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Non-discrimination

Denmark

2023

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Justice
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EUROPEAN COMMISSION

Directorate-General for Justice and Consumers

Directorate D — Equality and Union citizenship

Unit D.1 Non-Discrimination: LGBTIQ, Age Horizontal Matters

Unit D.2 Non- Discrimination: Anti-Racism and Roma Coordination

European Commission

B-1049 Brussels

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Denmark

Pia Justesen

Reporting period 1 January 2022 – 1 January 2023

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Luxembourg: Publications Office of the European Union, 2023

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PDF ISBN 978-92-68-01435-6 ISSN 2599-9176 doi: 10.2838/505223 DS-BB-23-007-EN-N

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EXECUTIVE SUMMARY

1. Introduction

In the 1960s and 1970s, the Danish Parliament debated whether legislation on discrimination in the labour market due to race, religion and other grounds should be enacted. The social partners, i.e. employers' organisations and employees' organisations in the labour market, rejected the proposal, arguing that Denmark had a tradition of collective agreements rather than legislation in the labour market. As no such collective agreements on anti-discrimination were concluded, victims of discrimination on grounds of race, ethnicity, sexual orientation and religion were not protected until 1996, when anti-discrimination legislation was finally enacted. A prohibition of discrimination based on age and disability was adopted in 2004.

Up until the 1960s and 1970s the Danish population was relatively homogeneous and the majority were members of the Evangelical Lutheran Church by conviction, tradition and/or culture. With new groups of migrant workers and the arrival of different groups of refugees, this picture has changed. During the last 50 years, Denmark has become a more multicultural and multi-ethnic country.

The domestic debate on whether and to what extent international human rights obligations should be followed can be quite fierce. Many politicians are sceptical about the limitations that international obligations impose on their legislative power.

In particular, there has been a growing emphasis on encouraging immigrants and descendants from third countries to explicitly sign up to 'basic Danish values'. In Denmark, the requirement to adapt and assimilate as understood by officials and the general public is stronger than in some of its neighbouring countries.

The Faroe Islands and Greenland are closely tied to Denmark as parts of the Danish Realm but are not members of the European Union. In general, the various anti-discrimination acts include provisions stating that they do not apply to the Faroe Islands and Greenland.

2. Main legislation

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

The Danish Constitution provides that no Danish subject shall be deprived of their liberty because of their political or religious convictions or because of their descent. Moreover, no person shall be denied the right to full enjoyment of civil and political rights by reason of their creed or descent, nor shall they 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 they adhere. Finally, the Constitution provides that citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done.

The Act on the Prohibition of Discrimination due to Race etc. makes it a criminal offence to refuse, in connection with a commercial or non-profit business, to serve or allow entrance to a person on the basis of race, colour, national or ethnic origin, religious belief or sexual

orientation.¹ In December 2021, the Act was amended to include the discrimination grounds of 'gender identity, gender expression or gender characteristics'.² The amended Section 1 entered into force on 1 January 2022.

The Act on Ethnic Equal Treatment aims to ensure protection against discrimination based on race or ethnic origin and to implement the non-employment aspects of the EU Racial Equality Directive.³ The Act on Ethnic Equal Treatment includes a prohibition of discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and healthcare, social benefits, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations whose members carry on a particular profession. The Act also includes a prohibition of harassment on the grounds of race and ethnic origin.

The Act on the Prohibition of Discrimination in the Labour Market etc. prohibits direct and indirect discrimination in the labour market based on race, skin colour, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin.⁴ In December 2021, the Act was amended to include the discrimination grounds of 'gender identity, gender expression or gender characteristics'.⁵ The amended Section 1 entered into force on 1 January 2022. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, employers are not allowed to discriminate among employees as regards access to vocational education and training, continuing training and retraining. The same prohibition applies to people providing guidance and training as well as to those involved in work placement activities and in making rules and decisions about the right to perform professional activities and about membership of workers' and employers' organisations. In April 2022, the Act was amended and, from the new Section 5(2), it follows that an employer may not request information about an applicant's age in connection with the recruitment process.⁶

The Act on the Prohibition of Discrimination due to Disability is a civil law, which prohibits direct and indirect discrimination on the ground of disability.⁷ The Act applies to all public and private activities in all areas of society except for areas covered by the Act on the Prohibition of Discrimination in the Labour Market etc. The Act was adopted on 8 June 2018 and entered into force on 1 July 2018. In December 2020, the Act was amended to include a legal duty to provide reasonable accommodation for young people and children with disabilities in public and private day-care institutions and schools.⁸ This provision in Section 9(a) entered into force on 1 January 2021.

¹ Act on the Prohibition of Discrimination due to Race etc. (*Lov om forbud mod forskelsbehandling på grund af race m.v.*), Consolidated Act No. 626 of 29 September 1987 with later amendments.

² Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022. Descriptions of the term sexual orientation and gender identity etc. follow from the preparatory works of this amendment (Bil No. 18 2021/1) (translation by the author): 'In relation to the protection of LGBTI people against discrimination, the working group has looked at protection in relation to 1) Sexual orientation, which includes a person's persistent sexual attraction pattern based on which gender they fall in love with and are sexually attracted to. 2) Gender identity that refers to a person's inner and individual experience of their gender. 3) Gender expressions that refer to the way a person expresses their gender, e.g. choice of clothes, hairstyle, makeup, behaviour, movements and speech. 4) Gender characteristics that cover the bodily characteristics that characterise and differentiate gender, e.g. the number of X and Y chromosomes, the type of internal and external genitalia, endocrine conditions, beard growth and breast development.'

³ Act on Ethnic Equal Treatment (*Lov om etnisk ligebehandling*), Consolidated Act No. 438 of 16 May 2012 with later amendments.

⁴ Act on the Prohibition of Discrimination in the Labour Market etc. (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*), Consolidated Act No. 1001 of 24 August 2017 with later amendments.

⁵ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

⁶ Amendment Act No. 372 of 28 March 2022 entering into force on 1 July 2022.

⁷ Act on the Prohibition of Discrimination due to Disability (*Lov om forbud mod forskelsbehandling på grund af handicap*), Act No. 688 of 8 June 2018 with later amendments.

⁸ Amendment Act No. 2218 of 29 December 2020.

The discrimination grounds of age, and religion or belief do not currently enjoy protection outside the labour market in Danish civil law. On 1 January 2022 an amended Act on Equality between Men and Women entered into force, adding the prohibition of discrimination based on 'sexual orientation, gender identity, gender expression or gender characteristics' to the existing discrimination ground of gender.⁹ The Act on Equality between Men and Women covers areas outside the labour market.

Criminal law prohibits direct differential treatment with regard to access to public places and services on the grounds of race, colour, national or ethnic origin, religious belief, sexual orientation, gender identity, gender expression or gender characteristics outside the labour market, but not age or disability. Moreover, criminal law does not cover indirect discrimination, harassment or victimisation.

Denmark has signed and ratified all major human rights conventions except the UN Convention on Migrant Workers and Protocol 12 to the European Convention on Human Rights (ECHR). Denmark has signed but not yet ratified the CoE Revised European Social Charter.¹⁰

3. Main principles and definitions

Direct discrimination is defined as a situation where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of, for example, racial or ethnic origin.¹¹

Indirect discrimination is deemed to occur where an apparently neutral provision, criterion or practice would put persons of a particular racial or ethnic origin, for example, at a disadvantage compared to 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.¹²

Harassment, instruction to discriminate and victimisation are also prohibited.¹³

Two main exceptions to the prohibition of discrimination apply in the labour market:¹⁴

1. Employers whose establishments have the aim of promoting a certain political or religious ethos are exempted from the Act's prohibition of discrimination in situations where a certain political or religious requirement is of importance to the particular job in question.
2. If it is of crucial significance that a person has a particular race, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, or national, social or ethnic origin, has a particular skin colour, age or disability or is of a certain religion or belief and if the requirement for such a characteristic is reasonable in relation to the concrete work in question, the employer can apply for a dispensation from the relevant Government minister. After having obtained a statement from the Minister of Labour, the minister may issue a concrete exemption from the prohibition of differential treatment.

⁹ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

¹⁰ Denmark has not accepted the collective complaints protocol to the European Social Charter.

¹¹ See Section 1(2) of the Act on the Prohibition of Discrimination in the Labour Market, Section 3(2) of the Act on Ethnic Equal Treatment and Section 5(2) of the Act on the Prohibition of Discrimination due to Disability.

¹² See Section 1(3) of the Act on the Prohibition of Discrimination in the Labour Market etc., Section 3(3) of the Act on Ethnic Equal Treatment and Section 5(3) of the Act on the Prohibition of Discrimination due to Disability.

¹³ See Sections 1(4), 1(5) and 7(2) of the Act on the Prohibition of Discrimination in the Labour Market etc.; Sections 3(4), 3(5) and 8 of the Act on Ethnic Equal Treatment; and Sections 5(4), 5(5) and 9 of the Act on the Prohibition of Discrimination due to Disability.

¹⁴ See Section 6 of the Act on the Prohibition of Discrimination in the Labour Market etc.

Regarding reasonable accommodation for persons with disabilities, employers are obliged to adapt the workplace in order to accommodate persons with disabilities, unless this will place a disproportionate burden on the employer.¹⁵ The Danish Supreme Court has stated that if an employee needs reduced working hours because of a disability, the employer must show a willingness to look into possible accommodations like flexible jobs, part-time jobs, etc. If the employer refuses such accommodations, the courts might conclude that the obligation to provide reasonable accommodation has been violated.¹⁶ Outside the labour market, the Act on the Prohibition of Discrimination due to Disability establishes an obligation to provide reasonable accommodation within public and private day-care institutions and schools.

The Danish acts on discrimination distinguish between natural persons and legal persons and state that only natural persons are protected against direct or indirect discrimination.

Discrimination based on association with an individual is explicitly covered by the Act on Ethnic Equal Treatment and the new Act on the Prohibition of Discrimination due to Disability. Discrimination based on association is not mentioned in the wording of the Act on the Prohibition of Discrimination in the Labour Market etc., but it is covered in case law. Discrimination based on a perception or assumption of a person's characteristics is not directly prohibited in Danish law.

Multiple discrimination is not directly covered by legislation. In cases of multiple discrimination, the different discrimination grounds are dealt with individually. In recent cases, discrimination on more than one ground has involved higher amounts of financial compensation.

4. Material scope

In the public and private labour market, discrimination is prohibited on the grounds of race, skin colour, religion or faith, political conviction, sexual orientation, gender identity, gender expression or gender characteristics, age, disability and national, social or ethnic origin according to the Act on the Prohibition of Discrimination in the Labour Market etc. In civil law covering areas outside the labour market, discrimination on the grounds of race and ethnic origin as well as disability is prohibited according to the Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination due to Disability. Discrimination on the grounds of sexual orientation, gender identity, gender expression or gender characteristics¹⁷ is prohibited outside the labour market according to the Act on Equal Treatment of Men and Women in Society prohibiting discrimination based on gender.¹⁸

5. Enforcing the law

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

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

- 1) Board of Equal Treatment;
- 2) Civil courts;
- 3) Trade union if it is a case within the labour market;
- 4) Citizens advice services, which exist in some municipalities (advice/assistance);
- 5) Danish Institute for Human Rights (advice/assistance);
- 6) NGOs (advice/assistance).

¹⁵ See Section 2(a) of the Act on the Prohibition of Discrimination in the Labour Market etc.

¹⁶ Supreme Court judgment of 22 November 2017, Case No. 305/2016.

¹⁷ 'Gender characteristics' is the Danish equivalent of 'sex characteristics', which is the term more generally used.

¹⁸ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

Most victims of alleged discrimination file complaints with the Board of Equal Treatment.¹⁹ The act establishing the Board was amended in 2021 to include the discrimination grounds of gender identity, gender expression and gender characteristics.²⁰ Thus, the Board of Equal Treatment covers all protected grounds, (gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin). The Board of Equal Treatment is competent to hear individual complaints related to discrimination in the labour market based on gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression, gender characteristics, age, disability or national, social or ethnic origin. Outside the area of employment, the Board deals with complaints related to discrimination based on disability, race, ethnic origin, gender, gender identity, gender expression and gender characteristics. Victims of discrimination can be awarded compensation for non-pecuniary damages directly by the Board. The Board is entitled to take the case to court if the discriminating party is not willing to pay.

A. Non-governmental organisations

Trade unions and other membership organisations can represent their members in civil court cases dealing with pay and employment conditions. No particular legislation exists regarding the possibility of NGOs representing victims of discrimination in civil court proceedings. In comparison with trade unions on questions of pay and employment conditions, NGOs do not have the same general legal standing before domestic courts of law in relation to cases of discrimination. Only certified lawyers who have obtained a mandate from the individual victim of discrimination can litigate a case for the civil courts. This means that the NGO can help to examine the case but when it comes to representing and promoting the case before the civil courts, the individual victim of discrimination must get legal representation from a certified lawyer.

B. Shared burden of proof

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

C. Level of sanctions and monitoring the number of complaints

Statistics on the number of complaints made to the Board of Equal Treatment can be found in the Board's annual report.

The level of compensation for discrimination in the labour market seems effective, proportionate and dissuasive. Outside the labour market, sanctions are so mild that it could be questioned whether they are sufficiently effective, proportionate and dissuasive.

D. Statistical evidence used in practice

Statistical evidence has been used in some cases of age and gender discrimination. In a 2015 ruling from the Supreme Court, the Court concluded that statistical information – if authentic and sufficiently significant – can by itself establish an assumption of discrimination because of age.²¹

¹⁹ Act on the Board of Equal Treatment (*Bekendtgørelse af lov om Ligebehandlingsnævnet*), Consolidated Act No. 1230 of 2 October 2016 with later amendments.

²⁰ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

²¹ Supreme Court judgment No. 28/2015 of 14 December 2015.

6. Equality bodies

The Danish Institute for Human Rights – the national human rights institution of Denmark²²

Legal basis

The Danish Institute for Human Rights (DIHR) has been designated since 2003 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 Racial Equality Directive. The act establishing the DIHR clarified the role of the Institute as a separate and independent institution. The act also specifies the role of the DIHR with regard to the promotion of equality and non-discrimination and specifies the mandate of the Institute under the EU directives as a specialised equality body on race and ethnic origin as well as on gender. The act establishing the DIHR was amended in 2021 to include the discrimination grounds of sexual orientation, gender identity, gender expression and gender characteristics.²³ Since 1 January 2022, the DIHR has had the formal competence of a specialised equality body in respect not only of race, ethnic origin and gender but also of sexual orientation, gender identity, gender expression and gender characteristics. Furthermore, according to Parliament Decision B15 of 17 December 2010, the DIHR is also responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities and thus deals with issues of disability. In practice the DIHR takes a horizontal approach and works on other discrimination grounds as well.

Mandate and competences

The DIHR has been given the authority to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination. Also, the DIHR issues a yearly report to the Parliament on the human rights situation in Denmark, which includes the situation of ethnic minorities and persons with disabilities. Finally, the DIHR has the authority to bring complaints to the Board of Equal Treatment in cases that are a matter of principle or of general public interest.

7. Key issues

The key issues in this section represent the views of the author of this report.

Recent legislative initiatives targeting foreigners deal with the following:

- access to healthcare;
- legislation to abolish 'parallel societies';
- adoption of a burqa ban in public spaces;
- handshake as a requirement for Danish citizenship;
- initiatives against homeless unregistered migrants causing issues of discrimination because of ethnic origin.

As described and elaborated upon in Section 11.2, it is a widely held view among experts and civil society organisations that these initiatives pose challenges to protection against discrimination because of ethnic origin and/or religion.

As in previous years, there was a lack of recognition that discrimination takes place in Danish society. The Government, the ministries and other public authorities did not seem to prioritise efforts and initiatives for equality and non-discrimination.

²² Consolidated Act No. 553 of 18 June 2012 with later amendments.

²³ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

There was a lack of statistics and general research on discrimination. The monitoring of case law in Danish courts was hindered due to a lack of free public access to all case law.

There was no obligation and very limited access to the establishment of positive action measures by employers. Legal barriers made it very difficult in practice for employers to initiate genuine positive action measures.²⁴

The DIHR served as a specialised equality body.²⁵ Previously, the obligation set out by the EU directive and Danish legislation to provide assistance to victims of discrimination has not seemed to be a priority. The low number of discrimination inquiries illustrated that, for possible victims of discrimination, the DIHR either appeared invisible or there was no general confidence that approaching it would help in concrete terms. The numbers of inquiries rose substantially in 2022 and, overall, the situation may improve in the coming years as the DIHR has made the work of the advice unit a priority of the Equal Treatment Department.²⁶

²⁴ Section 4 of the Act on the Prohibition of Discrimination in the Labour Market etc.

²⁵ Section 2(2) of the Act on the Institute for Human Rights – the National Human Rights Institution of Denmark.

²⁶ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

INTRODUCTION

The national legal system

The basic law of Denmark is the current Constitution, which was adopted by referendum in 1953. This is the latest successor to the 1849 Constitution. The Constitution sets out the essential rules governing the most important institutions of the state, the Government, the Parliament and the judiciary, as well as the relationship between these institutions.

National legislative authority rests jointly with the Government and the Parliament.

The legal system is a continental system following primarily German traditions. Fundamental legal principles are laid down by the Constitution in very general terms. Constitutional rules are expounded in laws, while detailed regulation is provided by administrative orders (delegated/secondary legislation). In contrast to the German legal system, however, Denmark has no Constitutional Court. The Supreme Court has traditionally been very reluctant to use its power to annul laws that may contradict the Constitution.

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

Public authorities are governed by a general principle of equality applicable under administrative law. The general principle has the force of legislation (and not constitutional law) and means that public authorities must treat equal matters with full equality before the law.

The Danish private and public labour market has traditionally been based on the 'Danish model', as it is known. This means a labour market that is largely regulated by collective agreements between the labour market social partners. A specialised Labour Court exists to resolve conflicts between the social partners regarding breaches of collective agreements. Anti-discrimination is also to some degree covered by collective agreements, for example the question of equal pay.

The Board of Equal Treatment was established on 1 January 2009 to deal with individual complaints of discrimination.

The Danish Institute of Human Rights (DIHR) holds two EU mandates as a specialised equality body on race or ethnic origin as well as on gender. In addition, the DIHR monitors the Danish implementation of the UN Convention on the Rights of Persons with Disabilities in accordance with Article 33 of the Convention. On 1 January 2022, the DIHR became competent to act as a specialised equality body on gender identity, gender expression and gender characteristics as well.²⁷

Denmark is a member of the Council of Europe and has acceded to the European Convention on Human Rights and all of its protocols, apart from Protocol 12. The European Convention on Human Rights is the only human rights convention currently incorporated in Danish law.

With regard to unincorporated and ratified human rights conventions, it is generally assumed that they constitute a relevant source of law, which may be invoked and must be applied by national courts and administrative authorities.

²⁷ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

List of main legislation transposing and implementing the directives**Official title of the law: Act on the Prohibition of Discrimination in the Labour Market etc.²⁸**

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 24 May 1996

Entry into force: 1 July 1996

Latest relevant amendments: 1 July 2022

Web link: <https://www.retsinformation.dk/Forms/R0710.aspx?id=179869>

Grounds covered: Race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin

Civil law

Material scope: Employment

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Official title of the law: Act on Ethnic Equal Treatment²⁹

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 28 May 2003

Entry into force: 1 July 2003

Latest relevant amendments: 1 January 2013

Web link: <https://www.retsinformation.dk/forms/r0710.aspx?id=141404>

Grounds covered: Race and ethnic origin

Civil law

Material scope: Access to social protection, including social security and healthcare, social advantages, 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

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate

Official title of the law: Act on the Prohibition of Discrimination due to Race etc.³⁰

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 9 June 1971

Entry into force: 1 August 1971

Latest relevant amendments: 1 January 2022

Web link: <https://www.retsinformation.dk/forms/r0710.aspx?id=59249>

Grounds covered: Race, skin colour, national or ethnic background, belief or sexual orientation, gender identity, gender expression or gender characteristics

Criminal law

Material scope: Provision of goods or services and access to public places or events

Principal content: Direct discrimination (denial of services)

Official title of the law: Act on the Board of Equal Treatment³¹

Name used in this report: N/A

Abbreviation: N/A

Date of adoption: 27 May 2008

²⁸ *Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.* Consolidated Act No. 1001 of 24 August 2017 with later amendments.²⁹ *Lov om etnisk ligebehandling.* Consolidated Act No. 438 of 16 May 2012 with later amendments.³⁰ *Lov om forbud mod forskelsbehandling på grund af race m.v.* Consolidated Act No. 626 of 29 September 1987 with later amendments.³¹ *Lov om ligebehandlingsnævnet.* Consolidated Act No. 1230 of 2 October 2016 with later amendments.

Entry into force: 1 January 2009 Latest relevant amendments: 2 August 2022 Web link: https://www.retsinformation.dk/Forms/R0710.aspx?id=179851 Grounds covered: Gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin Civil law Material scope: - Within labour market: all protected discrimination grounds; - Outside labour market (access to social protection, including social security and healthcare, social advantages, 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): gender, disability, race and ethnic origin. Principal content: Creation of a specialised body
Official title of the law: Act on the Institute for Human Rights – the National Human Rights Institution of Denmark³² Name used in this report: N/A Abbreviation: N/A Date of adoption: 18 June 2012 Entry into force: 1 January 2013 Latest relevant amendments: 1 January 2022 Web link: https://www.retsinformation.dk/forms/r0710.aspx?id=142116 Grounds covered: Race, ethnic origin, disability, gender, sexual orientation, gender identity, gender expression or gender characteristics Civil law Material scope: Danish society in general Principal content: Creation of a specialised body
Official title of the law: Act on the Prohibition of Discrimination due to Disability³³ Name used in this report: N/A Abbreviation: N/A Date of adoption: 8 June 2018 Entry into force: 1 July 2018 Latest relevant amendments: 1 January 2021 Web link: https://www.retsinformation.dk/Forms/R0710.aspx?id=201823 Grounds covered: Disability Civil law Material scope: All public and private activities in all areas of society except for areas covered by the Act on the Prohibition of Discrimination in the Labour Market etc. Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Official title of the law: Act on Equal Treatment of Men and Women in Society³⁴ Name used in this report: N/A Abbreviation: N/A Date of adoption: Information has not been found on the exact adoption date in 2000 Entry into force: 1 June 2000 Latest relevant amendments: 1 January 2023 Web link: https://www.retsinformation.dk/eli/lta/2022/1575

³² Lov om Institut for Menneskerettigheder – Danmarks Nationale Menneskerettighedsinstitution. Act No. 553 of 18 June 2012 with later amendments.

³³ Lov om forbud mod forskelsbehandling på grund af handicap. Act No. 688 of 8 June 2018 with later amendments.

³⁴ Ligestillingsloven. Consolidated Act No. 1575 of 19 December 2022.

Grounds covered: Gender, sexual orientation, gender identity, gender expression or gender characteristics

Civil law

Material scope: All public and private activities in all areas of society except for areas covered by gender legislation on employment

Principal content: Prohibition of direct and indirect discrimination, harassment and sexual harassment, instruction to discriminate

The Faroe Islands and Greenland are not members of the EU and the various anti-discrimination acts listed above include provisions stating that they do not apply to the Faroe Islands and Greenland.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Denmark does not contain a general provision prohibiting discrimination or a general equality clause. The Constitution includes four articles dealing with non-discrimination and these provisions do not apply to the material areas covered by the EU directives. The Danish Constitution only covers one discrimination ground listed in the directives, namely religion.

Section 71(1) of the 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.' As a point of departure, the Section only covers Danish citizens, but the liberty of foreigners is to some extent protected by Section 70: 'No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons.'

Section 68 of the Constitution provides that 'No one shall be liable to make personal contribution to any denomination other than the one to which he adheres.'

Section 67 of the Constitution provides that 'Citizens shall be at liberty to form congregations for the worship of God in a manner which is in accordance with their convictions, provided that nothing contrary to good morals or public order shall be taught or done.'

The constitutional anti-discrimination and equality provisions are directly applicable and can be enforced against private individuals (as well as against the state).

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

In general, the grounds of discrimination are only vaguely defined and described in Danish legislation.

a) Racial or ethnic origin

There is no definition of race in the Act on Ethnic Equal Treatment or in the Act on the Prohibition of Discrimination in the Labour Market etc. implementing the Racial Equality Directive.

The explanatory notes to the above two acts describe race in the following way:

'The term shall be understood in accordance with usual terminology, as specified in national and international law, as well as case law from the Court of Justice of the European Union (CJEU) in relation to the Directive. Race is understood as a general belonging to a group of people being defined on the basis of physical criteria, including colour.'

Anti-discrimination criminal law on hate speech and access to public places was passed in 1971 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 particularly relevant.

On that basis, race must be understood in accordance with international human rights law as a social construct rather than a biological concept.

Like race, ethnic origin is not defined in the laws implementing the Racial Equality Directive. The explanatory notes to the Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market etc. implementing the Racial Equality Directive describe ethnic origin as follows: 'The term is generally understood as the belonging to a group of people, who are defined on the basis of shared history, traditions, culture or cultural background, language, geographical origin, etc.'³⁵

The only legally recognised ethnic minority in Denmark is the German minority in Southern Jutland.³⁶

In 2022, 45 % of immigrants of non-Western origin and their descendants experienced discrimination based on their ethnic background.³⁷ The survey for the national integration barometer is carried out every second year and the percentage has stayed almost the same since the indicator was first measured in 2012.

There is limited Danish case law on the meaning of ethnic origin. However, a preliminary ruling by the CJEU, requested by the Western High Court, illustrates that ethnic origin cannot be determined on the basis of a single criterion.³⁸ On the contrary, ethnic origin is based on a number of objective and subjective factors like shared nationality, religious faith, language, cultural and traditional origins and backgrounds. The question for the CJEU was whether credit institutions were allowed to request different documentation from loan applicants depending on whether they were born in an EU/EFTA country or not. The Court

³⁵ Ministry of the Interior, Committee on implementation in Danish law of Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Report No. 1455 (2002), p. 264.

³⁶ Regulation No. 24 of 7 June 1955 on the general rights of the German minority (*Bekendtgørelse nr. 24 af 7/6 1955 angående det tyske mindretals almindelige rettigheder*).

³⁷ National Integration Barometer 2022 (*Det Nationale Integrationsbarometer*): [Equal Treatment](#).

³⁸ Judgment of 6 April 2017, *Jyske Finans*, C-668/15.

determined that the birthplace of a person is only one of several factors determining their ethnic origin. The Court concluded that it was not direct or indirect discrimination because of ethnic origin to request additional identity information from a person who was born outside the EU/EFTA. In a recent case brought by the Danish Institute for Human Rights to the Board of Equal Treatment, the Board referred to the Jyske Finans ruling and concluded that the criterion 'non-Western origin' did not say anything about ethnic origin and the use of this criterion was not covered by the prohibition of discrimination based on ethnic origin (see section 12.2).³⁹

In a decision by the Board, a housing association had not offered the complainant the opportunity to reserve housing because of the woman's foreign-sounding name. She was therefore awarded compensation of EUR 1 350 (DKK 10 000) for discrimination on the grounds of race and ethnic origin (see section 12.2).⁴⁰

b) Religion or belief

The term 'religion' is not defined in the laws implementing the Employment Equality Directive. According to the guidelines for the Act on the Prohibition of Discrimination in the Labour Market etc. religion is understood as formally approved or recognised religions.⁴¹ A definition may thus be found indirectly through the Danish authorities' practice of approving religious communities. The Ministry of Church Affairs may approve a group of adult citizens (over 18 years) belonging to a particular religion as a religious community or congregation in accordance with the Marriage Act (*Ægteskabsloven*).⁴²

A standing advisory committee on religious communities (*Det Rådgivende Udvalg vedr. Trossamfund*) is appointed to assess whether the conditions for approval as a religious community are fulfilled. The criteria for approval follow from the Act on Religious Communities outside the Danish National Church (*Lov om trossamfund udenfor folkekirken*).⁴³ The committee is independent of the ministry and has expertise in religious sociology, religious history, law and theology.

Since religion in the non-discrimination legislation is therefore understood as formally approved or recognised religions, there is a theoretical link between the recognition as a religious community and the possibility to avail oneself of the non-discrimination rules on the ground of religion. In reality, however, because of the wider discrimination ground of belief, the establishment of such a link is not required in practice.

'Belief' is not defined in the legislation but is generally assumed to provide wider protection than religion.⁴⁴ Thus, belief includes religions that are not formally recognised. In short, belief is considered to be a more defined conviction covering something other than formally recognised religions. Examples of belief are atheism and other philosophical orientations.

Research from the University of Copenhagen using the method of situation testing has found that wearing a hijab has a negative effect on a job applicant's chances of gaining employment.⁴⁵ The research shows that ethnic minority women wearing a hijab have to

³⁹ Board of Equal Treatment, Decision No. 9518 of 29 April 2022.

⁴⁰ Board of Equal Treatment, Decision No. 9026 of 7 December 2022.

⁴¹ *Vejledning om Lov om Forbud mod Forskelsbehandling på Arbejdsmarkedet m.v.* (Guidance on the Act on the Prohibition of Discrimination in the Labour Market), 1 February 2019, p. 55.

⁴² Since 28 June 2015 the Ministry of Church Affairs has had the competence to approve religious communities. See <http://www.km.dk/andre-trossamfund/>. For selected information in English, see <http://eng.andretrossamfund.dk/>.

⁴³ Act No. 1533 of 19 December 2017 about religious communities outside the Danish National Church (*Lov om trossamfund udenfor folkekirken*).

⁴⁴ *Vejledning om Lov om Forbud mod Forskelsbehandling på Arbejdsmarkedet m.v.* (Guidance on the Act on the Prohibition of Discrimination in the Labour Market), 1 February 2019, p. 55.

⁴⁵ Dahl, M. (2019) 'Alike but different: How cultural distinctiveness shapes immigrant-origin minorities' access to the labour market' in *Detecting discrimination. How group-based biases shape economic and political interactions: Five empirical contributions*. PhD dissertation. University of Copenhagen.

send 60 % more applications than ethnic Danish women in order to be called for an interview.

In its 2019 annual report, the Board of Equal Treatment states that in cases of discrimination on the grounds of religion or belief, the Board will assess whether there is a sufficiently close and direct connection between a complainant's act or omission (causing differential treatment by a defendant) and the complainant's religious beliefs.⁴⁶ Referring to case law of the European Court of Human Rights, the Board underlines that such a connection is a condition for the complainant to be covered by the protection against discrimination on the grounds of religion or belief.

There is limited case law on discrimination because of religion and belief in Denmark. In 2022 the Supreme Court ruled in a case about a physical education teacher who was dismissed from his job because he declined to comply with instructions from his employer (see Section 12.2.).⁴⁷ The teacher was a Seventh Day Adventist and it was a crucial part of his religion and belief not to work on Saturdays. After a detailed assessment, the Supreme Court agreed with the employer that requiring the teacher to work for three hours at an open house event on a Saturday was necessary and that indirect discrimination because of religion or belief had not taken place.

In a 2022 decision by the Board of Equal Treatment, a woman working in a bakery had complained that she was no longer offered shifts after she started wearing a headscarf.⁴⁸ The owner of the bakery had asked her if she could avoid wearing the headscarf, as he said that it made some customers feel insecure. The Board found that the woman had been directly discriminated against based on her religion. A year earlier, the Board found that it constitutes indirect discrimination based on religion to require that an employee shakes hands with everybody regardless of gender.⁴⁹

c) Disability

Danish legislation implementing the Employment Equality Directive does not contain a definition of 'disability'. The concept of disability has been the subject of a large body of case law from the Danish Board of Equal Treatment and Danish courts and it can be questioned whether the Danish interpretation of the concept is fully aligned with the definition of disability set by the CJEU. The focus on medical information to establish a disability and the lack of consideration of environmental factors does not seem to align with the CJEU's case law. The medical model of disability in other words has dominated in Danish case law, and still does to a large extent, despite the Supreme Court landmark ruling from November 2017, which established that a medical diagnosis is not a requirement to establish a disability covered by discrimination law.⁵⁰ Following the ruling, the impairment must be evaluated based on all circumstances of the case, including information from doctors and other health professionals describing the impairment. Thus, a comprehensive assessment must determine whether an employee has a disability or not.

In cases regarding dismissals, the employee has to prove that they had a disability at the time of the dismissal.

Regarding the impairment in question, it is generally not difficult to assess whether the individual has a disability covered by the law in situations where the condition is congenital or caused by an accident (for example, cerebral palsy or paralysis). In relation to illness, the assessment is less straightforward. However, as described in the following paragraph, the CJEU and the Danish Supreme Court have made clarifications illustrating that an illness

⁴⁶ Board of Equal Treatment (2020) *Annual Report 2019*, p. 18.

⁴⁷ Supreme Court Case No. BS-31220/2021-HJR of 7 September 2022.

⁴⁸ Board of Equal Treatment, Decision No. 9835 of 13 June 2022.

⁴⁹ Board of Equal Treatment, Decision No. 9031 of 15 December 2021.

⁵⁰ Supreme Court judgment of 22 November 2017, Case No. 305/2016. Judgment printed in U2018.853H.

can result in an impairment, which hinders full participation in professional life on an equal basis with others and thus constitutes a disability.

Whether an illness is diagnosed or by other means sufficiently documented must be based on a comprehensive evaluation of available information from doctors and other health professionals as well as all other circumstances of the case. However, it is not a requirement that the impairment is caused by a medically diagnosed illness. This follows from a landmark Supreme Court ruling of 22 November 2017,⁵¹ referring to case law from the CJEU.⁵² The case dealt with a woman who, after having brain surgery, experienced disabling tiredness. She could only work between 12 and 18 hours a week and her fatigue was not expected to improve. The Supreme Court clarified that to have a disability covered by the discrimination law, it is not a requirement that the condition in question is caused by a medically diagnosed illness. Instead, the impairment must be evaluated based on all circumstances of the case, including information from doctors and other health professionals describing the impairment. The ruling also confirmed that the burden of proof rests with the employee. An employee has to prove that they have a disability, including that the impairment is of a long-term nature.

In a landmark ruling, the Eastern High Court dealt with the issue of sequelae/complications stemming from a disorder (in this case diabetes).⁵³ The Court found that sequelae must be regarded as individual illnesses that cannot be considered together resulting in one long-lasting limitation. The Court stated that diabetes by itself does not constitute a disability. The Court also argued that, because of the character and the variations of the different complications related to diabetes, the diverse sequelae did not constitute the entire course of an illness, but had to be considered individually. In other words, since the individual consequences and illnesses associated with diabetes did not amount on their own to a limitation of sufficient impact and duration, no disability was found.

Most judgments and decisions deal with physical disabilities. However, a growing number of cases relate to psychosocial disabilities. Many individuals with psychosocial disabilities experience discrimination. Figures show that 53 % of persons with major psychosocial disabilities have experienced discrimination.⁵⁴ The Board of Equal Treatment has, for example, concluded that post-traumatic stress disorder constituted a disability.⁵⁵

To be considered a disability, the impairment must also constitute a limitation on the individual's participation in professional life on an equal basis with others. In a 2016 ruling, the question for the city court of Kolding was whether obesity could be deemed a disability.⁵⁶ In December 2014, the CJEU had issued a preliminary ruling in the case (C-354/13). On that basis, the city court stated that obesity might constitute a disability. However, in the case in question, the city court found that, according to medical information, the claimant's obesity did not constitute a disability because of the fact that the obesity did not entail a physical limitation that hindered the claimant's participation in professional life. The city court did not evaluate whether it was the employer's view of the claimant's obesity that led to the dismissal. The city court's reasoning and judgment was upheld by the Western High Court in 2020.⁵⁷

⁵¹ Supreme Court judgment of 22 November 2017, Case No. 305/2016. Judgment published in U2018.853H.

⁵² CJEU, joined cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, judgment of 11 April 2013, ECLI:EU:C:2013:222; Case C-13/05, *Chacón Navas*, judgment of 11 July 2006, ECLI:EU:C:2006:456; Case C-406/15, *Milkova*, judgment of 9 March 2017, ECLI:EU:C:2017:198; Case C-395/15, *Daouidi*, judgment of 1 December 2016, ECLI:EU:C:2016:917.

⁵³ Eastern High Court judgment of 6 December 2016, Case No. B-2828-15.

⁵⁴ Danish Institute for Human Rights (2021), *2012-2021: Otte år uden reelle forbedringer i levevilkår for mennesker med handicap*, (2012-2021: Eight years without improvements in living conditions for persons with disabilities), December 2021, p. 11.

⁵⁵ Board of Equal Treatment, Decision No. 9538 of 24 June 2020.

⁵⁶ City Court of Kolding judgment of 31 March 2016.

⁵⁷ Western High Court judgment of 6 November 2020, Case No. BS-1716/2016-VLR.

Finally, it follows from case law that the impairment limiting an individual's participation in professional life has to be either permanent or long term to constitute a disability. No minimum period of time as to what constitutes 'long term' has been indicated by the courts. According to the Supreme Court whatever constitutes 'long term' has to be based on a specific assessment of the individual case.⁵⁸

Even if, at the time of a dismissal, an illness has not imposed long-term limitations on an individual, it can still constitute a disability if the limitations based on medical information are expected to be lasting or long term. In the *Daouidi* case (C-395/15), the CJEU held that if the duration of an illness is uncertain, it should be regarded as long term. Danish rulings on the long-term conditions have reached a different result, questioning whether Danish law aligns with the CJEU's case law. One example is a decision by the Board of Equal Treatment where the Board concluded that a social worker did not have a disability because of the fact that at the time of the dismissal, there was no real prognosis for the duration of the social worker's illness and no prognosis for the impairments.⁵⁹

Another example questioning the Danish alignment with the CJEU case law on the long-term requirement is a judgment from the Maritime and Commercial Court.⁶⁰ This ruling seems to illustrate that alcoholism is not seen as a disability because it is not long term. The court emphasised that even though the craving for alcohol continued to be present for the woman in the case, because of the fact that she did not actually drink anymore, her alcoholism could not be seen as a long-term impairment.

d) Age

Age is not defined in the legislation implementing the directives but, according to the guidelines for the Act on the Prohibition of Discrimination in the Labour Market etc., everybody is protected against discrimination on account of age.⁶¹ This applies to young people and old people – all ages are protected discrimination grounds.

The Board dealt with the case of a 23-year-old student who was refused a paid internship at a crisis centre (see section 12.2).⁶² In a message to the student, the employer had stated that he was too young. The employer argued to the Board that the complainant was too immature to do an internship at the crisis centre. The Board found that the employer's use of the term 'too young' could be understood as a matter of lack of maturity and personal qualifications rather than age. Based on all the information of the case, the Board therefore concluded that the complainant had not experienced direct discrimination because of age.

In another 2022 case for the Board, a significant over-representation of older workmen among dismissed employees put the burden of proving that discrimination had not taken place on the employer (see section 12.2).⁶³ Since the employer had not explained why the complainant was selected for dismissal, the Board found that the employer had not proved that the principle of equal treatment had not been violated. The complainant was therefore awarded compensation equivalent to nine months' salary.

The Board of Equal Treatment has issued landmark decisions in two test cases regarding job advertisements on Facebook.⁶⁴ The question for the Board was whether it was contrary to the Act on the Prohibition of Discrimination in the Labour Market etc. to target job

⁵⁸ Supreme Court judgment of 23 June 2015, Case No. 25/2014. Printed in U2015.3301H.

⁵⁹ Board of Equal Treatment, Decision No. 9925 of 8 August 2017.

⁶⁰ Maritime and Commercial Court judgment of 3 December 2020, Case No. BS-45652/2019-SHR.

⁶¹ Guidance on the Act on the Prohibition of Discrimination in the Labour Market (1 February 2019), p. 41.

⁶² Board of Equal Treatment, Decision No. 10129 of 14 September 2022.

⁶³ Board of Equal Treatment, Decision No. 9412 of 23 March 2022. A similar case is dealt with in Decision No. 9413 of 23 March 2022.

⁶⁴ Board of Equal Treatment, Decision No. 9134 and Decision No. 9135 of 25 February 2021. See Board of Equal Treatment (March 2022) *Annual Report 2021*, p. 8.

advertisements on Facebook, so that the advertisements were only displayed on profiles belonging to Facebook users of a certain gender and age. The respondent companies had not indicated in the actual job advertisement that they preferred a person of a certain gender or of a certain age. However, by using Facebook's advertising platform, the companies arranged for the advertisements to appear only on the profiles belonging to certain Facebook users. In other words, the companies had actively indicated in the Facebook settings that the advertisements should be targeting certain age and gender groups. In one of the cases, the defendant had encouraged Facebook recipients to share the advertisement with anybody and in the end the defendant hired an applicant who was over 50 years of age for the position. On that basis, the Board found that the advertisements were not in breach of the prohibition against discrimination on the ground of age.⁶⁵ In the other case, the Board found that discrimination had taken place.⁶⁶

In 2020, the DIHR reviewed a total of 526 cases relating to age and discrimination.⁶⁷ The cases had been decided by the Board of Equal Treatment during the period from June 2009 to March 2018. The majority of cases concern situations of dismissal and recruitment and in 25 % of the cases the complaints of discrimination were upheld. The review notes that it can be difficult to lift the burden of proof and uphold a claim of discrimination based on age.

e) Sexual orientation

Sexual orientation has not been defined in the legislation implementing the directives. The core area for this criterion is the prohibition of discrimination against heterosexuals and homosexuals. According to the guidelines for the Act on the Prohibition of Discrimination in the Labour Market etc., the prohibition protects 'lawful sexuality, and therefore not paedophilia for example'.⁶⁸ There is very limited case law on the issue. In the literature, sexual orientation has been given a broad interpretation and is understood as including not only bisexuality but also the protection of transgender persons.⁶⁹

On 1 January 2022, discrimination based on gender identity, gender expression or gender characteristics was prohibited according to the amended Act on the Prohibition of Discrimination in the Labour Market etc.⁷⁰ According to the preparatory works for this amendment, sexual orientation includes 'a person's persistent sexual attraction pattern based on which gender one falls in love with and is sexually attracted to'.⁷¹

2.2 Multiple and intersectional discrimination

In Denmark, multiple discrimination is not prohibited by law.

In Denmark, intersectional discrimination is not prohibited by law.

In Denmark, there are civil court cases and decisions by the Board of Equal Treatment on multiple discrimination. The cases deal primarily with gender in combination with ethnic origin, disability or age. There is no case law dealing directly with intersectional discrimination and no information and case law has been found on how the Board distinguishes between multiple and intersectional discrimination.

⁶⁵ Board of Equal Treatment, Decision No. 9134 of 25 February 2021.

⁶⁶ Board of Equal Treatment, Decision No. 9135 of 25 February 2021.

⁶⁷ DIHR (2020), *Recommendation on openness about age* (August 2020). See:

<https://menneskeret.dk/udgivelser/anbefaling-aabenhed-alder-ved-ansoegninger>.

⁶⁸ Guidance on the Act on the Prohibition of Discrimination in the Labour Market (1 February 2019), p. 65.

⁶⁹ Schwarz, F. and Hartmann, J. J. (2011), *Forbud mod forskelsbehandling på arbejdsmarkedet – forskelsbehandlingsloven* (Prohibition of discrimination in the labour market – the Discrimination Act), p. 178.

⁷⁰ Amendment Act No. 2591 of 28 December 2021 entering into force on 1 January 2022.

⁷¹ Bill No. 18 (2021/1): <https://www.retsinformation.dk/eli/ft/202112L00018>.

A city court has, for instance, dealt with a case involving the dismissal of a wheelchair user during her maternity leave as if there were two different cases, assessing the claims of gender discrimination and disability discrimination separately.⁷² With regard to gender, the court found that the decision to dismiss was made during the teacher's maternity leave and the employer had not submitted any proof that the teacher's absence had not influenced this decision. With regard to disability, the employer had told the teacher that she was considered to be the least flexible with regard to teaching in locations other than the school in that many of these places were inaccessible. The school had not provided information about the need for flexibility and thus had not proved that the dismissal was objective and proportional. The court thus concluded that the teacher had been indirectly discriminated against because of both her gender and her disability.

In dismissal cases, the awarding of 6 to 12 months' salary in compensation is common in cases of discrimination on account of a single discrimination ground. Recent case law seems to suggest that the Board may award higher damages when several discrimination grounds are at stake.⁷³

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Denmark, discrimination based on a perception or assumption of a person's characteristics is not directly prohibited in national law. The following legislation therefore needs judicial interpretation.

The commentary to Section 3 of the Act on Ethnic Equal Treatment states that the prohibition of differential treatment is applicable irrespective of whether the actual race or ethnic origin of the victim is as assumed by the perpetrator or not. Discrimination based on perceptions or assumptions about a person's race or ethnic origin is therefore prohibited.

Such a statement is, however, not included in the commentary to Section 1 of the Act on the Prohibition of Discrimination in the Labour Market etc. or in the commentary to Section 5 of the Act on the Prohibition of Discrimination due to Disability.

A landmark Supreme Court ruling from November 2017 opens the way for discrimination based on perceived disability to be deemed illegal according to Danish non-discrimination law.⁷⁴ In the case concerned, the Supreme Court explicitly clarified that, in order to have a disability covered by the discrimination law, it is not a requirement that the condition in question be caused by a medically diagnosed illness. Instead, the impairment must be evaluated based on all the circumstances of the case, leaving room for discrimination by assumption. In some rulings (for example the obesity ruling),⁷⁵ however, where persons with disabilities claim that they were dismissed because of their disability, the approach by the courts and the Board of Equal Treatment seems to be an assessment of disability from a purely medical point of view. If, on that basis, the court or the Board finds that the person in question does not have a disability, there is no protection against discrimination, and in these cases, there is no investigation into whether the employer regarded the person as a person with a disability and dismissed them on that basis.

⁷² Randers City Court, judgment in Case No. BS-35572/2018-RAN of 24 September 2019.

⁷³ Board of Equal Treatment (June 2019) *Annual Report 2018*, p. 25.

⁷⁴ Supreme Court judgment of 22 November 2017, Case No. 305/2016.

⁷⁵ Western High Court judgment of 6 November 2020, Case No. BS-1716/2016-VLR.

b) Discrimination by association

In Denmark, discrimination based on association with persons with particular characteristics is prohibited in national law.

It follows from Section 3(1) of the Act on Ethnic Equal Treatment 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.

It follows from Section 6 of the Act on the Prohibition of Discrimination due to Disability that no person may subject another person to discrimination on grounds of the latter's relationship to a person with a disability, provided that the discrimination is based on this person's disability.

No such article on discrimination by association appears in the Act on the Prohibition of Discrimination in the Labour Market etc. However, discrimination in the labour market based on a third party's disability is prohibited according to case law, which concludes that direct discrimination by association is covered by the Act.

A landmark Supreme Court ruling from May 2016 deals with discrimination by association.⁷⁶ The case dealt with a woman who claimed that she had been discriminated against due to the disability of her son who had Asperger's syndrome. The Supreme Court concluded that the son 'suffered from Asperger's syndrome to such a degree that he was covered by the concept of disability' in the Act on the Prohibition of Discrimination in the Labour Market etc. However, the Court argued that the complainant had not been dismissed because of her son's disability but because of her long absence from her job.

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Denmark, direct discrimination is prohibited in national law. It is defined.

Direct discrimination is deemed 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 race or ethnic origin, cf. Section 3(2) of the Act on Ethnic Equal Treatment. Section 5(2) of the Act on the Prohibition of Discrimination due to Disability defines discrimination in the same manner. Section 1(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. also defines direct discrimination in this manner referring to the discrimination grounds of race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin.

The Board of Equal Treatment has made reference to the preparatory works of the Act on the Prohibition of Discrimination due to Disability and has stated that the act does not entail an obligation to secure accessibility.⁷⁷ Lack of accessibility therefore does not constitute direct or indirect discrimination due to disability. In January 2021, the Board issued decisions in three test cases on website accessibility and concluded that the Act on the Prohibition of Discrimination due to Disability does not require further accessibility than what is required by other legislation.⁷⁸ The Board reached the same result in 2022 in a case where the complainant had dyslexia and complained that the website of a private company was not dyslexia-friendly (see Section 12.2).⁷⁹

⁷⁶ Supreme Court judgment of 27 April 2016, Case No. HR-151/2015.

⁷⁷ Board of Equal Treatment, Decision No. 9153 of 20 February 2020.

⁷⁸ Board of Equal Treatment, Decisions Nos. 9039, 9040 and 9041 of 19 January 2021.

⁷⁹ Board of Equal Treatment, Decision No. 9233 of 3 February 2022.

b) Justification for direct discrimination

As a general rule, the law does not permit direct discrimination – not even if it could be argued to be objectively justified and proportionate. However, Section 7 in the Act on the Prohibition of Discrimination due to Disability regulating areas outside of the labour market does allow for both direct and indirect discrimination based on disability. This is the case if the differential treatment pursues a legitimate aim and is appropriate and necessary to obtain the desired aim. In individual cases the Board makes a detailed evaluation of the necessity requirement. One case dealt with a woman who was diagnosed with post-traumatic stress disorder.⁸⁰ She was a member of an association training and certifying psychiatric service dogs. The association required her to use a vest for her service dog with the text: “psych service dog”, which she found stigmatising. In the case, the Board emphasized that it must be possible to spread the knowledge of mental illness without individuals being obliged to display that they have a psychiatric service dog because of a psychosocial disability. The Board therefore concluded that the complainant had been discriminated against based on her disability.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Denmark, indirect discrimination is prohibited in national law.

Definition:

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

Section 5(3) of the Act on the Prohibition of Discrimination due to Disability states that indirect discrimination shall be deemed to occur where an apparently neutral provision, criterion or practice would put persons with disabilities at a disadvantage compared to other persons.

In a landmark judgment, the Eastern High Court concluded that an employee in a case of collective redundancy dismissal had to experience an actual disadvantage to claim that they had been discriminated against.⁸¹

Language requirements may cause indirect discrimination based on ethnic origin. Case law illustrates that the Board makes an in-depth evaluation as to whether language requirements for e.g. a schoolteacher are justified with regard to the learning considerations of the students. In such cases, the Board therefore assesses whether the language requirement is objectively justified as well as appropriate and necessary.⁸²

b) Justification test for indirect discrimination

According to the justification test, indirect discrimination shall be deemed to occur where an apparently neutral provision, criterion or practice would put persons of a particular ethnic origin, for example, at a disadvantage compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means

⁸⁰ Board of Equal Treatment, Decision No. 9915 of 28 October 2021.

⁸¹ Eastern High Court judgment of 8 July 2015, Case No. B-3983-13.

⁸² Board of Equal Treatment, Decision No. 9151 of 26 February 2021.

of achieving that aim are appropriate and necessary. Cases of alleged indirect discrimination must be individually assessed. The justification test is compatible with the directives.

In a landmark case, the Supreme Court assessed the question of indirect discrimination because of disability in a case concerning a reorganisation process at a hospital and the resulting redundancies.⁸³ The case dealt with a nursing assistant who had reduced capacity in one arm and was dismissed at the same time as a large number of other employees. The Court found that the dismissal criteria of physical strength and flexibility put the nursing assistant in a worse-off situation than other employees. However, the Court concluded that the differential treatment was legitimate because of the actual change in working tasks after the reorganisation. The Court also stated that the dismissal could not have been avoided by establishing reasonable accommodation. The Court concluded that the dismissal did not constitute indirect discrimination because of disability.

In a landmark judgment from 2004, the Supreme Court found that the dismissal of a female employee for having worn a headscarf for religious reasons in opposition to the rules on clothing did not amount to indirect discrimination. The Court recognised that the prohibition of wearing a headscarf would mainly affect Muslim women but found that differential treatment was objectively justified in the performance of the work.⁸⁴ Since the 2017 headscarf rulings from the CJEU,⁸⁵ the Danish practice seems to be in line with EU law.

The Board has dealt with several cases of claimed disability discrimination outside the labour market.⁸⁶ The cases illustrate that the prohibition of indirect discrimination because of disability provides some protection against adverse treatment in, for example, access to services. An obligation to provide reasonable accommodation would provide stronger protection but, as emphasised by the Board, the Act on the Prohibition of Discrimination due to Disability covering areas outside the labour market does not involve an obligation to provide reasonable accommodation.

2.5.1 Statistical evidence

Section 2.5.1 has not been updated for 2022. Regarding both the legal framework and its practical application, please see Country report Non-discrimination Denmark 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 01.01.2021 – 01.01.2022.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Denmark, harassment is prohibited in national law. It is defined.

In Denmark, harassment explicitly constitutes a form of discrimination, cf. Section 1(4) of the Act on the Prohibition of Discrimination in the Labour Market etc., Section 3(4) of the Act on Ethnic Equal Treatment and Section 5(4) of the Act on the Prohibition of Discrimination due to Disability.

Harassment within the labour market is deemed to be discrimination when conduct related to race, skin colour, religion or belief, political opinion, sexual orientation, gender identity,

⁸³ Supreme Court judgment of 12 September 2014, Case No. 163/2013.

⁸⁴ Judgment printed in U2005.1265H.

⁸⁵ Judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15, ECLI:EU:C:2017:203; judgment of 14 March 2017, *Micropole*, C-188/15, ECLI:EU:C:2017:204.

⁸⁶ Board of Equal Treatment, Decision No. 9313 of 21 April 2021. Board of Equal Treatment, Decision No. 9150 of 20 February 2020.

gender expression or gender characteristics, 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, cf. Section 1(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. The offending acts can be concrete actions as well as failures to act.

Harassment outside the labour market is deemed to be discrimination when conduct related to race, ethnic origin or disability 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, cf. Section 3(4) of the Act on Ethnic Equal Treatment and Section 5(4) of the Act on the Prohibition of Discrimination due to Disability. Outside the labour market refers to the following: access to social protection, including social security and healthcare, social advantages, 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. For the discrimination ground of disability, the material scope is all public and private activity (except for the labour market and strictly private activities), cf. Section 2 of the Act on the Prohibition of Discrimination due to Disability.

Furthermore, according to the Act on Work Environment (*Arbejdsmiljøloven*), employers are obliged to ensure a healthy physical and psychological work environment.⁸⁷ According to this Act, it is the employer's responsibility to work against harassment in general at the individual workplace. It is irrelevant whether the alleged harassment is an expression of thoughtlessness or an outright intention to harass, rather what matters is the person's experience of the offending act.⁸⁸

There is limited case law on harassment but the Board of Equal Treatment has clarified the obligation of employers to support their employees and to secure a working environment without harassment, including harassment committed by other employees or customers.⁸⁹

b) Scope of liability for harassment

According to Section 3(4) of the Act on Ethnic Equal Treatment and Section 5(4) of the Act on the Prohibition of Discrimination due to Disability, the prohibition of harassment applies to anybody who performs tasks within the scope of the Act.

Where harassment is perpetrated by an employee, the employer is liable. In some cases, the employee is also liable. The following will deal with harassment in the labour market.

The prohibition of harassment in Section 1(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. applies in situations where the employer is the one exercising the harassment.

The guidelines to Section 1(4)⁹⁰ state that the employer may also be liable for any harassment or other discriminatory behaviour exercised by employees, as the employer has to take the necessary measures to ensure a harassment-free working environment.

Thus, where harassment is perpetrated by an employee, the main rule is that only the employer is liable.

⁸⁷ Consolidated Act No. 2062 of 16 November 2021.

⁸⁸ *Arbejdstilsynets Vejledning om 'Krænkende handlinger, herunder mobning og seksuel chikane'* (Danish Working Environment Authority's Guidance on 'Offensive acts, including bullying and sexual harassment') (2020), guideline 4.3.1-1, page 2.

⁸⁹ Board of Equal Treatment, Decision No. 9077 of 11 January 2018.

⁹⁰ Guidance on the Act on the Prohibition of Discrimination in the Labour Market (1 February 2019), p. 9.

This also follows from the general Danish principle of employer liability according to Provision 3-19-2 of the Danish Act (*Danske Lov*), which dates from 1683. According to this principle, employers are responsible not only for their own negligence and faults, but also for faults committed by their employees acting on their behalf. However, as harassment is not part of performing a job, harassment will not be considered as included in, or part of, the employer's responsibility, unless the employer has neglected their duty to instruct or correct their staff as a good employer should do to avoid harassment among employees.

As described above, only employers are bound by Provision 3-19-2 of the Danish Act and by the Act on the Prohibition of Discrimination in the Labour Market etc. If the employer is not responsible for harassment by an employee against another employee, the employee who experienced harassment can claim compensation from their colleague, according to the general legislation on damage liability, and more precisely Section 26 of the Act on Damage Liability (*Erstatningsansvarsloven*).⁹¹

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Denmark, instructions to discriminate are prohibited in national law. Instructions are not defined in detail.

The law just prohibits an instruction to discriminate, cf. Section 1(5) of the Act on the Prohibition of Discrimination in the Labour Market etc., Section 3(5) of the Act on Ethnic Equal Treatment and Section 5(5) of the Act on the Prohibition of Discrimination due to Disability.

In Denmark, instructions explicitly constitute a form of discrimination.

In the labour market, an instruction to discriminate against persons on grounds of race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age and disability or national, social or ethnic origin shall be deemed to be discrimination, cf. Section 1(5) of the Act on the Prohibition of Discrimination in the Labour Market etc. Outside the labour market, an instruction to discriminate against persons on grounds of race, ethnic origin or disability shall be deemed to be discrimination, cf. Section 3(5) of the Act on Ethnic Equal Treatment and Section 5(5) of the Act on the Prohibition of Discrimination due to Disability.

b) Scope of liability for instructions to discriminate

In Denmark, the person instructing is liable for discrimination. The prohibition of instruction in Section 1(5) of the Act on the Prohibition of Discrimination in the Labour Market etc. applies in situations where the employer gives an instruction to employees to discriminate, for example in a recruitment situation where the employer tells the personnel manager to avoid hiring employees with an ethnic minority background. An employee who instructs a colleague to discriminate against another colleague is not covered by the prohibition, because none of them has the power of an employer to instruct.

The employer may be liable for discriminatory behaviour, including an instruction to discriminate that is carried out by employees, as the employer has to take the necessary measures to ensure a working environment without discrimination.

This also follows from the general Danish principle of employer liability according to Provision 3-19-2 of the Danish Act. However, as an employee's instruction to discriminate

⁹¹ Consolidated Act No. 1070 of 24 August 2018 with later amendments.

is not part of performing a job, it will not be part of the employer's responsibility, unless the employer has neglected the duty to avoid discrimination among employees.

As described above, only employers are bound by Provision 3-19-2 of the Danish Act and by the Act on the Prohibition of Discrimination in the Labour Market etc. If the employer is not responsible for an instruction to discriminate by an employee, the employee who experienced discrimination can claim compensation according to Section 26 of the Act on Damage Liability.⁹² Compensation can be claimed from the person who issued the instruction to discriminate as well as from the person who was actually responsible for committing the discriminatory act.

The prohibition of instruction (discrimination on account of race and ethnic origin) in Section 3(5) of the Act on Ethnic Equal Treatment only involves service providers. As in the case of employers, the provision only applies where the person giving the instruction has some authority or right of supervision over the person receiving the instruction. In other words, there must be a certain hierarchical relationship between the person issuing the discriminatory instruction and the person receiving it. A situation where a customer encourages a shopkeeper to discriminate against third parties will not be covered by the provision.

The prohibition of instruction (discrimination on account of disability) in Section 5(5) of the Act on the Prohibition of Discrimination due to Disability applies to all public and private activities in all areas of society, except for the labour market. In practice, it will most often involve service providers in situations where there is a certain hierarchical relationship between the person issuing the discriminatory instruction and the person receiving it. One example described in the preparatory work is the owner of a nightclub who instructs their employees to reject customers who use a wheelchair.⁹³ Another example is the owner of a holiday home who instructs the estate agent not to rent their holiday home to individuals with intellectual disabilities.

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Denmark, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law according to Section 2(a) of the Act on the Prohibition of Discrimination in the Labour Market etc.

Reasonable accommodation is described in the law but not defined in detail. Section 2(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. states that the employer shall take reasonable measures in view of the practical needs to provide a person with disabilities access to employment, to pursue employment or to advance in employment, or to give a person with disabilities access to vocational training. The obligation to provide accommodations does not apply if a disproportionate burden is thereby imposed upon the employer. It follows from Section 2(a) that the burden will not be considered to be disproportionate if it is sufficiently eased by public measures, including financial assistance from the state.

⁹² Consolidated Act No. 1070 of 24 August 2018 with later amendments.

⁹³ Bill No. L221 of 18 April 2018 on the Act on the Prohibition of Discrimination due to Disability.

b) Case law

Whether an employer has fulfilled their duty to provide reasonable accommodation will always depend on a concrete assessment. Case law in the area gives some indications on the criteria to be used when assessing the extent of this duty.

The employer's knowledge about the employee's disability

It is a precondition of the duty to provide reasonable accommodation that the employer knows – or ought to know – about the employee's disability. This is illustrated by two landmark Supreme Court rulings.

The first case was part of the CJEU Ring and Skouboe Werge joined cases.⁹⁴ In the Danish case, the parties had been emailing each other during the employee's sickness absence, but the note from the specialist doctor with the long-term prognosis was not sent to the employer. On that basis, the Supreme Court did not find that the employer knew or ought to have known at the time of the dismissal about the fact that the illness had caused a disability and the employer was acquitted.⁹⁵

The second case dealt with an employee who had told her employer when she received a diagnosis of arthritis.⁹⁶ She had also informed the employer about the need to modify her tasks. On that basis, the Court found that the employer knew about the disability and was obliged to establish reasonable accommodation.

The employee with a disability must be competent, capable and available

Recital 17 of the Employment Equality Directive is not directly reflected in the Danish legislation. It is, however, stated in the preparatory work for the Act on the Prohibition of Discrimination in the Labour Market etc. that an employer should only choose an applicant with a disability if the applicant is as qualified as an applicant without a disability. Thus, the duty of reasonable accommodation only applies when the applicant with a disability has the necessary qualifications to do the job if accommodation is made.

The Eastern High Court dealt with the case of a shop assistant who had a disability in the form of back and neck problems (see section 12.2.).⁹⁷ It was undisputed that the shop assistant had a disability covered by the Act on the Prohibition of Discrimination in the Labour Market etc. However, his disability worsened and the High Court therefore concluded that, at the time of dismissal, the shop assistant was no longer competent, suitable and available to perform his job.

When comparing qualifications of job applicants and evaluating whether a person is competent, capable and available, it follows from case law that the person with a disability must be assessed according to their capacity to carry out the essential functions of the position **after** reasonable accommodation is made.

The nature of accommodation measures

Possible accommodation measures can be of a material and organisational nature, including adjustment of workplaces and workstations, modification of work patterns or divisions of labour, or reduction of working hours.

⁹⁴ CJEU cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, judgment of 11 April 2013, ECLI:EU:C:2013:222.

⁹⁵ Supreme Court judgment of 23 June 2015, Case No. 25/2014. Printed in U2015.3301H.

⁹⁶ Supreme Court judgment of 11 August 2015, Case No. 104/2014. Printed in U2015.3827H.

⁹⁷ Eastern High Court judgment of 5 May 2022, Case No. BS-15105/2021-OLR.

A landmark judgment from the Supreme Court illustrates that, if an employee needs reduced working hours because of a disability, the employer must show a willingness to look into possible accommodation measures like flex-jobs, part-time jobs, etc.⁹⁸ The case dealt with a woman who had undergone serious brain surgery.

A 2021 decision from the Board of Equal Treatment dealt with a complicated conflict between the needs of employees with different impairments.⁹⁹ The case concerned an employee with a visual impairment who was using a guide dog. In connection with a relocation to another office, restrictions were imposed on the employee in the use of her guide dog. Her guide dog had to be in a separate small office and the complainant could choose whether she would stay with her guide dog or work in the large open office with the other employees. The employer introduced the restrictions with reference to a colleague who was allergic to dogs. The employee found that the restrictions put her in a worse position than her colleagues. She ultimately chose to resign and complained that she was discriminated against because of her disability. The Board found that when relocating the complainant, the employer had not sufficiently investigated whether there was an office without any employees who were allergic to dogs. Thus, the employer had not made reasonable accommodation.

The accommodation must be reasonable

The obligation to provide accommodation measures does not apply if a disproportionate burden is thereby imposed upon the employer, meaning that the accommodation is not reasonable. The size of the employer's business is relevant when evaluating the reasonableness of an accommodation. This is illustrated by a Supreme Court ruling on the dismissal of a swimming instructor (see section 12.2).¹⁰⁰ In this case, the complainant was granted a flex-job (an adapted job for individuals with disabilities) because of her diagnoses of anxiety, depression and ADHD. She worked as a sports coordinator at a sports association for four hours and later for seven hours per week. The sports association was a small organisation for people with psycho-social challenges, which was primarily run by volunteers. The complainant was dismissed, among other things because she refused to take a new lifeguard test. She claimed that she had been discriminated against because of her disability. The Court argued that, taking into account the nature, size and finances of the association, there was no basis for challenging the employer's assessment that it would not be possible to exempt the sports coordinator from conducting swimming lessons or to make a contact person available. The Court therefore concluded that the employer had fulfilled its obligation to provide reasonable accommodation.

When evaluating whether the burden placed on the employer is disproportionate, consideration is also given to whether public authorities will cover some or all of the expense. There is no obligation on the employer to apply for public funding to cover such expenses. But in a concrete discrimination case before the Board or the courts, it can be detrimental to the employer if otherwise possible funding has not been applied for. This is illustrated in an older landmark ruling from the Maritime and Commercial Court.¹⁰¹ The case dealt with an employee who had severe permanent backache. Due to his illness, the employer decided to terminate the training agreement. The employer had refused a proposal from the municipality concerning a personal assistant arrangement paid for by the municipality. The Court concluded that discrimination based on disability had taken place.

It is the employer who has to prove that accommodation measures impose a disproportionate burden. In concrete terms, the employer must look into and evaluate

⁹⁸ Supreme Court judgment of 22 November 2017, Case No. 305/2016. Appeal of Eastern High Court judgment of 30 June 2016, Case No. B-477-15. Printed in U.2018.853H.

⁹⁹ Board of Equal Treatment, Decision No. 9226 of 22 March 2021.

¹⁰⁰ Supreme Court judgment of 6 September 2022, Case No. BS-26753/2021-HJR.

¹⁰¹ Printed in U.2009.1948SH.

various possible accommodation measures. In cases of dismissal, an employer must be able to document that steps have been taken to provide reasonable accommodation with regard to an employee's specific needs before the decision on dismissal was made.

c) Definition of disability and non-discrimination protection

The definition of a disability for the purposes of claiming reasonable accommodation is the same as for claiming protection from discrimination in general.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In Denmark, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination.

If an employer denies or does not provide reasonable accommodation and if this is not justified, it will constitute indirect discrimination, cf. Section 2(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., which refers to Section 1(3) of the Act. Reasonable accommodation cases are dealt with as cases of indirect discrimination meaning that the burden of proof will be shifted, cf. Section 7(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. The provision does not entail a total shift of the burden of proof, but a shared burden of proof.

A victim of indirect discrimination can claim compensation from the employer according to Section 7 of the Act on the Prohibition of Discrimination in the Labour Market etc. There is no penalty.

e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In Denmark, there is no general legal duty to provide reasonable accommodation for persons with disabilities outside the area of employment, including vocational training.¹⁰² This is specifically stated in Section 3 of the Act on the Prohibition of Discrimination due to Disability. According to the preparatory work for this law, one of the reasons for not including a duty to provide reasonable accommodation was what was referred to as 'unpredictable socio-economic costs'.¹⁰³

In December 2020, the Act on the Prohibition of Discrimination due to Disability was amended to include a legal duty to provide reasonable accommodation for young people and children with disabilities in public and private day-care institutions and schools.¹⁰⁴ The new provision in Section 9(a) entered into force on 1 January 2021. It follows from Section 9(a) that in assessing what is considered reasonable, special attention must be paid to the effect of removing the barriers as well as to the costs associated with the accommodation, taking into account the resources of the individual day-care institution or school.

The Board dealt with the question of reasonable accommodation in schools in a case concerning a six-year-old boy with cerebral palsy (see section 12.2).¹⁰⁵ The father of the boy argued that his son had experienced discrimination based on disability in connection with screening and admission to a municipal school. From the medical information in the case, the child had cerebral palsy and therefore had difficulty with actively expressing himself verbally. In the case, the Board assessed that the respondent municipality's offer of extra time for the screening process was not a relevant accommodation for the child in

¹⁰² Board of Equal Treatment (March 2022), *Annual Report 2021* p. 5.

¹⁰³ Notat af 21. august 2017 fra Børne- og Socialministeriet og Finansministeriet om rimelig tilpasning af offentlige ydelser – Svar på Spørgsmål 1. See: <https://www.ft.dk/samling/20171/lovforslag/L221/spm.htm>.

¹⁰⁴ Act No. 2218 of 29 December 2020.

¹⁰⁵ Board of Equal Treatment, Decision No. 9032 of 16 December 2022.

question and that the municipality knew or should have known this. The Board therefore assessed that the municipality had not provided reasonable accommodation and the complainant was awarded compensation.

The wording of the obligation to provide reasonable accommodation in schools etc. is more specific than the wording in the Act on the Prohibition of Discrimination in the Labour Market etc. Here it is stated in Section 2(a) that the obligation to provide accommodation does not apply if it thereby imposes a disproportionate burden on the employer. It is also emphasised in Section 2(a) that if this burden is sufficiently alleviated through public measures, the burden will not be considered disproportionate.

f) Duties to provide reasonable accommodation in respect of other grounds

Section 2.8.f has not been updated for 2022. Please see Country report Non-discrimination Denmark 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, Reporting period 01.01.2021 – 01.01.2022.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Denmark, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. Undocumented migrants and those with irregular status are therefore protected by the Danish anti-discrimination laws.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Denmark, the personal scope of anti-discrimination law does not cover legal persons for the purpose of protection against discrimination. Only natural persons are protected against direct and indirect discrimination.

In the labour market, this follows from Sections 2 and 3 of the Act on the Prohibition of Discrimination in the Labour Market etc., which specifically mentions employees and job applicants. Outside the labour market, it follows from Section 3 of the Act on Equal Treatment and from Section 5 of the Act on the Prohibition of Discrimination due to Disability that individuals are protected against discrimination on account of their race, ethnic origin and disability.

b) Liability for discrimination

In Denmark, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

There is no distinction in Section 2 of the Act on the Prohibition of Discrimination in the Labour Market etc. between different kinds of employers when it comes to liability for discrimination in the labour market. According to the general Danish labour law concept of employers, both natural and legal persons may be liable for discrimination as employers. The liability covers an even broader group of legal persons than the traditional Danish labour market concept of employers. Thus, Section 3 of the Act on the Prohibition of Discrimination in the Labour Market etc. stipulates that the prohibition of discrimination applies to anybody who runs vocational training and assigns employment, who issues decisions on access to self-employment and who issues decisions on membership and benefits provided by trade unions or employers' associations.

A decision by the Board of Equal Treatment illustrates that the obligation to provide reasonable accommodation in access to employment for job-seekers applies to anybody assigning employment.¹⁰⁶

Employers can be penalised for discriminatory job advertisements according to Section 8(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. (provision of penal law). It specifically mentions that legal persons are subject to a fine for such discriminatory job advertisements.

According to Section 2 of the Act on Ethnic Equal Treatment and Section 2 of the Act on the Prohibition of Discrimination due to Disability, there is no distinction between natural and legal persons when it comes to liability for discrimination outside the area of employment.

¹⁰⁶ Board of Equal Treatment, Decision No. 9872 of 25 September 2019.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Denmark, national law provides protection against discrimination in both the private and the public sectors.

b) Liability for discrimination

In Denmark, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies for the purpose of liability for discrimination. Sections 2, 3 and 8 of the Act on the Prohibition of Discrimination in the Labour Market etc. stipulates the liability of employers and anybody who runs vocational training and assigns employment etc. According to Section 2 of the Act on Ethnic Equal Treatment and Section 2 of the Act on the Prohibition of Discrimination due to Disability, there is no distinction between the private and public sectors when it comes to liability for discrimination outside the area of employment.

3.2 Material scope

3.2.1 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))

In Denmark, national legislation prohibits discrimination in relation to conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds and in both the private and public sector, as described in the directives. Gender identity, gender expression and gender characteristics are also covered.

Sections 2 and 3 of the Act on the Prohibition of Discrimination in the Labour Market etc. cover all aspects of discrimination in relation to access to employment, to self-employment and to occupation, including selection criteria, recruitment conditions and promotion.

Case law illustrates that the chair of a Disability Council who only received subsistence and mileage allowance for meetings at the Council was not covered by the Act on the Prohibition of Discrimination in the Labour Market etc.¹⁰⁷ The Board therefore evaluated the case according to the Act on the Prohibition of Discrimination due to Disability.

The Board of Equal Treatment has considered volunteering as employment covered by the Act on the Prohibition of Discrimination in the Labour Market etc.¹⁰⁸ In a previous and similar case, the Board had reached the opposite conclusion.¹⁰⁹ No case law has been found in which the Board considered whether volunteering could fall under the scope of vocational training (see Section 3.2.3 below).

Case law also illustrates that the area of self-employment and occupation is covered by the Act on the Prohibition of Discrimination in the Labour Market etc.¹¹⁰

In general, the anti-discrimination legislation does not differentiate between the public and the private sectors. However, according to the Administration of Justice Act, Danish citizenship can be a selection criterion in the public sector for the police, judges, etc. In

¹⁰⁷ Board of Equal Treatment, Decision No. 10011 of 28 October 2019.

¹⁰⁸ Board of Equal Treatment, Decision No. 9254 of 7 March 2018.

¹⁰⁹ Board of Equal Treatment, Decision No. 11063 of 12 August 2015.

¹¹⁰ Board of Equal Treatment, Decision No. 9564 of 27 June 2018.

the private sector, on the other hand, such a requirement may be considered indirect discrimination due to national or ethnic origin.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Denmark, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment. Gender identity, gender expression and gender characteristics are also covered. Section 2(1) of the Act on the Prohibition of Discrimination in the Labour Market etc. prohibits public and private employers from exercising differential treatment in connection with recruitment, dismissal, transferral, promotion and work and pay conditions.¹¹¹

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Denmark, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities for all five grounds. Gender identity, gender expression and gender characteristics are also covered.

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) and 3(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. This provision covers any training aiming at paid employment. Paid employment must be understood in a very broad sense.

In 2020, the DIHR published a report on the equal treatment of students with disabilities in vocational education and training schools.¹¹² Such schools are covered by the prohibition of discrimination in the Act on the Prohibition of Discrimination in the Labour Market etc. The report noted that the dropout rates for students with disabilities was far higher than their co-students without disabilities. The report also showed that more students with disabilities ended up with school-based practical training instead of an apprenticeship in a company.

Section 2(2) of the Act on Ethnic Equal Treatment and Section 2(2) of the Act on the Prohibition against Discrimination due to Disability state that the Acts shall not apply to areas covered by the Act on the Prohibition of Discrimination in the Labour Market etc. Education and training outside the labour market – not covered by the Act on the Prohibition of Discrimination in the Labour Market etc. – is covered by Section 2(1) of the Act on Ethnic Equal Treatment and by Section 2(1) of the Act on the Prohibition against Discrimination due to Disability.

In a case of race discrimination at a technical school,¹¹³ it was decided by a city court and confirmed by the Eastern High Court that this situation was not covered by the Act on the Prohibition of Discrimination in the Labour Market etc. but rather by the Act on Ethnic Equal Treatment prohibiting unequal treatment in goods and services, education etc. By considering a technical school as education covered by the Act on Ethnic Equal Treatment, race discrimination was covered. However, an implementation problem exists in relation to the other protected grounds: by making this decision, the High Court excluded students

¹¹¹ Art. 2(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. states: 'Discrimination shall be deemed to have occurred in relation to payment conditions if an equal salary is not offered for the same job or for jobs which are regarded as having the same value'.

¹¹² DIHR (2020) *Ligebehandling af elever med handicap på erhvervsskoler* (Equal treatment of students with disabilities in vocational education and training schools).

¹¹³ Eastern High Court judgment of 27 June 2006, Case No. B-4028-05.

at technical schools from protection against discrimination due to age, religion and belief (as no provisions against discrimination on these grounds exist in the field of goods and services, education, etc.). The case should have been adjudicated according to the Act on the Prohibition of Discrimination in the Labour Market etc. and thus appears not to comply with national law. No subsequent rulings on this topic have been found.

3.2.4 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))

In Denmark, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment, cf. Section 3(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. Gender identity, gender expression and gender characteristics are also covered.

In a concrete case, the Board of Equal Treatment found that the function as a sector president in a labour union was covered by the concept of 'occupation' and that the Act on the Prohibition of Discrimination in the Labour Market etc. should apply in a case of possible age discrimination.¹¹⁴

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Denmark, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive, cf. Section 2(1) of the Act on Ethnic Equal Treatment. This protection only extends to race and ethnic origin.

According to Section 50 of the Danish Health Act, all residents with the right to free treatment in hospitals, by general practitioners or by specialists, have the right to an interpreter, if a doctor finds that an interpreter is necessary to explain their treatment. With the primary aim of further incentivising foreigners to learn Danish, Section 50(2) of the Health Act stipulates that patients who need an interpreter and who have lived in Denmark for more than three years are charged a fee for the interpreting service.¹¹⁵ A report from DIHR and the Danish Medical Association examined the results of a survey in which more than 600 doctors reported their experiences with the interpreting services charge and its implications after it had been in force for one year.¹¹⁶ The report shows that the fee has resulted in an increased use of relatives as interpreters and that patients who do not speak Danish well may not receive the right healthcare. The rules may therefore cause indirect discrimination due to ethnic origin or race. The rules do not apply to people who use sign language interpreting.

Section 2(1) of the Act on the Prohibition of Discrimination due to Disability prohibits discrimination on account of disability in all public and private activities in all areas of society, including social protection.

¹¹⁴ Board of Equal Treatment, Decision No. 10073 of 22 June 2016.

¹¹⁵ Consolidated Act No. 210 of 27 January 2022 (*Sundhedsloven*). Regulation No. 855 of 23 June 2018 (*Bekendtgørelse om tolkebistand efter sundhedsloven*). The rules are described in the official periodic report from Denmark to the CERD Committee covering the period from July 2013 to December 2018. See UN document CERD/C/DNK/22-24 of 7 February 2019, paragraphs 185-190.

¹¹⁶ DIHR and the Danish Medical Association (*Lægeforeningen*) (2019), *Egenbetaling for tolkebistand – lægers erfaring med ordningen* (Patients charged for interpreting services – doctors' experiences with the scheme) (December 2019). See: <https://menneskeret.dk/udgivelser/egenbetaling-tolkebistand-laegers-erfaring-ordningen>.

Section 1a of the Act on Equal Treatment of Men and Women in Society prohibits discrimination due to sexual orientation, gender identity, gender expression and gender characteristics in all public and private activities in all areas of society, including social protection.

Complementary to this protection in civil law is Section 1 of the criminal Act on the Prohibition of Discrimination due to Race etc. of 1971. According to this Act, penalties are warranted for differential treatment of persons on the grounds of race, skin colour, national or ethnic background, belief, sexual orientation, gender identity, gender expression or gender characteristics in a number of areas of life, including social protection. Any public or private leisure facilities, etc. open to the public, whether on a commercial or non-profit basis, must be offered on equal terms.

The discrimination ground of age is not covered by the discrimination laws covering areas outside the labour market. However, discrimination in social protection is prohibited by the general principle of equality in administrative law.

a) Article 3(3) exception (Directive 2000/78)

The exception in Article 3(3) of Directive 2000/78 is not directly repeated or implemented in the Act on the Prohibition of Discrimination in the Labour Market etc. However, Section 43 of the Act on Unemployment states that a member of an unemployment insurance fund will automatically stop being a member when they become eligible for the state pension – for most people at the age of 65.¹¹⁷

In a concrete case, the Supreme Court dealt with the question of whether the Danish Act on Unemployment Insurance violated the Employment Equality Directive (2000/78/EC).¹¹⁸ The Supreme Court concluded that the Danish system of unemployment benefit should be regarded as a public social protection scheme. The payment of unemployment benefit was therefore covered by the exception clause in Article 3(3) of the Employment Equality Directive and the Board concluded that the Danish Act on Unemployment Insurance did not violate the Directive.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Denmark, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive, by Section 2(1) of the Act on Ethnic Equal Treatment. The protection in this Act only extends to race and ethnic origin.

Section 2(1) of the Act on the Prohibition of Discrimination due to Disability prohibits discrimination on account of disability in all public and private activities in all areas of society, including social advantages.

Section 1a of the Act on Equal Treatment of Men and Women in Society prohibits discrimination due to sexual orientation, gender identity, gender expression and gender characteristics in all public and private activities in all areas of society (outside the labour market), including social advantages.

Complementary to this protection in civil law is Section 1 of the criminal Act on the Prohibition of Discrimination due to Race etc. of 1971. According to this Act, penalties are warranted for differential treatment of persons on the grounds of race, skin colour, national or ethnic background, belief, sexual orientation, gender identity, gender expression or gender characteristics in a number of areas of life, including social advantages. Any public or private leisure facilities, etc. open to the public, whether on a commercial or non-profit

¹¹⁷ Consolidated Act No. 234 of 10 February 2022 (*Lov om Arbejdsløshedsforsikring*).

¹¹⁸ Supreme Court judgment of 19 January 2015, Case No. 308/2012. Printed in U2015.1303H.

basis, must be offered on equal terms. According to the Act on the Prohibition of Discrimination due to Race etc. it is also an offence to refuse access on the same terms as others to social advantages or to social centres, or similar facilities open to the public, if the refusal is based on one of the protected grounds.

As described, there is a certain overlap between the protection against discrimination offered by civil and criminal law – but not on all discrimination grounds. In theory, criminal law can make up for the fact that age and religion are not included in the protection offered by civil law. However, criminal law only protects against direct discrimination. In practice, no indictments or case law have been found regarding such discrimination. This means that it can be questioned whether the protection against discrimination due to age and religion is effective in relation to social advantages. It is not clear to the author of this report why the protection is not being invoked.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Denmark, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive, cf. Section 2(1) of the Act on Ethnic Equal Treatment. The protection in this Act only extends to race and ethnic origin. The protection against discrimination within education covers protection against bullying constituting harassment due to race and ethnic origin. See also section 3.2.9 Housing, which describes a number of initiatives in the so-called 'parallel society' legislation that impact education and risk discriminating against children because of their ethnic origin.

Discrimination on account of disability within education is prohibited by Section 2(1) of the Act on the Prohibition of Discrimination due to Disability. The provision prohibits discrimination on account of disability in all public and private activities in all areas of society, including education. Section 9(a) of the Act includes a legal duty to provide reasonable accommodation for young people and children with disabilities in public and private day-care institutions and schools.

Section 1a of the Act on Equal Treatment of Men and Women in Society prohibits discrimination due to sexual orientation, gender identity, gender expression and gender characteristics in all public and private activities in all areas of society (outside the labour market), including education.

Section 1 of the criminal Act on the Prohibition of Discrimination due to Race etc. of 1971 complements the civil law and prohibits discrimination on account of race, skin colour, national or ethnic origin, belief and sexual orientation, gender identity, gender expression or gender characteristics. Thus, both criminal and civil law apply to all aspects of education, including university education, and all types of schools.

All individuals within the Danish jurisdiction are protected from discrimination according to the legislation above, regardless of their status, whether they have a permanent or time-limited residence permit or have status as undocumented immigrants, and irrespective of citizenship and nationality.

There is no access to Danish schools for individuals who are not legal residents in Denmark. This means that undocumented migrants do not have access to education on an equal footing with other migrants and Danish citizens. No data has been found on whether this has led to direct or indirect discrimination based on race or ethnic origin in real life.

A report from the DIHR examines the status of segregation in Danish primary and lower secondary schools, focusing particularly on students from marginalised residential areas.¹¹⁹

¹¹⁹ Søndergaard, J., Thomsen, T. and Witt, C. (2021), *Socialt og etnisk opdelte skoler – om skoler for børn i udsatte boligområder* (Socially and ethnically divided schools – on schools for children in vulnerable residential areas), DIHR.

According to the DIHR, segregation means that students are distributed between schools based on the students' socioeconomic and ethnic background. The report shows neighbouring schools where one school has a high percentage of students from affluent homes, whereas the other school has a majority of students from homes with very limited socioeconomic resources. This uneven distribution of students between schools is also seen when the DIHR compares the ethnic backgrounds of students.

On 26 November 2019, the DIHR filed a complaint with the Board of Equal Treatment against the municipality of Herning, claiming discrimination against primary school children with an ethnic minority background. The municipality had established a special section in the primary school of Herningsholm almost exclusively for children with an ethnic minority background (63 out of 64 children in the special section were bilingual). Children from the residential area of Holtberg starting in kindergarten in August 2019 had to start in the Holtberg section and children in the 1st to 3rd grades from Holtberg were moved from their existing classes to the Holtberg section.

On 2 March 2020, the DIHR published a statement that it had agreed with the municipality of Herning on an out-of-court settlement, concluding the case before the Board of Equal Treatment.¹²⁰ In the settlement, the municipality of Herning acknowledged that the decision by the city council – although not intended – constituted discrimination based on ethnic origin because of the fact that the basis for the decision was the ethnic origin of the children and because the decision resulted in the segregation of children with an ethnic minority background. The statement on the out-of-court settlement does not detail efforts to close down the Holtberg section of the public school in Herningsholm and it does not cover efforts to combat future ethnic segregation in the city of Herning. Nevertheless, the out-of-court settlement illustrates that the segregation of ethnic minority children in special sections of a primary school constitutes stigmatisation, even though special resources are provided to this section. It also illustrates that segregation by itself constitutes discrimination against children with ethnic minority backgrounds.

The proportion of pupils with disabilities in special education, either in special classes or special schools, is increasing.¹²¹ A 2022 report from VIVE – the Danish Center for Social Science Research illustrates that, overall, there has been an increase in the proportion of segregated pupils from 2016 to 2019.¹²² Additionally, there are students in general classes who do not receive the necessary support according to teachers.

The number of persons with disabilities who have completed a vocational education or higher education course is declining. This, among other problems, gives rise to increasing challenges on the labour market for persons with disabilities.¹²³

A 2021 report states that only two out of three 18-year-olds with a psychiatric diagnosis or a disability are in school or youth education, compared to 86 % of 18-year-olds overall.¹²⁴ Many young people with a diagnosis or disability end up on state benefits and have difficulty finding suitable education.

¹²⁰ Danish Institute for Human Rights, Description of the out-of-court settlement available at: <https://menneskeret.dk/nyheder/kommune-anerkender-opdeling-skole-diskrimination>.

¹²¹ Andreasen, A. G., Rangvid, B. S. and Lindeberg, N. H. (2022) *Støtte, Støttebehov og elevresultater* (Support, support needs and learner outcomes), 29 March 2022, VIVE. See: <https://www.vive.dk/da/udgivelser/stoette-stoettebehov-og-elevresultater-17302/>.

¹²² Andreasen, A. G., Rangvid, B. S. and Lindeberg, N. H. (2022) *Støtte, Støttebehov og elevresultater* (Support, support needs and learner outcomes), 29 March 2022, VIVE. See: <https://www.vive.dk/da/udgivelser/stoette-stoettebehov-og-elevresultater-17302/>.

¹²³ DIHR (April 2019) *Handicap – Status 2019*, p. 27.

¹²⁴ Pihl, M. and Salmon, R. (2021) *Unge med diagnoser har svær start på uddannelseslivet* (Young people with a diagnosis have a difficult start to educational life), *Arbejderbevægelsens erhvervsråd* (Economic Council of the Labour Movement).

A 2022 report indicates that higher education students who have a disability have higher rates of unemployment, higher second-year dropouts and longer average study time than students without disabilities.¹²⁵ Students with psychosocial disabilities have the highest unemployment and drop-out rates, compared to the total group of students with disabilities and this group of students also takes longer to complete their education.

a) Trends and patterns regarding Roma pupils

In Denmark, there are no specific trends or patterns (whether legal or societal) in education regarding Roma pupils, such as segregation. The Roma population in Denmark consists of around 2 000 individuals and no information has been found about Roma and education. There are restrictions on data collection based on ethnicity in Danish law. However, it is unclear whether this or other issues, such as policies or funding, constitute the reason(s) for the lack of information about Roma pupils in Denmark, including lack of knowledge about their experience of discrimination.

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Denmark, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive.

Section 1 of the criminal Act on the Prohibition of Discrimination due to Race etc. warrants penalties for differential treatment of persons on the grounds of race, skin colour, national or ethnic background, belief and sexual orientation, gender identity, gender expression or gender characteristics in a number of areas of life, including the supply of goods and services. The discrimination grounds of age and disability are not covered by the criminal law. Any public or private supply of goods and services open to the public, whether it is commercial or non-profit, must be offered on the same terms as to others.

It is therefore a criminal offence to refuse a person admittance on the same terms as others to a venue, restaurant, shop, or similar that is open to the public, if the refusal is based on one of the grounds protected by the Act on the Prohibition of Discrimination due to Race etc. In practice, the Act has been applied in only a few cases, although some door staff have been fined for denying access to restaurants, nightclubs, etc.

Civil legislation in Section 1a of the Act on Equal Treatment of Men and Women in Society also prohibits discrimination due to sexual orientation, gender identity, gender expression and gender characteristics in all public and private activities in all areas of society (outside the labour market), including goods and services.

In addition, persons with disabilities are protected against discrimination by civil law in Section 2(1) of the Act on the Prohibition of Discrimination due to Disability when it comes to access to public goods and services. The act does not include a general reasonable accommodation duty.

The Board of Equal Treatment dealt with a case of possible discrimination based on disability in access to the services of a travel agent.¹²⁶ In the case the travel agency could not satisfy the burden of proof that it was necessary for an individual to be 100 % self-reliant to be able to go on a bus trip.

Civil legislation further prohibits discrimination based on race and ethnic origin in access to and supply of goods and services, cf. Section 2(1) of the Act on Ethnic Equal Treatment.

¹²⁵ Uddannelses- og Forskningsstyrelsen (2022), [Bedre vilkår for studerende med funktionsnedsættelser \(Better conditions for students with disabilities\)](#).

¹²⁶ Board of Equal treatment, Decision No. 9434 of 28 May 2021.

Discrimination due to ethnic origin in access to night clubs and discotheques is still a large problem as reported by the Danish Institute for Human Rights.¹²⁷ According to the Institute there is a need for more effective legal measures to target discrimination in this area of society.

The only High Court judgment on this issue was passed in 2018.¹²⁸ The case dealt with two young men of ethnic minority background. They were refused access to both a nightclub and a café. They received no explanation for the refusals and they observed that several individuals of Danish origin were admitted to the nightclub and the café. The two men were awarded compensation for discrimination.

The Board of Equal Treatment has adjudicated a number of cases that deal with alleged ethnic discrimination in relation to access to bars and night clubs. Between 2009 and 2022, altogether the Board adjudicated 61 cases of discrimination because of ethnic origin, race, skin colour or national origin in the night-time economy.¹²⁹

In 2022, only one complaint to the Board dealt with ethnic discrimination in relation to access to a bar.¹³⁰ The complaint was dismissed because oral testimonies from parties and witnesses were necessary to adjudicate the case and, since the Board bases its decisions solely on written material, this can only take place in court. In 2021, there was also only one complaint.¹³¹

In 2020, the Board concluded 17 cases relating to night clubs, bars and restaurants. In 16 out of 17 cases, the Board found that discrimination had taken place and the complainant was granted compensation of EUR 670 (DKK 5 000).

a) Distinction between goods and services available publicly or privately

In Denmark, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association). It follows from Section 2(1) of the Act on Ethnic Equal Treatment, which states that goods and services available to the public are covered by the provision. The term 'publicly available' in the law must be interpreted broadly. Goods and services made available exclusively for family members or close acquaintances, for example, fall outside the law. In the area of disability, the distinction follows from Section 2(3) of the Act on the Prohibition of Discrimination due to Disability, which specifically exempts execution of activities of a purely private nature from the scope of the Act.

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Denmark, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive. It follows from Section 2(1) of the Act on Ethnic Equal Treatment. The protection in this Act only extends to race and ethnic origin. Section 2(1) of the Act on Ethnic Equal Treatment applies to public housing including social housing as well as private housing companies that rent out houses, and real estate companies. The term 'available to the public' should be interpreted in a broad sense, but the Act does not apply to private persons letting out or sub-letting a room in their own home.

¹²⁷ Danish Institute for Human Rights (2022), [Bekæmpelse af diskrimination i nattelivet](#) (Combating discrimination in the night-time economy), p. 1.

¹²⁸ Eastern High Court judgment of 17 September 2018, Case No. B-1860-17.

¹²⁹ Danish Institute for Human Rights (2022), [Bekæmpelse af diskrimination i nattelivet](#) (Combating discrimination in the night-time economy), p. 4.

¹³⁰ Board of Equal Treatment, Decision No. 9853 of 29 June 2022.

¹³¹ Board of Equal Treatment, Decision No. 9803 of 8 September 2021.

Section 2(1) of the Act on the Prohibition of Discrimination due to Disability prohibits discrimination on account of disability in all public and private activities in all areas of society, including housing.

Section 1a of the Act on Equal Treatment of Men and Women in Society prohibits discrimination due to sexual orientation, gender identity, gender expression and gender characteristics in all public and private activities in all areas of society (outside the labour market), including housing.

Section 1 of the criminal Act on the Prohibition of Discrimination due to Race etc. warrants penalties for differential treatment of persons on the grounds of race, skin colour, national or ethnic background, belief and sexual orientation, gender identity, gender expression or gender characteristics in a number of areas of life, including housing. The discrimination grounds of age and disability are not covered. Any public or private housing open to the public, whether it is commercial or non-profit, must be offered on the same terms as to others.

In relation to public housing, discrimination is, moreover, prohibited by the general principle of equality in administrative law.

Legislation on so-called ghettos entered into force in 2019. The legislation defines 'marginalised residential areas' according to a number of criteria. To be categorised as a 'marginalised residential area' at least two out of the following criteria must be met: low level of income, high number of individuals with criminal convictions, low level of education and high unemployment rate. A 'ghetto' is furthermore defined as a 'marginalised residential area' where the percentage of immigrants and descendants from third countries exceeds 50 %. A practical consequence of being categorised as a ghetto is that some apartment buildings in the so-called ghettos will be torn down. Residents of the demolished buildings will be offered alternative accommodation.

In 2021, the legislation was amended and the term 'ghetto' was replaced by the term 'parallel society' but the consequences are the same as being categorised as a 'ghetto'.¹³² Furthermore, another and new category of housing area was introduced with the term 'preventive area' where the goal is to prevent the area from becoming a 'parallel society'.¹³³ This area is categorised as a residential area where the percentage of immigrants and descendants from third countries exceeds 30 % and at least two out of the following criteria must be met: low level of income, high number of individuals with criminal convictions, low level of education and high unemployment rate. A practical consequence of being categorised as a 'preventive area' is the application of stricter rental requirements, which will restrict access to housing for ethnic minorities. The DIHR has described how the toughened requirements put marginalised groups, including ethnic minorities, in a poorer position than others, when it comes to access to housing.¹³⁴

To provide an overview of the so-called ghetto initiatives, legislation outside the housing area will be included in the following brief description of the various acts:

- Mandatory education for any child over the age of one who lives in a marginalised residential area and who is not enrolled in a day-care centre. The 25 hours a week training must include education in the Danish language as well as Danish traditions, norms and values.¹³⁵

¹³² Act No. 2157 of 27 November 2021.

¹³³ Act No. 2157 of 27 November 2021.

¹³⁴ DIHR (2021) 'Statement Hearing on "preventive areas"' (18 August 2021): <https://menneskeret.dk/hoeringssvar/indfoerelse-forebyggelsesomraader-ny-terminologi-aftalt-anvisningsret-private-lejemaal>.

¹³⁵ Consolidated Act No. 985 of 27 June 2022 (*Dagtilbudsloven*), Section 44(a).

- Distribution of young children in day-care centres. The aim is to make sure that not more than 30 % of children in a day-care centre come from a marginalised residential area.¹³⁶
- Act that makes it illegal for housing associations in marginalised residential areas to assign housing to applicants who receive public benefits.¹³⁷ The same prohibition applies if a spouse or partner of the housing applicant receives public benefits.
- Act that gives the police the authority to designate a demarcated geographical area as a strict penalty zone. See below for the consequences of an area being designated as a strict penalty zone. For a police commissioner to designate a strict penalty zone, the area must be experiencing an extraordinary crime situation that creates insecurity for people living in the area. This will often be the case in areas that the police have designated as 'particularly vulnerable residential areas' (SUB areas). Examples include areas where antisocial behaviour by young people dominates an area and creates insecurity with threats, violence, vandalism and drug dealing. Another example mentioned in the preparatory work includes the situation where postal services, the fire service and other public services experience difficulties entering the area because of threats and violence.¹³⁸
- Act that doubles the penalties for crimes committed in a designated strict penalty zone. Relevant crimes covered by the provision are violence, fighting in public, vandalism, arson, theft and robbery, and drug dealing. When evaluating the penalty for other crimes, the fact that the crime was committed in a designated strict penalty zone must be regarded as an aggravating circumstance.¹³⁹
- Proposal to establish mandatory Danish language tests in schools with a high percentage of students coming from marginalised residential areas. Passing the language test will be a requirement for the student's promotion to the next class.¹⁴⁰

The legislation primarily affects ethnic minorities. The various acts raise legitimate questions of possible illegal direct discrimination because of ethnic origin within the areas of housing, education and social services. The DIHR has continued to raise concerns of possible illegal direct discrimination.¹⁴¹ In December 2021, the CERD Committee also raised concerns that the Danish package of laws previously known as the 'Ghettopackage' has a discriminatory impact on ethnic minorities.¹⁴² In 2022, in the sixth report on Denmark from the European Commission against Racism and Intolerance, ECRI recommends that the Danish authorities avoid forced evictions in the neighbourhoods referred to as 'parallel societies'.¹⁴³

A practical consequence of being categorised as a ghetto/parallel society is that a certain percentage of apartment buildings in the housing area has to be demolished, renovated for other purposes or sold to private investors. This is illustrated by the following ruling from the Eastern High Court (see section 12.2).¹⁴⁴

In 2018, the public housing area Nøjsomhed in Helsingør was put on the national Danish 'ghetto' list. In order to avoid the status as a 'hard ghetto', the housing association adopted

¹³⁶ Consolidated Act No. 985 of 27 June 2022 (*Dagtilbudsloven*), Section 26(a).

¹³⁷ Consolidated Act No. 1877 of 27 September 2021 with later amendments (*Lov om almene boliger*), Section 51(c).

¹³⁸ Consolidated Act No. 1270 of 29 November 2019 with later amendments (*Lov om politiets virksomhed*), Section 6(a).

¹³⁹ Consolidated Act No. 1360 of 28 September 2022 (*Straffeloven*), Section 81(c).

¹⁴⁰ Consolidated Act No. 1396 of 5 October 2022 (*Lov om folkeskolen*), Section 5(6).

¹⁴¹ DIHR (2021) 'Statement Hearing on "preventive areas"' (18 August 2021): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/240/23/PDF/G2224023.pdf?OpenElement>.

¹⁴² Committee on the Elimination of Racial Discrimination (2021) *Concluding observations on the combined twenty-second to twenty-fourth reports of Denmark*, 3 December 2021, para. 12. UN Doc. CERD/C/DNK/CO/22-24. See: https://tbinternet.ohchr.org/Treaties/CERD/SharedDocuments/DNK/CERD_C_DNK_CO_22-24_47280_E.pdf.

¹⁴³ ECRI Report on Denmark (sixth monitoring cycle), Adopted on 29 March 2022 and published on 9 June 2022. See: <https://rm.coe.int/6th-ecri-report-on-denmark-/1680a6d5e4>.

¹⁴⁴ Eastern High Court Case No. BS-47813/2020-OLR of 27 June 2022.

a comprehensive plan, which included remodelling and, as a result, the housing association terminated 96 tenancies in the Nøjsomhed housing area in January 2020. Two out of three of the residents whose tenancies were terminated were immigrants or descendants from non-Western countries. A number of them brought their cases to court, claiming that the terminations constituted discrimination based on ethnic origin. The Eastern High Court found that it had not been proven that the decision on which parts of the buildings to renovate was based on whether the residents came from Western or non-Western countries. Thus, direct discrimination had not taken place. With regard to indirect discrimination, the Court pointed out that the criterion 'immigrants and descendants from non-Western countries' did not 'in itself refer to a population group of the same ethnic origin'. Since there was no information about the ethnic origin of the residents whose tenancies were terminated or the ethnic origin of the residents in Nøjsomhed's other tenancies, the Court found that it had not been proven that indirect discrimination because of ethnic origin had taken place. The case has been granted a permission to appeal to the third instance and the Supreme Court will therefore adjudicate the case at an as yet undetermined date.¹⁴⁵

With regard to the protection against indirect discrimination, in the view of the author, the Nøjsomhed judgement is possibly a ground-breaking ruling stating that non-Western origin does not refer to ethnic origin. According to the Court, there was a lack of correlation between 'non-Westernness' and ethnic origin in the case in question. In other words, the Court found that the legal concept of 'immigrants and descendants from non-Western countries' was not sufficiently precise and that (indirect) differential treatment based on non-Western origin did not constitute (indirect) discrimination based on ethnic origin. The Danish Institute for Human Rights has publicly addressed the judgment and stated that the Institute does not share the interpretation by the High Court of the discrimination ground of ethnic origin.¹⁴⁶

Similar cases are currently being adjudicated by other courts in Denmark as well as by the Board of Equal Treatment.

A case that has gained particular media attention is a case against the Ministry of Transportation and Housing brought by tenants of the Mjølnerparken housing association in Copenhagen. In this case, which is currently being adjudicated by the Eastern High Court, three UN Special Rapporteurs urged the Danish Government in October 2020 to 'halt [the] contentious sale of ghetto buildings'.¹⁴⁷ In November 2022, the Eastern High Court agreed to ask the CJEU for a preliminary ruling on whether the concept of 'immigrants and descendants from non-Western countries' in the Danish legislation must be interpreted as being covered by the discrimination ground of 'ethnic origin'.¹⁴⁸ The issue in question is whether the 'ghetto and parallel society laws' are discriminatory and thus a potential breach of the Racial Equality Directive.

¹⁴⁵ *Jyllands-Posten* (2022), 'Opsagte lejere fra ghetto får lov til at gå til Højesteret' (Evicted ghetto tenants can go to the Supreme Court), 22.09.2022. See: <https://jyllands-posten.dk/indland/ECE14429173/opsagte-lejere-fra-ghetto-faar-lov-til-at-gaa-i-hoejesteret/>.

¹⁴⁶ DIHR press release (2022), 'Østre Landsret afviser diskrimination af beboere fra Nøjsomhed' (Eastern High Court rejects discrimination claim of tenants from Nøjsomhed), 22.06.2022. See: <https://menneskeret.dk/nyheder/oestre-landsret-afviser-diskrimination-beboere-noejsomhed>.

¹⁴⁷ UNHRC (2020) 'UN human rights experts urge Denmark to halt contentious sale of "ghetto" buildings', press release, 23 October 2020: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26414&LangID=E>.

¹⁴⁸ *Berlingske Tidende*, 'Diskriminerer ghettoloven? Beboere fra Mjølnerparken får sag for EU-Domstolen' (Is the ghetto law discriminatory? Mjølnerparken residents take their case to the European Court of Justice), 9 November 2022.

a) Trends and patterns regarding housing segregation for Roma

In Denmark, there are no trends or patterns of housing segregation and discrimination against Roma. The Roma population in Denmark consists of around 2 000 individuals, and no information has been found about Roma and housing. There are restrictions on data collection based on ethnicity in Danish law. However, it is unclear whether this or other issues, such as policies or funding, constitute the reason(s) for the lack of information about Roma and housing in Denmark, including lack of knowledge about their experience of discrimination.

A group of Romanian Roma were denied access to a campsite and filed a complaint with the Board of Equal Treatment (see section 12.2).¹⁴⁹ They wanted to stay for a period of time at the campsite but the respondent campsite stated that there was no room for the group. The campsite had, however, sent an email explaining that there was room for a group of 10 people from the Faroe Islands. The Board found that the defendant campsite had not satisfied the burden of proof that the principle of equal treatment had not been violated. All complainants were therefore awarded a compensation of EUR 672 (DKK 5 000) for discrimination because of their ethnic origin.

¹⁴⁹ Board of Equal Treatment, Decision No. 9450 of 31 March 2022 and similar cases on Romanian Roma and the same campsite adjudicated the same day by the Board.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78))

In Denmark, national legislation provides for an exception for genuine and determining occupational requirements, cf. Section 6(2) of the Act on the Prohibition of Discrimination in the Labour Market etc.

According to Section 6(2) of the Act on the Prohibition of Discrimination in the Labour Market etc., if it is of crucial significance that a person has a particular race, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, or national, social or ethnic origin, has a particular skin colour, age or disability or is of a certain religion or belief and if the requirement for such a characteristic is reasonable in relation to the concrete work in question, the employer can apply for a dispensation from the relevant Government minister. After having obtained a statement from the Minister of Labour, the minister may issue a concrete exemption from the prohibition of differential treatment. Subsequently, the employer in question can legally make a requirement that the future employee for the job in question has a particular ethnic origin, etc. As an example, a police commissioner who wants to appoint a person with a particular ethnic origin for a particular job has to apply to the relevant Minister of Justice for a dispensation. As the minister responsible for the 'subject matter concerned', the Minister of Justice will subsequently provide a dispensation after having obtained a statement from the Ministry of Labour. A concrete example of an exemption to the prohibition of discrimination is a poultry slaughterhouse exporting to Arab countries that received a dispensation to hire a Muslim to perform halal slaughter. According to the Ministry of Labour, the ministry has only evaluated four dispensation cases regarding ethnic origin and religion.¹⁵⁰

A landmark case before the Board of Equal Treatment dealt with a 53-year-old woman who applied for a position as a personal assistant for a 13-year-old girl with muscular dystrophy.¹⁵¹ The woman was rejected because the girl's family preferred personal assistants aged between 20 and 25 and she claimed that she had been discriminated against based on her age. The Board referred to a decision of 13 October 2005 by the Ministry of Social Affairs allowing age to be taken into consideration when appointing personal assistants for persons with disabilities. Thus, the Board concluded that the case in question was covered by the dispensation provided by the Ministry of Social Affairs and that it was legitimate to reject the job applicant because of her age.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Denmark, national law provides for an exception for employers with a special political opinion or an ethos based on religion or belief, cf. Section 6(1) of the Act on the Prohibition of Discrimination in the Labour Market etc. None of the other discrimination grounds are covered by the exception.

According to this exception in Section 6(1), in particular situations the prohibition of discrimination 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 is an occupational requirement in this case). The same applies to organisations with a specific ethos (for example, private schools established on the basis of a specific religion).

¹⁵⁰ Andersen, S. and Justesen, P. (2017), *Hvornår må man lave etnisk særbehandling – Personer med etnisk oprindelse på arbejdsmarkedet* (When is ethnic discrimination allowed? People of ethnic origin in the labour market), Institut for Menneskerettigheder, p. 27.

¹⁵¹ Board of Equal Treatment, Decision No. 10111 of 7 September 2016.

The provision explicitly states that the political or religious requirement has to be of importance to the particular job in question to be covered by the exception. Whether the requirement is important to the particular job in question and thereby legal is a concrete assessment, which may ultimately have to be made by the Board of Equal Treatment and the courts.

The Board of Equal Treatment has ruled on this question and the most recent case dealt with a man who complained of discrimination on the grounds of religion or belief.¹⁵² The reason was that a foundation in a job posting required that new employees working with veterans should be Christians. The Board assessed that this role as an employee working with veterans involved work that was within the foundation's core area, and that the employee's religious beliefs were important for the foundation's activities. The requirement of Christian faith was therefore not a violation of the Act on the Prohibition of Discrimination in the Labour Market etc. It can be questioned whether decisions by the Board on this issue are in accordance with the principle of proportionality outlined in the CJEU cases of *Egenberger* (C-414/16) and *IR v JQ* (C-68/17).

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Denmark, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

According to Section 1(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., the Ministry of Defence can make exceptions for the armed forces in relation to age and disability. The Ministry of Defence has made use of this exception clause and exempted military personnel from the prohibition of discrimination on account of age and disability.¹⁵³

In Denmark, the scope of the exception is not limited to safeguarding the combat effectiveness of the armed forces. Instead, the scope of the exception extends to other non-combat staff, such as civilians employed in administrative positions in the army. Section 2 of the Executive Order No. 350 of 30 March 2012 directly mentions that the navy's mechanic personnel are exempted from protection against discrimination based on age and disability.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Denmark, national law includes exceptions relating to difference of treatment based on nationality.

In the public sector, 'Danish citizenship' is a selection criterion for the police, judges, etc.¹⁵⁴ This criterion is established by law as these are functions related to the essence of Danish sovereignty. However, public employees in most sectors are not required to be Danish citizens.

Apart from these particular job categories, requirements of nationality in the private and public sector may be considered indirect discrimination due to national or ethnic origin.

¹⁵² Board of Equal Treatment, Decision No. 9688 of 12 August 2021.

¹⁵³ Executive Order No. 350 of 30 March 2012 (*Bekendtgørelse om undtagelse fra forbud mod forskelsbehandling på grund af alder og handicap*).

¹⁵⁴ Regulation No. 210 of 11 December 2000 (*Cirkulære om anvendelse af tjenestemandsansættelse i staten og folkekirken*).

In Denmark, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

The Act on the Prohibition of Discrimination in the Labour Market etc. does not cover discrimination based on nationality, as citizenship is not covered by the list of discrimination grounds. Demanding a certain citizenship may constitute indirect discrimination based on ethnic origin.¹⁵⁵ Since specific citizenship is not covered by the Act, it must be assumed that the same goes for stateless persons.

The Act on Ethnic Equal Treatment also does not cover discrimination based on nationality, as citizenship is not covered by the list of discrimination grounds.

b) Relationship between nationality and 'racial or ethnic origin'

Demanding a certain citizenship may constitute indirect discrimination based on race, ethnic or national origin.

An overlap between discrimination on grounds of nationality and ethnicity does not seem to be the case in Denmark. Case law regarding discrimination on grounds of nationality is either dealt with as nationality discrimination (not covered by discrimination law) or as indirect discrimination on account of race, ethnic or national origin (covered by discrimination law).

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Denmark, there are specific rules with regard to disability and health and safety in accordance with Article 7(2) of the Employment Equality Directive. Section 18 of the Executive Order on the Arrangement of Permanent Workplaces obliges employers to take into consideration the needs of employees with disabilities when organising the workplace.¹⁵⁶ The aim of these obligations is to provide persons with disabilities with basic working conditions when establishing (new) permanent workplaces.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Denmark, national law provides for specific exceptions for direct discrimination on the ground of age. Subsections 3, 4 and 5 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. allow for direct discrimination due to age.

b) Justification of direct discrimination on the ground of age

In Denmark, national law provides for justifications for direct discrimination on the ground of age according to Subsections 3, 4 and 5 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. It follows from the law that such age limits must have a legitimate aim and be proportional. Potential legitimate aims are not explicitly listed in the Danish law.

A decision by the Board dealt with a doctor who claimed that it constituted age discrimination that she had to stop her self-employed professional activities when she

¹⁵⁵ Preparatory work for Act No. 459 of 12 June 1996 on the Prohibition of Discrimination in the Labour Market etc.

¹⁵⁶ Executive Order No. 96 of 13 February 2001 with later amendments (*Bekendtgørelse om faste arbejdssteders indretning*).

turned 75 years of age.¹⁵⁷ The Board dismissed the complaint by referring to its established practice on the Authorisation Act and arguing that it was obvious that the doctor would not succeed in her complaint. The Board had reached a similar result in a previous case, where the Board referred to Article 6(1) of the Employment Equality Directive and found that the age limit of 75 years in the Authorisation Act was based on a legitimate aim to protect the safety of patients.¹⁵⁸

According to Section 1(a) of the Act, the Minister of Defence can decide to exempt armed forces in active duty from the prohibition of differential treatment due to age and disability (see Section 3(4) of the Directive).

Furthermore, Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. provides for positive action with regard to older workers to promote the employment of older people. No concrete examples of positive action have been found.

Section 9(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. also allows for age requirements imposed by other legislation, if such requirements are established in order to protect children and young people.

c) Permitted differences of treatment based on age

In Denmark, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Section 5(a)(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. states that the Act is not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements, provided 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 of the Directive). This rule only applies to collective agreements. Collective agreements in both the private and the public labour market are covered.

In a landmark case, the Supreme Court upheld an age limit in a collective agreement.¹⁵⁹ Referring to Section 5(a)(3), the Court concluded that the collective agreement did not constitute age discrimination. The provision in the collective agreement stipulated that service station employees under the age of 25, who were students and not working more than 15 hours a week, would receive lower pay supplements than other employees. The Court stated that the purpose of the provision was to promote the occupational integration of young people enrolled in education and that the age limit was an appropriate and necessary means to achieve this purpose.

d) Fixing of ages for admission to occupational pension schemes

In Denmark, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2).

According to Section 6(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., age requirements can be set for admission or right to occupational pension schemes and age can also be used in actuarial calculations as long as such requirements do not result in discrimination on account of gender.

¹⁵⁷ Board of Equal Treatment, Decision No. 9092 of 31 January 2022.

¹⁵⁸ Board of Equal Treatment, Decision No. 10174 of 29 November 2019.

¹⁵⁹ Supreme Court judgment of 16 June 2016, Case No. 154/2015. Printed in U.2016.3281H.

4.6.2 Special conditions for younger or older workers

In Denmark, there are special conditions set by law for younger and older workers in order to promote their vocational integration.

With regard to employment, payment and dismissal, Section 5(a)(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. allows for direct discrimination against young people under 18 years of age if their payment and salary is covered by a collective agreement.

A landmark Supreme Court judgment deals with a 16-year-old who was hired to work in a supermarket.¹⁶⁰ During his employment, he received a salary that was significantly lower than the salary that his 18-year-old colleagues received. When the young employee turned 18, he was dismissed due to the fact that, according to the collective agreement in the area, he would now have the right to a higher salary. The Supreme Court concluded that Section 5(a)(4) of the Act on the Prohibition of Discrimination in the Labour Market etc. was in accordance with EU law by not going further than allowed by Article 6(1) of Directive 2000/78/EC. The reasoning was that Section 5(a)(5) was justified by the need to ensure the integration of young people under 18 into the labour market.

With regard to employment, conditions of payment and dismissal, Section 5(a)(5) of the Act on the Prohibition of Discrimination in the Labour Market etc. allows for direct discrimination against young people under 15 years of age if their employment is not covered by a collective agreement.

Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. provides for positive action with regard to older workers, with a view to promoting the employment of older people.

4.6.3 Minimum and maximum age requirements

In Denmark, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

There is no minimum age for judges and bailiffs but there is a maximum age. According to Section 34(2) of the Civil Servants Act, judges and bailiffs must also retire when they reach the age of 70.¹⁶¹

In a 2022 case for the Board, the complainant was a civil service legal assessor who was dismissed at the end of the month in which he turned 70.¹⁶² The dismissal took place with reference to Section 34(2) of the Civil Service Act and the complainant argued that he had been discriminated against based on his age. The Board found that the mandatory retirement age in the Civil Service Act was objectively justified by a legitimate aim to ensure the independence of the courts, the quality of the courts' decisions and trust in the courts. The Board also found that the mandatory retirement age was appropriate and necessary to achieve these objectives. The complainant was therefore not successful in the complaint.

There is a minimum age for police officers. Applicants to the National Police Academy must be 20 years of age and must be 21 years of age before they can begin their training to become a police officer.¹⁶³

¹⁶⁰ Supreme Court judgment of 14 November 2013, Case No. 185/2010. Judgment printed in U2014.470H.

¹⁶¹ Consolidated Act No. 511 of 18 May 2017 (*Tjenestemandsløven*).

¹⁶² Board of Equal Treatment, Decision No. 9837 of 22 June 2022.

¹⁶³ Website of the Police Academy: <http://politiskolen.dk/adgangskrav>.

4.6.4 Retirement

a) State pension age

In Denmark, there is a state pension age at which individuals must begin to collect their state pensions. Individuals are entitled to begin collecting their state pensions according to the Act on Pensions.¹⁶⁴ The retirement pension is an age-determined pension payable to women and men of 65 years and over if they were born before 1954. If they were born in or after 1954 the pension age increases to 68 years of age.

If an individual wishes to work beyond the state pension age, the pension can be deferred for a maximum of 10 years. In other words, if a person is entitled to a state pension, they can postpone the payment of their pension to a time after they turn 65 if retirement is postponed. An individual can collect a pension and still work. The pension will, however, be reduced on the basis of the recipient's income.

In a landmark ruling, the Supreme Court adjudicated a case involving an office worker who had a flex-job, which is an adapted job for persons with disabilities with reduced working hours, and whose employer received a subsidy from the local municipality in accordance with the flex-job legislation.¹⁶⁵ The office worker was dismissed from his position when he reached the state pension age and argued that the dismissal constituted discrimination based on his age and his disability.

In its ruling, the Supreme Court made clear that a flex-job arrangement contains two elements – certain conditions of employment and a subsidy from the municipality. The Court also stated that a flex-job must be considered to be an employment-creating arrangement (a positive action), which is allowed according to Section 9(2) of the Act on Prohibition of Discrimination in the Labour Market etc. allowing for positive action with regard to older employees and persons with disabilities. The Court referred to Articles 6(1) and 7 of Directive 2000/78/EC in regard to the positive action argument. The Court argued that the termination of such positive action when a person reaches the state pension age and the subsidy stops could not be considered discrimination because of either age or disability. Referring to the employment contract between the office worker and the employer, the Supreme Court noted that it was an obvious condition for the employment in question that the employer had received a flex-job subsidy from the municipality. The basis for the employment therefore lapsed when the office worker reached the state pension age and the subsidy was discontinued. On that basis, the Court did not find that the dismissal constituted discrimination because of age or disability in violation of the Act on Prohibition of Discrimination in the Labour Market etc.

b) Occupational pension schemes

In Denmark, there is no standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. Occupational pension schemes and other employer-funded pension arrangements are not legally regulated, and they are exempted from the general prohibition of age discrimination pursuant to Section 6(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. They are part of either collective agreements or individual arrangements. There are different age limits in the different collective agreements and different individual arrangements.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

¹⁶⁴ Consolidated Act No. 527 of 25 April 2022 with later amendments (*Pensionsloven*), Section 1a.

¹⁶⁵ Supreme Court judgment of 17 April 2019, Case No. BS-25958/2018-HJR.

An individual can collect a pension and still work.

c) State imposed mandatory retirement ages

In Denmark, there is no generally state-imposed mandatory retirement age. However, in some sectors, retirement ages are set by collective agreements for certain professions (see below). Furthermore, there is a state-imposed retirement age for some civil servants, as the Act on Civil Servants sets an age limit for certain civil servants working within the judiciary as well as for priests, according to which they are dismissed at the end of the month that they turn 70.¹⁶⁶

d) Retirement ages imposed by employers

In Denmark, national law previously permitted employers to set retirement ages (or ages at which the termination of an employment contract is possible) by collective bargaining. However, since 1 January 2016, neither individual employment contracts nor collective agreements providing for automatic termination of employment at any age can be agreed.¹⁶⁷ It also follows from the Act on the Prohibition of Discrimination in the Labour Market etc. that previous individual contracts providing for automatic termination cannot be enforced after 1 January 2016.

Collective agreements on automatic termination are, however, valid until the time when the collective agreement in question can be renegotiated. It follows from Section 5(a)(3) of the Act on the Prohibition of Discrimination in the Labour Market etc., which states that the Act is not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements, provided 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 of the Directive). This rule only applies to collective agreements. Collective agreements in both the private and the public labour market are covered.

A landmark Supreme Court judgment of 27 August 2013 dealt with an employee who was working in a telecommunications company.¹⁶⁸ His employment was covered by an existing collective agreement containing a provision for retirement without notice at the age of 67. The Supreme Court referred to Section 5(a)(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. and concluded that a forced retirement age of 67 years constituted appropriate and necessary means to achieve the purposes of an appropriate age distribution and the reduction of the workforce by age-related departures rather than dismissals.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

f) Compliance of national law with CJEU case law

In Denmark, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

¹⁶⁶ See Section 34(2) and Section 43(2) of Consolidated Act No. 511 of 18 May 2017 (*Tjenestemandsløven*).

¹⁶⁷ It follows from Act No. 1489 of 23 December 2014 repealing Section 5(a)(4) of the Act on Prohibition of Discrimination on the Labour Market etc., which allowed for automatic termination of employment by the age of 70 years or older.

¹⁶⁸ *Weekly Law Journal*, U.2013.3130H.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Denmark, national law does not permit age or seniority to be taken into account in selecting workers for redundancy. It follows from Section 2(1) of the Act on the Prohibition of Discrimination in the Labour Market etc., that it constitutes illegal discrimination to take age into consideration in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Denmark, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker.

If a redundancy is judged illegal, workers can be awarded compensation according to national law. The Dismissal Board (*Afskedigelsesnævnet*) adjudicating cases on redundancies covered by collective agreements has developed a 25-year rule in its case law. It follows from this rule that an employer has an obligation, if possible, to refrain from dismissing a person who has been employed for 25 years or longer. If an employee with seniority of 25 years or more is dismissed, the burden of proof shifts to the employer, who has to prove that there were strong reasons for dismissing this particular person. There is no case law indicating that the age of the worker has an influence on the amount of compensation awarded. No information has been found about legal challenges to this 25-year rule.

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Denmark, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. None of the exceptions of public security, public order, criminal offences, protection of health, or the protection of the rights and freedoms of others are included in Danish law.

4.8 Any other exceptions

In Denmark, there are no other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Denmark, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation, gender identity, gender expression or gender characteristics is permitted to a limited extent in national law. There is, however, no general provision for special or positive measures in Danish law embracing all the discrimination grounds.

Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. 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, gender identity, gender expression or gender characteristics, or national, social or ethnic origin, age or disability by virtue of other legislation, rules other than legislation and other public measures. Such special measures require legal authority and are primarily to be taken by the minister through public projects. According to the preparatory work, Section 9(2) of the Act is directed primarily at the public sector and general projects improving the integration of ethnic minorities.

The right to take special measures in Section 9(2) does not apply to private employers who want to improve employment opportunities for marginalised groups. Thus, legislation makes it difficult for private employers to actively offer equal opportunities in practice. The fact is that even simple outreach initiatives can be claimed to discriminate against the groups that are not the target of the individual outreach initiatives.

An exception follows from Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc., which allows for private employers to take positive measures in relation to older persons and persons with disabilities.

Private employers who are interested in actively offering equal opportunities (which do not conflict with the prohibition of discrimination) are met with another legal barrier. Section 4 of the Act on the Prohibition of Discrimination in the Labour Market etc. prohibits employers from asking for, obtaining, receiving or using information about the race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, or national, social or ethnic origin of a job applicant or an employee. Neither anonymity nor informed consent nor any other exemption will allow an employer to use such information about ethnic origin, etc. and the prohibition applies no matter how the employer gets the information.¹⁶⁹ This rule makes it difficult in practice for private employers to measure the results of their equal opportunities initiatives.

The legislative barriers in the Act on the Prohibition of Discrimination in the Labour Market etc. are assumed to prevent private employers from being active in creating actual equal opportunities in the labour market.

Outside the labour market, Section 4 of the Act on Ethnic Equal Treatment allows for the maintenance or adoption of specific and temporary measures to prevent or compensate for disadvantages linked to racial or ethnic origin. Both public authorities and private organisations and entities can initiate such measures. Section 8 of the Act on the Prohibition of Discrimination due to Disability permits similar temporary measures in the area of disability.

¹⁶⁹ Guidance on the Act on the Prohibition of Discrimination in the Labour Market (1 February 2019), p. 68.

Race and ethnic origin

In the guidelines to Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market etc., lawful public positive measures cover projects initiated by the different ministries as part of national integration schemes, including projects with the aim of improving the qualifications of persons with an ethnic minority background. The guidelines emphasise that only public programmes whose aim is to improve access to employment are possible. Employers themselves are not allowed to give preferential treatment to racial and ethnic minorities.

The preparatory work for Section 4 of the Act on Ethnic Equal Treatment states that there has to be an *actual* disadvantage linked to racial or ethnic origin in order for specific measures to be initiated. It also states that it is possible for public authorities and private organisations and entities to initiate specific measures. The Act only covers equal treatment outside the labour market.

Age and disability

Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. also applies in relation to disability and age, allowing for a number of legislative or public measures that promote employment opportunities for older people and persons with disabilities.

The Supreme Court has held that a flex-job must be considered to be an employment-creating arrangement (a positive action in favour of persons with disabilities), which is allowed according to Section 9(2) of the Act on Prohibition of Discrimination in the Labour Market etc.¹⁷⁰ A flex-job is employment with reduced working hours and where the employer receives a subsidy from the local municipality according to the flex-job legislation. In its arguments, the Court has referred to Article 6(1) and Article 7 of Directive 2000/78/EC in respect of the positive action argument.

According to Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc., it is possible for public and private employers to take concrete positive measures in relation to 'older' age and disability. The purpose of the positive action has to be the improvement of employment possibilities for persons with disabilities or for older employees. If job applicants have the same qualifications, it is thus possible for the employer to prefer an applicant with disabilities or an applicant who is 'older'.

The Act on Compensation for Persons with Disabilities in the Labour Market promotes the integration of persons with disabilities into the job market.¹⁷¹ This Act focuses on how compensation for impairments is best provided in the labour market and sets out general rules on how to promote and enhance employment for persons with (special) difficulties in finding a job. The general aim of the Act is to enhance the integration of persons with disabilities into the labour force by means of affirmative action and various other compensatory measures. Section 3 of the Act provides for preferential treatment of equally qualified job applicants with disabilities to positions in the public administration. It also states that job applicants who have a disability have the right to a job interview for positions in the public administration.

Outside the labour market, Section 8 of the Act on the Prohibition of Discrimination due to Disability allows for the maintenance or adoption of specific and temporary measures to prevent or compensate for disadvantages linked to disability. Both public authorities and private organisations and entities can initiate such measures.

¹⁷⁰ Supreme Court judgment of 17 April 2019, Case No. BS-25958/2018-HJR.

¹⁷¹ Consolidated Act No. 108 of 3 February 2020 with later amendments (*Lov om kompensation til handicappede i erhverv m.v.*).

Religion or belief

Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. also applies in relation to religion and belief, allowing for a number of legislative or public measures that promote the employment opportunities of persons from different religions.

Since religion is understood as formally approved or recognised religions, there is a theoretical link between recognition as a religious community and the possibility of benefitting from these positive actions in Section 9(2). In reality, however, because of the wider discrimination ground of belief, the establishment of such a link is not required in practice.

Besides such possible public measures, there are no provisions in Danish law explicitly allowing for positive measures on the ground of religion.

Sexual orientation

Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. also applies in relation to sexual orientation, gender identity, gender expression and gender characteristics allowing for legislative or public measures that promote the employment opportunities of persons with different sexual orientations. No concrete examples of such measures have been found.

Other than this, there are no provisions in Danish law explicitly allowing for positive measures on the ground of sexual orientation.

b) Quotas in employment for persons with disabilities

In Denmark, national law does not provide for a quota/quotas for the employment of persons with disabilities.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Denmark, the following procedures exist for enforcing the principle of equal treatment:

Courts:

The lower city courts, the High Courts, the Maritime and Commercial Court and the Supreme Court hear cases which involve provisions of the civil Act on Ethnic Equal Treatment and the civil Act on the Prohibition of Discrimination in the Labour Market etc., implementing Directive 2000/43 and Directive 2000/78. The courts also hear cases involving the criminal Act on the Prohibition of Discrimination due to Race etc. and the civil Act on the Prohibition of Discrimination due to Disability. Judgments and decisions handed down by the courts are legally binding.

Labour courts:

The Labour Court and labour arbitration bodies only interpret collective agreements and adjudicate cases concerning violations of collective agreements. They do not deal with cases concerning violations of the legislation on discrimination.¹⁷² Judgments and decisions handed down by labour courts are legally binding.

However, Section 1(6) of the Act on the Prohibition of Discrimination in the Labour Market etc. states that the Act does not apply if equal protection is provided by a collective agreement. Trade unions engage in judicial procedures before the Labour Court on behalf of their members in cases concerning the violation of a prohibition of discrimination in a collective agreement. In the individual case, the trade union decides whether or not it wishes to bring a case. If an individual covered by a collective agreement wishes to initiate a case concerning the violation of collective agreements, the case must be tried in the ordinary courts and the individual must provide proof that their trade union has no intention of pursuing the matter before the Labour Court.

Board of Equal Treatment:

In practice, most complaints of discrimination are dealt with by the administrative Board of Equal Treatment, which was established on 1 January 2009.¹⁷³ The Board deals with complaints related to discrimination based on gender, race, colour, religion or belief, political views, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin *within* the labour market. In sectors outside the labour market, the Board has a mandate to hear individual cases of discrimination because of gender, sexual orientation, gender identity, gender expression, gender characteristics, disability, race and ethnic origin. The Board of Equal Treatment issues binding decisions and can order compensation to be paid.

Individuals making complaints to the Board of Equal Treatment must have an individual and current interest in the case in question. The Board of Equal Treatment cannot force the parties to produce documents, give their opinion or reveal the factual circumstances of a case. The Board secretariat can, however, request that the parties contribute to the elucidation of a case. If a party does not comply with this request within the stated time

¹⁷² Consolidated Act No. 1003 of 24 August 2017 with later amendments in the Labour Court and Labour Arbitration (*Lov om Arbejdsretten og faglige voldgiftsretter*).

¹⁷³ Consolidated Act No. 1230 of 2 October 2016 with later amendments (*Bekendtgørelse af Lov om Ligebehandlingsnævnet*).

period, a new deadline will be set. If the party still does not respond, the Board can choose to decide the case based on the existing evidence, cf. Section 5 of the Act on the Equal Treatment Board. The Board can also procure expert evidence for use in specific cases, cf. Section 7 of the Act.

The Board of Equal Treatment cannot deal with a complaint if the situation is covered by a prohibition of discrimination in a collective agreement.

Decisions handed down by the Board of Equal Treatment are legally binding. According to Section 12(2) of the Act on the Board of Equal Treatment, the Board is obliged to bring its decisions to the civil courts if they are not followed and the applicants wish to pursue the matter. Both parties to a case can also bring a Board decision to the civil courts.

In the period from January 2016 to the end of 2021, the Board of Equal Treatment received 2 505 complaints in total.¹⁷⁴ In the same period, the Board issued 1 282 decisions and its secretariat dismissed 188 complaints.¹⁷⁵

Institute of Human Rights – the National Human Rights Institution of Denmark:

The DIHR is a national human rights institution (NHRI) in accordance with the UN Paris Principles.¹⁷⁶ The Institute has been accredited as an A-status NHRI since 2001.

The DIHR functions as the national equality body in accordance with the Racial Equality Directive and the gender directives. Its mandate as a specialised body for the promotion of equal treatment irrespective of gender, racial or ethnic origin is laid down in the founding law of the Institute by replicating the EU law requirement to establish equality bodies. The DIHR's mandate is to promote equality with regard to gender, race and ethnicity by way of providing assistance to victims of discrimination, conducting independent surveys and publishing reports and recommendations about equality. The DIHR does not play any role in criminal proceedings.

According to Parliament Decision B15 of 17 December 2010, the DIHR is also responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities and thus deals with issues of disability. Finally, since January 2022, the DIHR also has the competence to deal with LGBTI issues.¹⁷⁷

b) Barriers and other deterrents faced by litigants seeking redress

To initiate a civil court case in practice requires the appointment of a lawyer, which is a financial barrier for many victims of discrimination.

In theory, it is not necessary to obtain assistance from a lawyer to file a complaint with the Board of Equal Treatment. In practice, many victims cannot manage to file the complaint by themselves.

There is no time limit in the Act on the Board of Equal Treatment within which a procedure must be initiated. However, the Board of Equal Treatment has concluded in concrete cases that claims were statute-barred according to the Act on Limitations and on that basis the Board could not decide in favour of the complainants.¹⁷⁸ According to the Act on Limitations, there is an absolute three-year period of limitation (five-year period of

¹⁷⁴ Board of Equal Treatment (March 2022) *Annual Report 2021*, p. 32.

¹⁷⁵ Board of Equal Treatment (March 2022) *Annual Report 2021*, p. 32.

¹⁷⁶ Consolidated Act No. 553 of 18 June 2012 on the Institute for Human Rights – the National Human Rights Institution of Denmark with later amendments.

¹⁷⁷ Act No. 2591 of 28 December 2021.

¹⁷⁸ Board of Equal Treatment, Decision No. 29/2015 of 4 March 2015, Decision No. 9386 of 2 March 2016.

limitation for employment-related cases), which means that a procedure must be initiated three years (or five years), at the latest, after the unlawful violation has occurred.¹⁷⁹

Furthermore, the Board has rejected concrete complaints of discrimination on the basis that the complainants acted passively and thus had lost any claim against the employer. According to a general principle of Danish law, a person can lose their claim before the statutory period of limitation by acting passively. Whether a person has acted passively is determined by an individual assessment carried out by the civil courts or other law enforcement agencies, including the Board of Equal Treatment.

In a 2022 decision by the Board of Equal Treatment, a woman had complained of discrimination on grounds of disability in connection with her dismissal from a position as a pharmacist. The complaint of discrimination was brought to the Board more than 2.5 years after the dismissal. The Board found that the complainant had acted passively and had therefore lost any claim against the employer.¹⁸⁰

There are no statistics on the number of cases for which the Board decides that a complainant loses their claim by acting passively. Also, there is no fixed number of months or years that will prompt the Board to decide that a complainant has acted passively. The Board conducts specific and individual case-by-case evaluations.

No absolute time limit is indicated in the Act on Labour Courts.¹⁸¹ With regard to the civil courts, there is a three-year period of limitation (five-year period of limitation for employment-related cases), which means that a procedure must be initiated three years (or five years) at the latest after the unlawful violation.¹⁸²

A person can file a complaint even after their employment relationship has ended. There is therefore no deadline for filing a complaint, but practical difficulties can arise in relation to collecting evidence.

The assistance given by the DIHR to victims of discrimination deals primarily with the provision of information and with advice on how and where victims can complain about discrimination.¹⁸³ Typically, the DIHR does not file complaints with the Board of Equal Treatment on behalf of a victim, but rather provides information on how the complainant can do it on their own behalf. On the DIHR's website, a telephone number and an email address is listed if a person needs assistance and advice on discrimination issues and ways to complain.

Chapter 31 of the Administration of Justice Act deals with legal aid and free legal proceedings.¹⁸⁴ The Minister of Justice can financially support legal aid offices where individuals can seek free legal advice and representation.¹⁸⁵ No public data is available on the practice of supporting and representing victims of discrimination.

Only a few NGOs specialise in assisting victims of discrimination in filing complaints and initiating court proceedings. Many Danish labour unions provide counselling and legal advice on discrimination, in particular discrimination because of disability in the labour market.

¹⁷⁹ Act on Limitations (*Forældelseslov*), Sections 3 and 4, Consolidated Act No. 1238 of 9 November 2015.

¹⁸⁰ Board of Equal Treatment, Decision No. 9830 of 13 June 2022.

¹⁸¹ Consolidated Act No. 1003 of 24 August 2017 with later amendments in the Labour Court and Labour Arbitration (*Lov om Arbejdsretten og faglige voldgiftsretter*).

¹⁸² Act on Limitations (*Forældelseslov*), Sections 3 and 4, Consolidated Act No. 1238 of 9 November 2015.

¹⁸³ See: <https://menneskeret.dk/diskriminationslinjen>.

¹⁸⁴ Consolidated Act No. 1655 of 25 December 2022 with later amendments (*Retsplejelov*).

¹⁸⁵ Regulation No. 637 of 11 June 2014 (*Bekendtgørelse om tilskud til retshjælpskontorer og advokatvagter*).

c) Number of discrimination cases brought to justice

In Denmark, statistics on the number of cases related to discrimination brought to justice are not available.

Statistics on cases brought to the city courts are not available as they are not registered or published in the *Weekly Law Journal* (*Ugeskrift for Retsvæsen*). Only selected judgments from the Supreme Court, the high courts and the Maritime and Commercial Court are published in the *Weekly Law Journal*. The *Weekly Law Journal* is a paid journal not freely available to the public.

On 6 January 2022, a new web portal opened with open and free access to judgments in Denmark (domsdatabasen.dk). The content of the database will be developed gradually.¹⁸⁶

d) Registration of national court decisions on discrimination cases

In Denmark, court decisions on discrimination are not registered as such by national courts.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Denmark, associations/organisations/trade unions are entitled to act on behalf of victims of discrimination under certain conditions.

There are very few specialised NGOs providing legal aid to victims of discrimination and using litigation as a method to generate public discourse on equality.

The Danish judicial system is regulated in the Administration of Justice Act.¹⁸⁷ Under Danish procedural rules in Section 260 of the Administration of Justice Act, a person may either go to court themselves or authorise a process agent to appear in court on their behalf. As a general rule, in Danish procedural law, only jurists authorised to practise law, i.e. certified lawyers, may serve as process agents for a party. As an exception, the Minister of Justice may allow for interest groups, labour unions and the like to represent their members in court through an in-house jurist in cases concerning pay and employment conditions. This is the case even when the in-house jurist is not a certified lawyer, cf. Section 260(6) of the Administration of Justice Act.

Trade unions and other membership organisations can therefore represent their members in civil court cases dealing with pay and employment conditions. The trade union employees representing the individual member must have a Danish bachelor's or master's degree in legal studies. According to established case law, a trade union may also be allowed to serve a function similar to that of a process agent for its members in the sense that the union files a suit in its own name on behalf of its member (in Danish: *mandatar*). However, it is still the member and not the union who is a party to the case.

No particular legislation exists regarding the possibility of NGOs and other associations representing victims of discrimination in civil court proceedings. In comparison with trade unions on questions of pay and employment conditions, NGOs do not have the same general legal standing before domestic courts of law in relation to cases of discrimination. According to Section 260(2), only certified lawyers who have obtained a mandate from the individual victim of discrimination can litigate a case for the civil courts. This means that

¹⁸⁶ In April 2023, the database announced that it now contains judgments handed down since January 2020 as well as selected older judgments. See news from the Danish Courts (14 April 2023): <https://domsdatabasen.dk/nyheder/afgoeelserne-i-domsdatabasen/?page=1>.

¹⁸⁷ Consolidated Act No. 1655 of 25 December 2022 with later amendments (*Retsplejelov*).

an NGO can help to examine the case but when it comes to representing and promoting the case before the civil courts, the individual victim of discrimination must get legal representation from a certified lawyer.

Some public bodies have been given express statutory power to represent complainants in court. According to Section 12 of the Act on the Board of Equal Treatment, the Board of Equal Treatment is thus obliged to bring a case to the civil courts if the defendant refuses to follow the decision of the Board and the applicant wishes to pursue the matter. In practice, the Board of Equal Treatment is represented by the private law firm Kammeradvokaten, which is the legal adviser to the Danish Government.¹⁸⁸

There are no formal requirements for giving a mandate to represent one's case. In practice, a mandate will always be in writing.

In Board of Equal Treatment cases, trade unions and NGOs are entitled to represent individuals who have a legitimate interest in the case. A victim of discrimination is represented before the Board in accordance with traditional administrative law, cf. Section 8 of the Public Administration Act.¹⁸⁹

The DIHR is competent to take cases of principle to the Board of Equal Treatment, including individual cases of discrimination of general public interest.¹⁹⁰ Test cases on, for example, job advertisements on Facebook illustrate the importance of the competence of the DIHR to take cases of principle to the Board and to engage in strategic litigation.¹⁹¹ Individual companies' settings on Facebook advertisements that discriminate based on age and gender would most likely not have been dealt with by the Board if these cases had not been initiated by the Danish Institute for Human Rights.

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Denmark, associations/organisations/trade unions are entitled to act in support of victims of discrimination. According to Section 252 of the Act on Administration of Justice, third party intervention is allowed in existing court proceedings, where the association has a legal interest in the outcome of the case.

As an example, the DIHR may intervene in civil court cases in support of a victim of discrimination if the Institute determines that such support may help to clarify the general interpretation of the discrimination law in Denmark. Between 2016 and March 2022, the DIHR has acted as *amicus curiae* in 11 court cases.¹⁹²

c) Actio popularis

In Denmark, national law does not directly allow associations/organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

The competence of the DIHR to take principle cases to the Board of Equal Treatment could be considered as a form of *actio popularis* as the Institute does not need a specific victim of discrimination to initiate such a principle case.

¹⁸⁸ As described in Jacobsen, B.D. (2010), *Assistance to victims of discrimination by equality bodies of the EU Member States – a Scandinavian perspective*, DJØF Publishing, Copenhagen.

¹⁸⁹ Consolidated Act No. 433 of 22 April 2014 (*Forvaltningsloven*).

¹⁹⁰ Section 1(7) of Consolidated Act No. 1230 of 2 October 2016.

¹⁹¹ Board of Equal Treatment, Decision Nos. 9134 and 9135 of 25 February 2021.

¹⁹² Information provided in Skype interview with the DIHR Equal Treatment Department on 17 January 2018 and in emails from the DIHR Equal Treatment Department on 5 April 2019, 12 March 2021 and 10 March 2022.

No *actio popularis* court cases exist in relation to discrimination. In individual cases in other fields, the Supreme Court has accepted cases filed on the constitutional legality of Denmark's membership of the EU, for example (see U 1996.1300 H and U 1998.800 H). So one could argue that there is a willingness to accept *actio popularis* cases within the Danish judicial system.

d) Class action

In Denmark, national law allows associations/organisations/trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

Chapter 23a of the Danish Administration of Justice Act specifies rules on collective action.

A collective action is a special type of procedure prepared with a view to combining several – especially a large number of – uniform claims in the same proceedings. The term 'collective action' implies that the action relates to the claims of a group of persons, a representative of this group (not individual members of the group) being regarded as a party to the action. Collective actions seem to be the same as class actions.

The rules on collective actions are based on a main rule that the members of the group must opt for the action (the opt-in model). At the request of the group representative, the court may also decide that a collective action must comprise the group members who do not opt out of the collective action (the opt-out model). This is, however, subject to two additional conditions being satisfied.

First of all, the case must concern claims that are so small that it is evident that they cannot generally be expected to be brought through individual actions, not because the persons concerned do not think that they have a justified claim, but merely because the inconvenience and financial risk of individual litigation are deemed to be disproportionate to the outcome of the individual action.

A number of conditions for bringing a collective action have been laid down, including the condition that the court must approve the case as being suitable for a collective action. A number of 'control mechanisms' also apply. For example, the court must approve the group representative and may decide that the representative must provide security for the legal costs that they may have to pay to the other party if they lose the case.

As for associations, there are no specific requirements as to age, number of members, financial situation, etc., but in order to be appointed as group representative, the association must have sufficient financial means, including, for example, insurance to be able to cover legal costs.

No information has been found on collective actions in discrimination cases.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Denmark, national law requires a shift of the burden of proof from the complainant to the respondent.

Section 7 of the Act on Ethnic Equal Treatment, Section 7a of the Act on the Prohibition of Discrimination in the Labour Market etc., and Section 10 of the Act on the Prohibition of Discrimination due to Disability all deal with the principle of a shared burden of proof.¹⁹³ This means that if a person who considers themselves to be discriminated against is able

¹⁹³ Section 7 of the Act on Ethnic Equal Treatment and Section 7a of the Act on the Prohibition of Discrimination in the Labour Market etc.

to establish facts of possible discrimination, then the employer, shop owner, landlord etc. has to prove that no discrimination has taken place. This shared burden of proof is in line with the directives.

The shared burden of proof is to be applied in cases of direct and indirect discrimination, harassment and instruction, but not in cases concerning victimisation.

In cases of discrimination based on disability, it is a precondition for the employer's obligation to establish reasonable accommodation that the employer actually knows or ought to know about the disability of the employee.

A number of judgments and decisions handed down by the Board of Equal Treatment illustrate the shared burden of proof in practice.

In a landmark judgment on disability of 22 November 2017, the Supreme Court underlined that the burden of proof rests with the employee with regard to proving that the employee has a disability, including that the impairment is of a long-term nature.¹⁹⁴ However, in the ruling, the Supreme Court also clarified that to have a disability covered by the discrimination law, it is not a requirement that the condition in question is caused by a medically diagnosed illness. Instead, the impairment must be evaluated based on all circumstances of the case. It makes no difference whether dizziness, for example, is an illness or a symptom of an illness as long as the condition involves a long-term impairment.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Denmark, there are legal measures of protection against victimisation.

National law prohibits subjecting 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.

Section 7(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. prohibits victimisation in employment. Section 8 of the Act on Ethnic Equal Treatment and Section 9 of the Act on the Prohibition of Discrimination due to Disability prohibits victimisation beyond employment when it comes to the discrimination grounds of ethnic origin and disability. In all three laws, it is the adverse treatment as a reaction to a complaint concerning discrimination that is prohibited. According to these laws, a person who experiences negative treatment or unfavourable consequences because of the fact that they asked for equal treatment can be granted compensation by the court.

The commentary to the Act on the Prohibition of Discrimination in the Labour Market etc. reads: '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.'¹⁹⁵

Both in the labour market as well as outside the labour market, protection applies to a person who files a complaint regarding differential treatment of themselves as well as to a person who files a complaint of differential treatment of another person.

It is a prior condition that a causal link can be established between the victimisation and the employee's or the complainant's request for equal treatment. Adverse treatment is not considered as a violation of the prohibition of discrimination in the directives. The burden of proof is therefore not shared in cases of victimisation

¹⁹⁴ Supreme Court judgment of 22 November 2017, Case No. 305/2016.

¹⁹⁵ Preparatory work for Act No. 253 of 7 April 2004 amending the Act on the Prohibition of Discrimination in the Labour Market etc.

In a 2022 decision by the Board of Equal Treatment, an applicant for a driver position was excluded from a job search group for drivers on Facebook after he had filed a complaint to the Board of Equal Treatment (see section 12.2).¹⁹⁶ The Board found that the owner of the respondent company, in response to the complaint to the Board, was instrumental in the complainant being excluded from the group and the complainant was awarded compensation for victimisation.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Discrimination in the private and public labour market may result in pecuniary compensation and discriminatory job advertisements may result in a fine, cf. Section 7(1) and Section 8 of the Act on the Prohibition of Discrimination in the Labour Market etc.

In public and private employment, as well as in a field outside the area of employment, a person who has been subject to discrimination can be awarded compensation for non-economic damages, as stipulated in Section 7(1) of the Act on the Prohibition of Discrimination in the Labour market etc., in Section 9 of the Act on Ethnic Equal Treatment, and in Section 11 of the Act on the Prohibition of Discrimination due to Disability.

Furthermore, Danish civil courts can award damages for an established economic loss according to the general Danish rules concerning damages. The Danish law of torts is developed through Danish case law. Damages can be awarded if negligent behaviour has resulted in an economic loss and there is a causal link between the negligent behaviour and the loss. Furthermore, the loss has to be foreseeable to the person acting negligently.

Finally, a person who is responsible for an unlawful violation of another person's freedom, honour or integrity is liable to pay compensation, according to Section 26 of the Act on Damage Liability. There is a three-year period of limitation, meaning that compensation claims must be brought to the courts three years, at the latest, after the unlawful violation.¹⁹⁷

As illustrated by case law, the scope of the Danish tort legislation is very narrow. A judgment from the Supreme Court about a young woman with an intellectual disability, for example, shows that, according to Danish law, it was not possible to get financial compensation for an unjustified loss of service or welfare.¹⁹⁸ The judgment leaves individuals with disabilities in an insecure place if their local municipalities issue faulty decisions.

b) Compensation – maximum and average amounts

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

Typically, the following amounts of compensation will be awarded to victims of discrimination:

- in cases of denial of access to public places like bars, restaurants and night clubs: from EUR 670 (DKK 5 000) to EUR 1 340 (DKK 10 000);
- in cases of discriminatory job advertisements: EUR 3 350 (DKK 25 000);
- in cases of discriminatory denial of employment/new job: EUR 3 350 (DKK 25 000);
- in cases of discriminatory dismissals: 6 to 12 months' salary.

¹⁹⁶ Board of Equal Treatment, Decision No. 9684 of 18 May 2022.

¹⁹⁷ Section 3 of Act on Limitations (*Forældelseslov*), Consolidated Act No. 1238 of 9 November 2015.

¹⁹⁸ Supreme Court judgment of 22 April 2021, Case No. BS-19523/2020-HJR.

In a 2022 case for the Board, the complainant experienced discrimination based on her disability when she was denied employment, and the Board awarded a higher compensation than usual: EUR 5 375 (DKK 40 000) (see section 12.2.).¹⁹⁹ The reason was that the denial of employment occurred a long way into the employment process, after the complainant had already participated in several interviews.

In a landmark Supreme Court judgment of 1 October 2014,²⁰⁰ the Court dealt with the level of compensation in dismissal cases of age discrimination. The Supreme Court referred to case law on gender discrimination in the labour market, stating that the pilots in question in this case would be eligible to more than six months' salary in compensation. However, according to the Court, there were a number of mitigating circumstances, which meant that the compensation in these cases should be determined at a lower level. The result was that the Court granted four months' salary in compensation to each of the pilots. According to the Court, the mitigating circumstances were the following:

- the dismissals were necessary because of work and workforce reductions;
- the criterion for dismissing the pilots (eligibility for retirement benefits) was collectively negotiated with the pilots' union;
- this criterion was the most humane and fair in a situation where – no matter what – a number of pilots had to be dismissed.

This approach was corroborated in a Supreme Court judgment of 12 March 2015.²⁰¹ In this case, the Court underlined that, when determining the amount of compensation, it must emphasise the 'coarseness', meaning the seriousness of the violation including the background for the violation and the infringement of the individual in question.

In another landmark Supreme Court judgment of 13 June 2013,²⁰² a young woman was appointed as a secretary at a law firm. She was dismissed almost immediately, only four days after she had started working. The woman had a diagnosis of ADHD²⁰³ and the employer's reason for dismissing her was her 'special conditions'. The Supreme Court concluded that the dismissal was a violation of the prohibition of discrimination in the labour market and she was awarded compensation amounting to six months' salary. When setting the compensation, the Supreme Court referred to the case law on discrimination on account of gender and stated that in the case in question, there was no reason to depart from the compensation practice in the gender case law.

In a judgement by the city court of Roskilde, the compensation awarded by the Board of Equal Treatment was reduced by half.²⁰⁴ The court argued that a teacher who had been dismissed from her full-time position because of her disability would not have been able to work more than part-time. Generally, if a person is dismissed from a full-time position, the compensation for unlawful discrimination will be based on a full-time salary. This ruling illustrates that specific circumstances may justify a change in this approach. It also shows that, when determining the level of compensation, the court may emphasise the number of hours that the employee is actually capable of working at the time of dismissal – and not the conditions and hours of employment in the contract.

In a judgment by the Western High Court, the Court concluded that a bus driver had experienced discrimination based on disability (see section 12.2).²⁰⁵ Regarding the calculation of the compensation, the High Court stated that, according to established

¹⁹⁹ Board of Equal Treatment, Decision No. 9879 of 1 July 2022.

²⁰⁰ Supreme Court judgment of 1 October 2014, Case No. 322/2012. Printed in U.2015.1H.

²⁰¹ Supreme Court judgment of 12 March 2015, Case No. 180/2014. Printed in U.2015.2027H.

²⁰² Printed in U.2013.2575H.

²⁰³ Attention deficit hyperactivity disorder.

²⁰⁴ City Court of Roskilde judgment of 7 May 2020, Case No. BS-33137/2018-ROS.

²⁰⁵ Western High Court, judgment of 31 May 2022, Case No. BS-50022/2021-VLR.

practice, a certain number of months' salary is set, depending on the seriousness of the infringement and the employee's seniority. This practice also applies to part-time employees. According to the flex-job scheme by which the bus driver was covered, the employment consisted of a part-time position corresponding to his working ability and, in addition to the pay from his employer, he received a supplementary wage subsidy from the public sector. Taking into account the fact that it was a question of compensation, the Court found that it was best, in line with previous practice and the nature of the employment relationship, that the compensation be set based on the employer's actual salary expenditure to the bus driver. Such compensation would constitute a sanction with a deterrent effect and would thus comply with the EU legal principle of effectiveness. The bus driver therefore received compensation of EUR 12 100 (DKK 90 000), corresponding to nine months' salary without the addition of the public sector wage subsidy.

The Eastern High Court dealt with a similar flex-job case and also found that compensation for disability discrimination should be set based on the actual salary expenditure by the employer.²⁰⁶ In the individual case in question, however, the Court determined that the compensation should be calculated on a discretionary basis, since it would otherwise be such a low amount that it would not meet the EU legal principle of effectiveness.

c) Assessment of the sanctions

In reality, compensation is almost the only sanction used in cases of unlawful discrimination on the labour market. Fines are used so rarely that it is difficult to evaluate whether these sanctions are effective.

The level of compensation in discrimination cases is higher than in traditional cases of unfair dismissal and seem proportionate. Hypothetically, the higher sanctions, combined with the increased knowledge that employers have about discrimination laws, are likely to have a dissuasive effect when it comes to discrimination in the labour market.

The Supreme Court has made a clear statement about the level of compensation in discrimination cases in the labour market. There was previously a tendency to award lower amounts of compensation in cases of discrimination on account of ethnic origin, age, disability, sexual orientation and religion/belief than in cases of discrimination because of gender. This is not the case anymore.

In its 2018 annual report, the Board stated that if there are multiple violations in a case, it might trigger higher compensation.²⁰⁷ This can, for example, be relevant where the employer has violated both the Act on the Prohibition of Discrimination in the Labour Market etc. and the Act on Equal Treatment of Men and Women as regards access to employment etc. Case law illustrates that, when evaluating the level of compensation, the Board has found it to be an aggravating circumstance that the complainant was dismissed in violation of both laws.²⁰⁸

Outside the area of employment, on the other hand, within the realm of the Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination due to Disability, sanctions are typically EUR 670 and so mild that it must be questioned whether they are sufficiently effective, proportionate and dissuasive. This is in particular the situation when it comes to night clubs and the wider night-time economy where discrimination because of ethnic origin is a big problem. The risk of having to pay small amounts of compensation does not seem to sufficiently prevent discrimination in the night-time economy.

²⁰⁶ Eastern High Court, judgment of 14 December 2022, Case No. BS-47157/2020-OLR.

²⁰⁷ Board of Equal Treatment, Annual Report 2018 (June 2019), p. 25.

²⁰⁸ Board of Equal Treatment, Decision No. 9435 of 24 April 2019.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

7.1 Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Danish Institute of Human Rights (DIHR) 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 Racial Equality Directive.²⁰⁹ Section 2(2) of the Act on the Institute for Human Rights – the National Human Rights Institution of Denmark stipulates that the DIHR must promote the equal treatment of all persons without discrimination on grounds of gender, race or ethnic origin. According to Parliament Decision B15 of 17 December 2010, the DIHR is also responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities and thus deals with issues of disability. In 2021, Section 2(2) of the Act was amended to include the discrimination grounds of sexual orientation, gender identity, gender expression and gender characteristics.²¹⁰

The DIHR addresses discrimination in any domain, including employment, education, housing, social services, etc. The mandate stipulated in the Act on the Institute for Human Rights covers gender, sexual orientation, gender identity, gender expression and gender characteristics, race and ethnic origin. Following Parliament Decision B15 of 17 December 2010, the DIHR also covers disability. More broadly it follows from the Act that the DIHR is mandated to work on the promotion of human rights in general. The DIHR states on its website that the principle of equal treatment and non-discrimination is a cornerstone of human rights advocacy. In its work, the DIHR therefore frequently applies a horizontal perspective. In practice, this means that all grounds of discrimination have been addressed, taking into account gender, age, disability, sexual orientation, religion and faith, ethnicity and race.²¹¹

The act establishing the DIHR exempts Greenland and the Faroe Islands from the competence of the DIHR.²¹² This exemption still applies to the Faroe Islands but in 2014, it was decided by decree that the DIHR has a mandate to work in Greenland in the same way as it does in Denmark.²¹³ The DIHR evaluates, promotes and monitors human rights in Greenland and publishes ongoing status reports on its activities and on the human rights situation in Greenland. It presents these reports to the *Inatsisartut*, the Parliament of Greenland.²¹⁴

In accordance with the requirements of Article 13 of the Directive, the Institute has been given the authority to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination.

The Board of Equal Treatment is an independent complaints board established by the Act on the Board of Equal Treatment. It is a quasi-judicial institution that is limited to adjudicating individual complaints of discrimination.²¹⁵ The Board is not officially designated as an Article 13 body.

²⁰⁹ Consolidated Act No. 553 of 18 June 2012 with later amendments on the Institute for Human Rights – the National Human Rights Institution of Denmark.

²¹⁰ Act No. 2591 of 28 December 2021.

²¹¹ See: <https://www.humanrights.dk/about-us/mandate>.

²¹² Section 15 of Consolidated Act No. 553 of 18 June 2012.

²¹³ Decree No. 393 of 23 April 2014 about the entry into force for Greenland of the Act on the Institute for Human Rights – the National Human Rights Institution of Denmark.

²¹⁴ For information on the DIHR's work in Greenland, see: <https://menneskeret.dk/emner/groenland>. For the latest status report on equal treatment in Greenland, see: <https://menneskeret.dk/udgivelser/menneskerettigheder-fokus-beretning-inatsisartut-2020-21>.

²¹⁵ Consolidated Act No. 1230 of 2 October 2016 with later amendments on the Act on the Board of Equal Treatment.

7.2 Political, economic and social context of the designated body

In 2015, legislation was amended to give the DIHR the authority to bring complaints to the Board of Equal Treatment in cases that are a matter of principle or in cases that are a matter of general public interest.²¹⁶ The amendment represented a strengthening of the DIHR's position. Furthermore, most of the DIHR's general budget comes from the Danish state (the national budget and various Government resources). During the last couple of years, the overall budget for the DIHR has largely been unchanged.

7.3 Institutional architecture

In Denmark, the designated body forms part of a body with multiple mandates.

The Act on the Institute for Human Rights – the National Human Rights Institution of Denmark establishes the DIHR as a separate and independent human rights institution.²¹⁷ The Act clarifies the role of the DIHR with regard to the promotion of equality and non-discrimination and specifies that the Institute also has a mandate under the EU directives as a specialised equality body on race and ethnic origin as well as on gender. Apart from being a specialised equality body, the DIHR is also an 'A' accredited NHRI according to the UN Paris Principles.

Furthermore, the DIHR is responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities, which follows from Parliament Decision B15 of 17 December 2010.

The Equal Treatment Department is a separate department in the DIHR that works to fulfil the functions and tasks assigned to the DIHR by virtue of its role as a specialised equality body in respect of race, ethnic origin and gender. The department also monitors, promotes and oversees the implementation of the UN Convention on the Rights of Persons with Disabilities.²¹⁸ The Equal Treatment Department works on issues of discrimination based on the grounds of gender/LGBT+, race/ethnic origin and disability within all spheres of society and has divided its tasks between three teams centred around gender/LGBT+, ethnicity and disability. The Equal Treatment Department works on issues of equality in general and does not limit its work to the material scope of the EU directives.

7.4 Status of the designated body – general independence and resources

a) Status of the body

Separate or other legal status or personality:

The DIHR is established by law as an independent autonomous institution within the public administration working with human rights in general. The Equal Treatment Department works to fulfil the functions and tasks assigned to the DIHR by virtue of its role as a specialised equality body. With regard to its budget, the DIHR is technically accountable to the Ministry of Finance.

The DIHR publishes a number of reports every year within the area of human rights and equality.

²¹⁶ Act No. 1570 of 15 December 2015 amending the Act on the Board of Equal Treatment.

²¹⁷ Consolidated Act No. 553 of 18 June 2012 with later amendments.

²¹⁸ Table of DIHR departments. See <https://www.humanrights.dk/about-us/departments>.

Selection of governing body:

The Danish Council for Human Rights (*Rådet for Menneskerettigheder*) is established to assess the development and execution of the activities of the DIHR and may propose new activities to the DIHR Board. The Council meets four times a year to discuss the work of the DIHR and also appoints six members of the Board. Members of the Council are appointed to reflect the attitudes of civil society organisations working with human rights as well as public and governmental institutions and authorities. Only members from civil society organisations have the right to vote in the Council.

The Board members of the DIHR are appointed by various institutions: one member is appointed by the University of Copenhagen; one member is appointed by the University of Aarhus; one member is appointed by the University of Southern Denmark; one member is appointed by the University of Aalborg; two members are appointed by the Danish Conference of Rectors (*Rektorkollegiet*); one member is appointed by the employees of the DIHR; and six members are appointed by the Danish Council for Human Rights. The Board of Equal Treatment is not represented on the DIHR's Board. The Executive Director of the DIHR is appointed by the Board.

Sources of funding:

Most of the DIHR's total budget comes from the Danish state (the national budget and various Government resources).

Powers to recruit and manage staff:

The DIHR is an independent autonomous institution within the public administration. The DIHR management has the power to recruit and manage staff.

Accountability:

The DIHR is accountable to the Danish Parliament through the obligation to submit an annual report to the Parliament about the status of human rights in Denmark. The obligation relates to the requirement to submit the report and not to the content of the report and the role of the Parliament is not to approve the report. The annual report is presented to the Legal Affairs Committee in the Parliament by the Executive Director of the Institute. The role of the Committee is not to approve the report and the presentation is typically followed by a more general discussion of the human rights situation in Denmark.

In theory, the report may influence funding as financing for the work on equal treatment is provided by the annual Danish national budget, which can be changed by a majority in the Parliament. Being part of the national budget still makes the funding relatively permanent and secure.

The DIHR is also accountable to the Danish Parliament due to the fact that the DIHR can only be abolished by legislation.

b) Independence of the body

The DIHR is established by law as an independent autonomous institution within the public administration. The DIHR can only be abolished by legislation. However, in the author's view, the dependence on public funding may raise questions about whether DIHR is fully independent in practice.

c) Resources

- Annual budget of the body:

The budget for 2022 for the whole of the DIHR was approximately EUR 30 million (DKK 222 million).²¹⁹ With regard to its budget, the DIHR is technically accountable to the Ministry of Finance, which means that the Ministry of Finance monitors to ensure that the relevant financial rules are applied.

- Share of the annual budget dedicated to the equality body mandate:

Via the Danish national budget, the DIHR has permanent funding for its work on equal treatment, which provides security for the Equal Treatment Department. The basic budget for equal treatment in 2022 was EUR 1 558 658 (DKK 11 600 000), allocated from the national budget.²²⁰ This covers the expenses for all equal treatment work and the Equal Treatment Department, including the advice unit. No information could be found on the specific budget for the advice unit.

- Number of staff

At the end of 2022, the total number of staff of the body was 143.

The Equal Treatment Department has 17 employees²²¹ divided between three teams focused on gender/LGBT+, ethnicity and disability. Within the teams, employees are competent to work broadly on the individual discrimination ground, i.e. conducting surveys, preparing reports and drawing up recommendations. Most of the employees have academic backgrounds in law and the social sciences.

7.5 Grounds covered by the designated body

The Act on the Institute for Human Rights – the National Human Rights Institution of Denmark establishes the Institute as a separate and independent institution.²²² The Act also clarifies the role of the DIHR with regard to the promotion of equality and non-discrimination and specifies the mandate of the Institute under the EU directives as a specialised equality body on race and ethnic origin as well as on gender.

As mentioned above, according to Parliament Decision B15 of 17 December 2010, the DIHR is also responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities. It follows from the Act on the Institute for Human Rights that the DIHR is mandated to work on the promotion of human rights in general. It therefore also works to promote disability rights, including the protection against disability discrimination more broadly than is described in Decision B15.

The Equal Treatment Department works to fulfil these DIHR functions and has divided its tasks between three teams centred around gender/LGBT+, ethnicity (including race and religion) and disability. All three teams work to focus on their specific discrimination ground as well as on areas where the grounds intersect when relevant. Since January 2022, the DIHR has had a specific mandate to work on the discrimination grounds of sexual orientation, gender identity, gender expression and gender characteristics and this task will be covered by the gender/LGBT+ team.²²³

²¹⁹ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²²⁰ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²²¹ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²²² Consolidated Act No. 553 of 18 June 2012 with later amendments.

²²³ Act No. 2591 of 28 December 2021.

7.6 Competences of the designated body – and their independent exercise

According to Section 2(3) of the Act on the Institute for Human Rights – the National Human Rights Institution of Denmark, the DIHR must issue a yearly report to the Parliament on the human rights situation in Denmark. It must also publish the report. This includes the situation of persons with disabilities. According to Parliament Decision B15 of 17 December 2010, the Institute is also responsible for monitoring the Danish implementation of the UN Convention on the Rights of Persons with Disabilities.

The duties and powers of the Institute with regard to the equality mandates are specified in the Act on the Institute for Human Rights – the National Human Rights Institution of Denmark. According to Section 2(2) of the Act, the Institute must promote equal treatment of all persons without discrimination on grounds of gender, race or ethnic origin by, among other things:

- assisting victims of discrimination in pursuing their complaints of discrimination in the light of the rights of victims, associations, organisations and other legal entities;
- conducting independent surveys concerning discrimination; and
- publishing reports and making recommendations on discrimination issues.

a) Independent assistance to victims

In Denmark, the designated body does have the competence to provide independent assistance to victims.

The DIHR has an advice unit in the Equal Treatment Department which is responsible for giving advice relating to individual cases of alleged discrimination. The unit is part of the DIHR, which is established by law as an independent autonomous institution within the public administration and which has the status of an NHRI. The advice unit acts as independently as the rest of the DIHR.

People can call for advice and counselling every Monday, Tuesday, Wednesday and Thursday from 12.00 to 15.00, or they can send an email to the Equal Treatment Department. Institute employees provide independent legal assistance to victims of alleged discrimination. This includes assistance in applying to the authorities for free legal aid in court and filing a complaint with the Board of Equal Treatment.

The DIHR can take up cases of discrimination on its own initiative. Since January 2016, the DIHR has been able to bring complaints to the Board of Equal Treatment in cases regarding a matter of principle or in cases of general public interest.²²⁴ The Institute does not necessarily act on behalf of individual victims of discrimination in these complaints. Thus, it is not a condition that the Institute must identify a victim of discrimination by name to file such complaints.²²⁵

In 2022, the advice unit dealt with 310 inquiries about possible discrimination and some of them dealt with several discrimination grounds:²²⁶

- 62 inquiries about ethnic origin
- 135 about disability
- 95 about gender
- 8 about LGBT+
- 22 about other topics

²²⁴ Act No. 1570 of 15 December 2015 amending the Act on the Board of Equal Treatment.

²²⁵ Bill No. 2015/1 LSF 28 of 8 October 2015 regarding the amendment of the Act on the Board of Equal Treatment.

²²⁶ Information provided by the DIHR Equal Treatment Department by email, 7 March 2023.

In relation to the effectiveness of the assistance, the advice unit of the DIHR previously received relatively few discrimination inquiries on an annual basis. Information has not been found that can clearly establish whether the reason for this was lack of knowledge about the opportunity or whether it was lack of trust. Either way, based on the number of inquiries, it can be questioned whether the provision of assistance to victims of discrimination has been effective. However, numbers of inquiries almost doubled in 2022 compared to previous years, which may illustrate a new development. Furthermore, the Equal Treatment Department has set a goal to strengthen its advice unit in 2023.²²⁷ A new website for a new 'Discrimination Line' is to be launched in the spring of 2023.²²⁸

b) Independent surveys and reports

In Denmark, the designated body does have the competence to conduct independent surveys and publish independent reports.

In relation to independence, the DIHR provides general information to the public on human rights. It conducts courses, seminars and other promotional activities. It also undertakes surveys, reports and analyses on human rights in general as well as on all grounds of discrimination. The DIHR is obliged by law to submit an annual report to the Danish Parliament on human rights in Denmark in general.²²⁹ The DIHR also publishes more detailed status reports on the situation of human rights in Denmark with recommendations, including specific reports with recommendations on the current situation of women,²³⁰ LGBTI+,²³¹ ethnic minorities²³² and persons with disabilities in Denmark.²³³

Besides being a specialised body according to Directive 2000/43, the DIHR is also an 'A' accredited national human rights institution according to the UN Paris Principles. Hence, it is independent, which means that published reports and recommendations must be independent.

In 2022, the DIHR and the Equal Treatment Department, for example, published an analysis documenting that people from ethnic minorities more often state that they experience discrimination and sexual harassment in the workplace.²³⁴ In some areas, the DIHR is quite effective in setting the agenda for public debate in Denmark.

DIHR publishes three-year strategy plans. According to the latest strategy, DIHR will prioritise five thematic areas including equal treatment: 'We will make our voice heard when human rights are challenged, and when people are exposed to discrimination.'²³⁵ In accordance with this strategy, the Equal Treatment Department develops multi-annual strategies within and across its areas of mandate.²³⁶

c) Recommendations

In Denmark, the designated body does have the competence to issue independent recommendations on discrimination issues. The DIHR website has sections on human rights and equality issues in Denmark where it publishes its latest recommendations on an

²²⁷ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²²⁸ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²²⁹ DIHR (2022), *Beretning til Folketinget 2021*. See: https://menneskeret.dk/files/media/document/Beretning_2021_-_Institut_for_Menneskerettigheder_juni_2022.pdf.

²³⁰ See: <https://menneskeret.dk/koen-ligestilling>.

²³¹ See: <https://menneskeret.dk/status/lgbt>.

²³² See: <https://menneskeret.dk/etnicitet>.

²³³ See <https://menneskeret.dk/status/handicap-psykiatri>.

²³⁴ DIHR (September 2022) *Discrimination and sexual harassment on the workplace*. See: https://menneskeret.dk/files/media/document/Etniske_minoriteter_angiver_oftere_at_de oplever diskrimination_og seksuel_chikane_paa_arbejdspladsen_Analyse_september_2022_tilgaengeligt.pdf.

²³⁵ DIHR, Strategy 2021-2024, p. 8. See: https://menneskeret.dk/files/media/document/Strategy_2021-2024_English_feb.pdf.

²³⁶ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

ongoing basis.²³⁷ There are recommendations on housing, children, ethnic origin, refugees, prisons, disability, gender, LGBT+, police, private life, religion, fair trial, citizenship, undocumented migrants, freedom of speech, and age.

The DIHR has particularly been setting the agenda in the public debate around ethnic profiling by the police²³⁸ and around hate crimes and hate speech.²³⁹

d) Prevention, promotion and awareness-raising

The DIHR does some promotional work for equal treatment through cooperation with key stakeholders, such as municipalities and private companies. This includes, for example, engaging in dialogue with schools about complaints of racism and with municipalities about the lack of services for people with disabilities.²⁴⁰

The DIHR has close cooperation with Danish universities and this subject knowledge and professional competence provides a key to the Institute's credibility. The DIHR does not conduct specific equality campaigns. The Equal Treatment Department is not involved in primary school education, but the general human rights education provided by the DIHR in primary schools does include elements of non-discrimination and equal treatment.

No general information has been found about the quality of cooperation between the DIHR and civil society organisations. However, the Council for Human Rights is an integral part of the DIHR's governance model and the Council has around 60 civil society organisations as members.

All in all, the DIHR does not have a direct mandate to prevent, promote and raise awareness about equal treatment. However, its mandate to publish reports and issue independent recommendations on discrimination issues encompasses a competence to engage in the prevention of discrimination and in the promotion of equal treatment. The website for the DIHR's national work includes a number of examples of its work in this regard.²⁴¹

e) Other competences

The DIHR introduced the Disability Barometer, which provides an ongoing state of play regarding the fulfilment of the human rights of persons with disabilities.²⁴² The Barometer covers 10 essential areas of life, including employment.

7.7 Legal standing of the designated body

In Denmark, the designated body only has legal standing in the following areas.

The DIHR does not have explicit legal standing to bring discrimination complaints to court. However, it may intervene in existing court cases on discrimination if a legal interest in the matter at issue can be proven. Thus, the DIHR may intervene and act as *amicus curiae* in principle cases of discrimination based on race, ethnic origin, gender/LGBT+ or disability.

²³⁷ See the webpage on human rights in Denmark: <https://menneskeret.dk/status>.

²³⁸ See: <https://menneskeret.dk/udgivelser/etnisk-profilering>.

²³⁹ See: <https://menneskeret.dk/udgivelser/had-mod-minoriteter> and <https://menneskeret.dk/udgivelser/offentlige-debat-paa-facebook-undersogelse-danskernes-debatadfaerd>.

²⁴⁰ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²⁴¹ See the webpage on human rights in Denmark: <https://menneskeret.dk/status>.

²⁴² See: <https://handicapbarometer.dk/>.

In 2022, the DIHR acted as *amicus curiae* in two new court cases of discrimination based on ethnic origin.²⁴³ Together with court cases that started in previous years, the DIHR is altogether involved in five cases.²⁴⁴

The DIHR can assist and provide advice to individuals or lawyers in concrete court cases.

The DIHR can also assist a complainant in bringing their case to the ECtHR or other international human rights bodies.

The DIHR can bring a discrimination complaint on behalf of an individual to the Board of Equal Treatment.

In 2016, the Institute was also given a mandate to bring complaints to the Board of Equal Treatment in cases that are a matter of principle or in cases that are a matter of general public interest.²⁴⁵ According to the preparatory work for this law, it is not a condition that the Institute can identify a victim of discrimination by name to file such complaints.²⁴⁶ Thus, the Institute does not necessarily act on behalf of individual victims of discrimination in such complaints. In 2022, the DIHR filed two discrimination complaints on matters of principle.²⁴⁷

7.8 Dispute resolution

a) Quasi-judicial functions

In Denmark, the DIHR is not a quasi-judicial institution but rather a specialised body to assist and advise victims of discrimination.

In Denmark, the Board of Equal Treatment is a quasi-judicial institution with the power to issue binding decisions.

b) Power to impose sanctions

The Board of Equal Treatment is an independent complaints board established by the Act on the Board of Equal Treatment. It is a quasi-judicial institution that is limited to adjudicating individual complaints of discrimination.²⁴⁸ The Board deals with individual complaints related to discrimination in the labour market based on gender, race, skin colour, religion or belief, political opinion, sexual orientation, gender identity, gender expression or gender characteristics, age, disability or national, social or ethnic origin. Outside the labour market the Board only deals with complaints related to discrimination based on race, ethnic origin, disability, gender, sexual orientation, gender identity, gender expression and gender characteristics.

The Board is part of the public administration and is funded by public funds. The Board's expenses include remuneration of Board members and secretarial staff as well as fees to the legal advisor to the Danish Government (the law firm Kammeradvokaten), which represents the Board in civil court cases.

The Board consists of one president and two vice-presidents, who are judges, as well as nine members, who are lawyers with specific expertise in discrimination law. The president of the Board must be a High Court judge and the vice-presidents must be city court judges.

²⁴³ Information provided by the DIHR Equal Treatment Department by email, 7 March 2023.

²⁴⁴ Information provided by the DIHR Equal Treatment Department by email, 7 March 2023.

²⁴⁵ Act No. 1570 of 15 December 2015 amending the Act on the Board of Equal Treatment.

²⁴⁶ Bill No. 2015/1 LSF 28 of 8 October 2015 regarding the amendment of the Act on the Board of Equal Treatment.

²⁴⁷ Information provided by the DIHR Equal Treatment Department by email, 6 March 2023.

²⁴⁸ Consolidated Act No. 1230 of 2 October 2016 on the Act on the Board of Equal Treatment.

Both genders must be represented in the presidency.²⁴⁹ The Board members are independent of the ministries that have nominated and appointed them. The Board members do not represent any specific political or organisational views.

In 2015, the Act on the Board of Equal Treatment was amended to clarify that the Board can only adjudicate complaints if the complainant has an individual and current interest in the case in question.²⁵⁰ Since 1 January 2016, it has not been possible for an individual to file a complaint because they belong to a group of people (based on ethnic origin, for example) who have been discriminated against. The requirement for *locus standi* has resulted in a number of cases being dismissed.

The Board does not have the power to take up cases on its own initiative or to allow for oral proceedings in individual cases.

When handling a complaint, the president or a vice-president of the Board participates together with two additional members. In 2015, the Act on the Board of Equal Treatment was amended to clarify that complaints, which can be adjudicated in accordance with well-established case law, can be decided by just one member of the Board's presidency.²⁵¹ In complaints concerning matters of principle, the president can decide that four additional members participate instead of two.

c) Nature and level of sanctions that can be imposed

According to Section 2 of the Act of the Board of Equal Treatment, the Board has the power to award financial compensation in cases of discrimination. See section 6.5. on Sanctions and the assessment of the level of compensation.

d) Possibility to appeal

A decision by the Board cannot be appealed to another administrative body but may be taken to the civil courts. The time limit in the statute of limitation is suspended by the Board's decision. See Section 6.1.b above for a description of the Danish rules on limitation.

e) Enforcement of binding decisions

The decisions of the Board of Equal Treatment are legally binding and generally well respected. The Board does not have the power to follow up on individual cases to track and secure implementation of its decisions. But if a decision by the Board is not respected, and if a complainant makes a request, the Board must bring the case before the courts pursuant to Section 12 of the Act on the Board of Equal Treatment.

f) Implementation of non-binding opinions

N/A

g) Amicable settlements

Neither the Board of Equal Treatment nor the DIHR have the competence to offer amicable settlement procedures to the parties in a discrimination case.

²⁴⁹ Consolidated Act No. 1230 of 2 October 2016.

²⁵⁰ Act No. 1570 of 15 December 2015 amending the Act on the Board of Equal Treatment.

²⁵¹ Act No. 1570 of 15 December 2015 amending the Act on the Board of Equal Treatment.

7.9 Procedural safeguards

Apart from the requirement to publish an annual report for the Danish Parliament on the human rights situation in Denmark, to the knowledge of the expert, there are no safeguards when it comes to the work of the DIHR.

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Denmark, the DIHR registers the number of requests received for advice in individual cases of possible discrimination. The DIHR assists victims of discrimination and has a unit responsible for giving advice relating to individual cases of alleged discrimination. The DIHR data are not generally available to the public. In 2022, the advice unit provided advice by phone or in writing on 310 cases of discrimination altogether²⁵² (see above section 7.6.a)). The number of inquiries for information on general discrimination issues is not recorded by the DIHR.

In Denmark, the Board of Equal Treatment records the number of discrimination complaints that it receives as well as the number of decisions issued. Statistics on the number of complaints and the Board's decisions could previously be found on the website of the Board of Equal Treatment. This is no longer the case and the Board's 2021 annual report is the source of the statistics below.²⁵³

Number of complaints received:

- 2015: 314
- 2016: 393
- 2017: 297
- 2018: 341
- 2019: 363
- 2020: 635 (222 complaints concern the same housing issue (the 'ghetto legislation') regarding possible discrimination based on ethnic origin and await rulings from the Eastern High Court)
- 2021: 471

Number of decisions made:

- 2015: 234
- 2016: 247
- 2017: 238
- 2018: 285
- 2019: 137
- 2020: 192
- 2021: 183

Decisions regarding race and ethnic origin:

- 2015: 22
- 2016: 25
- 2017: 44
- 2018: 37
- 2019: 46
- 2020: 68

²⁵² Information provided by the DIHR Equal Treatment Department by email, 7 March 2023.

²⁵³ Board of Equal Treatment (March 2022) *Annual Report 2021*, pp. 31-36.

- 2021: 32

Decisions regarding age:

- 2015: 80
- 2016: 50
- 2017: 52
- 2018: 102 (68 decisions were part of the same case)
- 2019: 30
- 2020: 36
- 2021: 18

Decisions regarding disability:

- 2015: 47
- 2016: 44
- 2017: 32
- 2018: 73 (new legislation prohibiting discrimination outside the labour market entered into force on 1 July 2018)
- 2019: 61
- 2020: 87
- 2021: 105

Decisions regarding multiple discrimination and other cases:

- 2015: 15
- 2016: 18
- 2017: 11
- 2018: 32
- 2019: 8
- 2020: 14
- 2021: 14

b) Equality data collection

In Denmark, the DIHR does not collect general equality data. When relevant for individual projects, the DIHR can request data from Statistics Denmark, the police and other public authorities.

7.11 Roma and Travellers

The DIHR does not treat Roma and Travellers as a priority issue.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

In theory, the Ministry of Foreigners and Integration works to promote the integration and equal treatment of ethnic minorities in Denmark. However, no information on efforts to combat discrimination is found on the ministry's website. The Ministry of Social Affairs and Senior Citizens has overall responsibility for coordinating policies regarding disability.²⁵⁴

The DIHR serves as a specialised equality body, disseminating information about discrimination and equal treatment. In its annual reports, the DIHR deals with selected human rights issues and provides recommendations to promote the protection of general human rights in Denmark.²⁵⁵

It follows from the national integration barometer that 45 % of immigrants of non-Western origin and their descendants experienced discrimination based on their ethnic background in 2022.²⁵⁶ The survey for the national integration barometer is carried out every second year and the percentage has stayed almost the same since the indicator was first measured in 2012.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Apart from the general work of the DIHR, no recent activities have taken place when it comes to measures to encourage dialogue with NGOs.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

No recent activities have taken place when it comes to measures to promote dialogue between social partners.

- d) Addressing the situation of Roma and Travellers

There is no specific body to address current Roma issues in Denmark. Denmark submitted a new Roma Strategy to the EU in December 2021.²⁵⁷ The strategy includes no information about the number of Roma people living in Denmark and no information about their specific social situation. The Danish Government argues that no statistics are available because registration of individuals' ethnicity is illegal and therefore not undertaken by Danish authorities. However, according to the strategy, it is estimated that around 2 000 Roma people live in Denmark.

The strategy does not include information about homeless Roma migrants who live on the streets in Denmark for shorter or longer periods, collecting bottles and selling magazines. In its latest report, ECRI criticises the enforcement of the Danish camp legislation

²⁵⁴ See: <https://english.sm.dk/responsibilities-of-the-ministry/disability-policy/>.

²⁵⁵ DIHR (2022), *Beretning til Folketinget 2021*. See: https://menneskeret.dk/files/media/document/Beretning_2021_-_Institut_for_Menneskerettigheder_juni_2022.pdf.

²⁵⁶ National Integration Barometer 2022 (*Det Nationale Integrationsbarometer*): [Equal Treatment](#).

²⁵⁷ The strategy is only available in Danish: 'Danmarks strategi om romaernes ligestilling, inklusion og deltageelse'. See: https://ec.europa.eu/info/sites/default/files/brurepprn02_brurep4xx05_1854_001.pdf.

prohibiting people sleeping on the streets in so-called camps.²⁵⁸ According to the ECRI, it appears that the legislation is implemented in a rather repressive manner by the police in relation to non-Danes.

There is no information about the extent of discrimination against the Roma population in Denmark. Discrimination against the Roma population living permanently in Denmark and against homeless Roma migrants is not mentioned in the strategy.

The strategy basically refers to existing equality and integration policies as well as general anti-discrimination legislation, stating that the small Roma population in Denmark is encompassed by these general laws and policies.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

A general non-discrimination assessment of all relevant legislation has never been carried out in Denmark. Furthermore, measures to ensure the abolition of laws, regulations and administrative provisions contrary to the principle of equal treatment have not been put in place. However, to the knowledge of the author, there are no laws in direct conflict with the principle of equality.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

A general non-discrimination assessment of all relevant contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations has never been carried out in Denmark. Furthermore, measures to ensure the abolition of regulations contrary to the principle of equal treatment have not been put in place.

The rules of *lex specialis* and *lex posterior* apply as part of Danish law.

Moreover, it is a general principle of Danish anti-discrimination law as well as most employment law that a person cannot sign away or agree to be placed in a less favourable position than that prescribed by law. A person cannot waive their right not to be subjected to discrimination through a contract or agreement with their employer.

²⁵⁸ ECRI Report on Denmark (sixth monitoring cycle), Adopted on 29 March 2022 and published on 9 June 2022, p.30-31. See: <https://rm.coe.int/6th-ecri-report-on-denmark-/1680a6d5e4>.

9 COORDINATION AT NATIONAL LEVEL

The Ministry of Employment is responsible for issues of discrimination in the labour market.²⁵⁹ In January 2022, the Occupational Safety and Health Administration under the Ministry of Employment launched a campaign to help employers to prevent and put an end to bullying and discrimination in the workplace on the basis of ethnicity.²⁶⁰

The Ministry of Foreigners and Integration is responsible for integration issues.²⁶¹ It is not clear from the ministry's website what kind of efforts the ministry makes to protect genuine ethnic equality and non-discrimination.

In January 2022 the previous Danish government launched a National Action Plan against Anti-Semitism.²⁶² The action plan contains 15 initiatives aiming to take a broad stand against anti-Semitism. These include funds for compulsory teaching of the Holocaust in schools, dissemination of Danish-Jewish cultural history, strengthened education of police officers in the prevention of radicalisation, more targeted research into anti-Semitism and increased focus on environments where anti-Semitism is particularly prevalent.

No recent national action plan on equality and anti-discrimination in general has been published. However, in January 2022, the previous Danish Government sent out a press release stating that it agreed with a majority of the Parliament to use some of the funds from the 2022 National Budget for a National Action Plan Against Racism.²⁶³ The action plan should combat racism broadly in society and initiatives should range from the labour market and education to cultural life and hate crimes. A draft action plan has not yet been presented.

The Ministry of Social Affairs and Senior Citizens has the overall responsibility for coordinating disability policies.²⁶⁴ A future national action plan on disability is still one of the main recommendations from the DIHR when it comes to the protection of persons with disabilities in Denmark.²⁶⁵

²⁵⁹ See: <https://bm.dk/>.

²⁶⁰ See: <https://bm.dk/nyheder-presse/nyheder/2022/01/ny-kampagne-skal-saette-fokus-paa-mobning-og-diskrimination-paa-arbejdspladsen-paa-grund-af-etnicitet/> and <https://at.dk/tag-snakken>

²⁶¹ See: <https://uim.dk/arbejdsmraader/integration/>.

²⁶² Regeringen, *Handlingsplan mod antisemitisme* (2022). See: <https://www.justitsministeriet.dk/wp-content/uploads/2022/01/Antisemitisme-handlingsplan.pdf>. See also press release from Ministry of Justice (25 January 2022): <https://www.justitsministeriet.dk/pressemeddelelse/regeringen-lancerer-handlingsplan-mod-antisemitisme/>.

²⁶³ Press release from Ministry of Justice (24 January 2022): <https://www.justitsministeriet.dk/pressemeddelelse/regeringen-er-enig-med-sf-radikale-venstre-enhedslisten-alternativet-og-kristendemokraterne-om-at-lave-en-handlingsplan-mod-racisme/>.

²⁶⁴ See: <https://sm.dk/arbejdsmraader/handicap>.

²⁶⁵ See: <https://menneskeret.dk/status/handicap-psykiatri>.

10 CURRENT BEST PRACTICES

Status reports and annual reports prepared for the Danish Parliament by the DIHR document discrimination and provide recommendations to promote the protection of human rights and equality rights in Denmark. The website of the DIHR provides clear and usable information about the status of equality and human rights in Denmark in relation to a number of discrimination grounds (16 areas of society). As an illustration, the DIHR webpage on ethnicity provides the following overview and information:²⁶⁶

- most important recommendations;
- progress and regression in 2022;
- latest news on ethnicity;
- publications on ethnicity;
- legal briefs on ethnicity regarding new bills and legislative initiatives;
- contact information.

The same information is provided with regard to disability, gender, LGBT+, religion, age etc.

No information has been found in relation to tackling discrimination caused by artificial intelligence (AI).

²⁶⁶ See: <https://menneskeret.dk/status/etnicitet>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

Discrimination and access to healthcare

According to Section 50 of the Danish Health Act, all residents with the right to free treatment in hospitals, by general practitioners or by specialists, have the right to an interpreter, if a doctor finds that an interpreter is necessary to explain their treatment. With the primary aim of further incentivising foreigners to learn Danish, new rules regarding interpreting fees came into force on 1 July 2018.²⁶⁷ According to Section 50(2) of the Health Act, patients who need an interpreter and who have lived in Denmark for more than three years are now charged a fee for the interpreting service. Among patients who need interpreting, it may be presumed that persons with an ethnic minority background other than Danish will be over-represented. Although the incentive to learn Danish and the push to strengthen integration are legitimate aims, the means of achieving those aims does not seem appropriate and necessary. Many of the patients who are affected by the legislation have low incomes and, in spite of their need, will not be able to afford an interpreter. Many patients with an ethnic minority background therefore risk not getting equal access to healthcare. This is documented in a report by the DIHR and the Danish Medical Association, which reports on the results of a survey in which more than 600 doctors reported their experiences with the interpreting services charge and its implications after it had been in force for one year.²⁶⁸ The report shows that the fee has resulted in an increased use of relatives as interpreters and that patients who do not speak Danish well may not receive the right healthcare. The rules may therefore cause indirect discrimination due to ethnic origin or race in violation of Racial Equality Directive 2000/43/EC Article 2(2)(b) and Article 3(1)(e).

No ghettos in Denmark by 2030!

As described above in Section 3.2.9 (Housing), a number of laws were adopted in 2018 to prevent and dismantle so-called ghettos and parallel societies in Denmark. The laws were amended in 2021 and introduced a new category of housing area with even stricter requirements. In reality, the background of residents (immigrants and descendants from non-Western countries) is a determining criterion when categorising various kinds of housing areas. The preparatory works to the legislation clearly describe the concept of 'immigrants and descendants from non-Western countries' as a concept concerning residents with an ethnic background other than Danish. In the expert's view, the legislation raises legitimate questions of possible illegal direct discrimination because of ethnic origin within the areas of housing, education and social services in violation of the Racial Equality Directive.

A number of cases are currently being adjudicated by courts in Denmark as well as by the Board of Equal Treatment. A case that has gained particular media attention is a case against the Ministry of Transportation and Housing brought by tenants living in the Mjølnerparken housing association in Copenhagen. In this case, which is currently being adjudicated by the Eastern High Court, three UN Special Rapporteurs urged the Danish

²⁶⁷ Consolidated Act No. 210 of 27 January 2022 (*Sundhedsloven*). Regulation No. 855 of 23 June 2018 (*Bekendtgørelse om tolkebistand efter sundhedsloven*). The rules are described in the latest official periodic report from Denmark to the CERD-Committee covering the period from July 2013 to December 2018. See UN document CERD/C/DNK/22-24 of 7 February 2019, paragraphs 185-190.

²⁶⁸ DIHR and the Danish Medical Association (Lægeforeningen) (2019), *Egenbetaling for tolkebistand – lægers erfaring med ordningen* (Patients charged for interpreting services – doctors' experiences with the scheme) (December 2019). See: <https://menneskeret.dk/udgivelser/egenbetaling-tolkebistand-laegers-erfaring-ordningen>.

Government in October 2020 to 'halt [the] contentious sale of ghetto buildings'.²⁶⁹ In November 2022, the Eastern High Court agreed to ask the CJEU for a preliminary ruling on whether the concept of 'immigrants and descendants from non-Western countries' in the Danish legislation must be interpreted as being covered by the discrimination ground of 'ethnic origin'.²⁷⁰

11.2 Other issues of concern

Denmark faces challenges and barriers for minorities to take part in society on an equal footing and in 2022, 45 % of immigrants of non-Western origin and their descendants experienced discrimination based on their ethnic background.²⁷¹

Research from the University of Copenhagen using situation testing found that wearing a hijab has a negative effect on a job applicant's chances of employment.²⁷² In general, there is a profound lack of recognition that such discrimination takes place in Danish society. Moreover, there is a serious lack of statistics and general research on discrimination. Research should be undertaken to examine institutional barriers that prevent minorities from gaining access to the labour market and obtaining jobs that match their education.

Monitoring case law in Danish courts is severely hindered due to a lack of free public access to case law. All judgments handed down by the Supreme Court and a few selected cases from the High Courts and city courts are posted on the internet. Cases not posted can be obtained from the courts by paying a fee. Case law in the court systems, however, is sorted without reference to the legislation applied. A complete list of case law concerning specific legislation is not available through public registers. It is possible to subscribe to an expensive private database (the Weekly Law Journal), which contains all Supreme Court cases and select High Court cases. City court cases are only rarely published. This lack of access to case law constitutes a problem, especially for monitoring discrimination cases, in particular city court cases, which are rarely appealed and therefore often remain unknown. In January 2022, a new web portal opened with open and free access to judgments in Denmark (domsdatabasen.dk). The content of the database is gradually being developed and will contain judgments handed down after the launch in January 2022.²⁷³ Over time, it will improve the ability to monitor Danish discrimination cases.

The Danish Institute for Human Rights (DIHR) has the mandate as the specialised equality body. The obligation set out in the EU directive and the Danish legislation to provide assistance to victims of discrimination has not seemed to be a priority in previous years. The low number of discrimination inquiries has shown that, for possible victims of discrimination, the DIHR has either been invisible or there has been no confidence that approaching the DIHR would help. The situation may currently be changing as the number of inquiries rose dramatically in 2022. Furthermore, the Equal Treatment Department is planning to relaunch the advice unit in the spring of 2023.

With regard to the Board of Equal Treatment, a number of issues should be raised:

- It is not possible to present a complaint to the Board in person. Complaints have to be submitted in writing.

²⁶⁹ UNHRC (2020) 'UN human rights experts urge Denmark to halt contentious sale of "ghetto" buildings', press release, 23 October 2020: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26414&LangID=E>.

²⁷⁰ *Berlingske Tidende*, 'Diskriminerer ghettoeloven? Beboere fra Mjølnerparken får sag for EU-Domstolen' (Is the ghetto law discriminatory? Mjølnerparken residents take their case to the European Court of Justice) (9 November 2022).

²⁷¹ National Integration Barometer 2022 (*Det Nationale Integrationsbarometer*): [Equal Treatment](https://www.integrationsbarometer.dk).

²⁷² Dahl, M. (2019) 'Alike but different: How cultural distinctiveness shapes immigrant-origin minorities' access to the labour market', in *Detecting discrimination. How group-based biases shape economic and political interactions: Five empirical contributions*, PhD dissertation, University of Copenhagen.

²⁷³ See information from Danish Courts: <https://www.domstol.dk/aktuelt/2022/1/domsdatabasen-er-aaben/>.

- The Board of Equal Treatment does not have a mandate to take up cases on its own initiative.
- The Board of Equal Treatment cannot force the parties to disclose material, produce documents, give their opinion or reveal the factual circumstances of a case in order to elucidate a case as recommended by the ECRI in its latest report.²⁷⁴
- The Board of Equal Treatment is not empowered to hear oral testimonies.

There are few NGOs and legal aid/citizen's advice offices assisting victims of discrimination in filing complaints and initiating court proceedings. Only very few NGOs specialise in providing legal aid to victims of discrimination.

Outside the area of employment, in cases relating to restaurants, bars and night clubs, for example, sanctions are so mild that it can be questioned whether they are sufficiently effective, proportionate and dissuasive, as required by the directives.

In more concrete terms, a number of legislative initiatives targeting foreigners were introduced in the last couple of years. The parallel society initiatives and laws are described above. The burqa ban, the handshake requirements and the anti-homeless initiatives are described below.

Adoption of a burqa ban

The Danish Parliament amended the Penal Code on 31 May 2018 and made it a crime to wear face coverings in public.²⁷⁵ The prohibition entered into force on 1 August 2018. The preparatory work states that the following garments will be illegal in the public sphere if they cover the face: hats, hoods, scarves including burqas and niqabs, masks, helmets and artificial beards.²⁷⁶ Wearing a hijab in public is not prohibited.

According to the preparatory works, the aim of the prohibition is to demonstrate that it is incompatible with Danish values and social cohesion in Danish society to have the face covered in the public sphere. The fine for the first violation of the prohibition is EUR 134 (DKK 1 000). The fine will increase in the event of further violations. In the period from 1 August 2018 to 1 August 2019, 23 women received fine notices.²⁷⁷ No information has been found on recent practice.

In spite of its neutral language, it follows from the political debate about the bill in the Danish Parliament that the criminalisation of face coverings in public was targeted at Muslim women wearing burqas and niqabs.²⁷⁸ The prohibition may constitute indirect discrimination based on religion or ethnic origin.²⁷⁹ The practical result may be that some Muslim women are prevented from moving around in the public sphere. The EU anti-discrimination directives do not include the prohibition of face coverings in the public sphere. However, the prohibition is significant for the general situation of ethnic minorities, and Muslim women in particular, in Denmark.

²⁷⁴ ECRI Report on Denmark (sixth monitoring cycle), Adopted on 29 March 2022 and published on 9 June 2022, p.8. See: <https://rm.coe.int/6th-ecri-report-on-denmark-/1680a6d5e4>.

²⁷⁵ Section 134(c) of the Act No. 1360 of 28 September 2022 (Penal Code).

²⁷⁶ Bill No. L 219 on Act amending the Penal Code (prohibition of face covering).

²⁷⁷ Information from the Police to the newspaper *Kristeligt Dagblad* in an article from 31 July 2019: <https://www.kristeligt-dagblad.dk/danmark/effekten-af-burkaforbud-er-vanskeligt-spaa-om>.

²⁷⁸ Debate between elected politicians in Danish Parliament of Bill L 219 on 19. April 2018. See: <https://www.ft.dk/samling/20171/lovforslag/L219/BEH1-85/forhandling.htm-tE938EC74786F4740AEF33CB26067233Btab1>.

²⁷⁹ In Denmark, case law on religious headscarves has been adjudicated as possible indirect discrimination because of ethnic origin. Most Muslims in Denmark are from ethnic minorities.

Handshake as requirement for Danish citizenship

The Act on Danish Citizenship requires that individuals who have been awarded Danish citizenship by law must also take part in ceremonies in their local municipalities.²⁸⁰ At the ceremonies, the individuals are required to sign a document to demonstrate that they will respect Danish laws and values. The Act authorises the Minister of Foreigners and Integration to establish more detailed rules for holding the ceremonies. These regulations were tightened in 2021 to underline that individuals must shake hands with the mayor or alderman (shaking hands with another public authority representative will no longer fulfil the requirements).²⁸¹ The regulations also describe the handshake as a handshake 'without gloves, palm against palm, to celebrate and clearly mark the moment in the participants' lives where they become Danish citizens' (author's translation).²⁸²

If an individual does not fulfil these ceremonial requirements, they will lose the right to become a Danish citizen.

A minority of Jews and Muslims in Denmark believe that it is against their religion to shake hands with a mayor if they are of the opposite gender.

For participants at the naturalisation ceremonies who believe that it is against their religion to shake hands with a person of the opposite gender, the gender of the individual mayor may determine whether or not they will obtain Danish citizenship.

On that basis, the handshake requirement may constitute indirect discrimination because of religion, and possibly multiple discrimination based on religion and gender.

More specifically, the handshake requirement may constitute a violation of Article 9 of the European Convention on Human Rights, which deals with freedom of religion and/or a violation of the prohibition of discrimination as outlined in Article 14 of the European Convention on Human Rights, cf. Articles 8 and 9.²⁸³

Discrimination against migrants experiencing homelessness

In recent years, there has been intense public debate regarding the presence of homeless migrants in public spaces in Denmark. In response to these public order issues, the Danish Government and the Danish Parliament adopted a range of legislative initiatives in 2017 and 2018. The initiatives are specifically aimed at homeless migrants.²⁸⁴

A ban was introduced on establishing or residing in camps that disrupt public order.²⁸⁵ Homeless people who, according to the police, have established or resided in a camp that disrupts public order, may be sentenced to fines or imprisonment for up to 18 months.

²⁸⁰ Consolidated Act No. 1656 of 23 December 2022 with later amendments, Section 10 (*Lov om dansk indfødsret*).

²⁸¹ Regulation No. 2546 of 16 December 2021, Section 5.

²⁸² Regulation No. 2546 of 16 December 2021, Section 8.

²⁸³ See: <https://menneskeret.dk/monitorering/hoeringssvar> for hearing statement from the DIHR: *Høring over udkast til lovforslag til lov om ændring af lov om dansk indfødsret og lov om danskuddannelse til voksne udlændinge m.fl.* (5 October 2018).

²⁸⁴ Kjørboe, E. (2018), *Uregistrerede Migranter – Status 2018* (Unregistered migrants – status report 2018), Institut for Menneskerettigheder. See <https://menneskeret.dk/udgivelser/uregistrerede-migranter-status-2018>.

²⁸⁵ *Bekendtgørelse nr. 305 af 31. marts 2017 om ændring af bekendtgørelse om politiets sikring af den offentlige orden og beskyttelse af enkeltpersoners og den offentlige sikkerhed mv., samt politiets adgang til at iværksætte midlertidige foranstaltninger* Regulation No. 305 of 31 March 2017. See: <https://www.retsinformation.dk/eli/lta/2017/305>. *Bekendtgørelse af lov nr. 1270 af 29 November 2019 om politiets virksomhed (bemyndigelse til at fastsætte regler om zoneforbud i § 23(2))*. Consolidated Act No. 1270 of 29 November 2019. See: <https://www.retsinformation.dk/eli/lta/2019/1270>. *Bekendtgørelse nr. 427 af 7. maj 2018 om ændring af bekendtgørelse om politiets sikring af den offentlige orden og beskyttelse af enkeltpersoners og den offentlige sikkerhed mv., samt politiets adgang til at iværksætte midlertidige foranstaltninger*. Regulation No. 427 of 7 May 2018. See: <https://www.retsinformation.dk/eli/lta/2018/427>.

They may also receive a zonal ban. Furthermore, tougher sanctions for begging have been introduced.²⁸⁶ The tougher sanctions were supposed to be temporary and to be abolished on 1 July 2020. The Danish Parliament decided to make the sanctions permanent and new rules entered into force on 30 June 2020.²⁸⁷

In the public debate leading to the legislative changes, both parliamentarians and cabinet ministers referred to the problematic camps of homeless people as 'Roma camps'. In 2019, the UN Committee on Economic, Social and Cultural Rights expressed its concern at the criminalisation of begging and at the instances of criminalisation of homeless people.²⁸⁸ Statistics imply that there may be serious issues of discrimination on the ground of ethnic origin in the application of the rules criminalising homelessness in Denmark. As an example, out of the 557 camp bans issued between April 2017 and the end of 2021, 425 were given to individuals from Romania experiencing homelessness, 24 to individuals from Albania and 22 to individuals from Bulgaria. Only 13 Danes received a camp ban.²⁸⁹ In 2022, the Danish Institute for Human Rights documented ethnic profiling within the police in general and recommended the introduction of a specific prohibition of discrimination in the Police Act.²⁹⁰

Artificial intelligence

No information has been found in relation to concerns regarding the use of AI.

²⁸⁶ Act No. 753 of 19 June 2017.

²⁸⁷ Act No. 804 of 9 June 2020.

²⁸⁸ UN Doc. E/C.12/DNK/CO/6 of 12 November 2019, par. 47-48.

²⁸⁹ Justesen, P. (2023), 'A crime to sleep in camps – Denmark and international human rights', *European Journal of Homelessness*, Vol. 17, No. 1, p. 94.

²⁹⁰ Institut for Menneskerettigheder (2022), *Etnisk profilering* (Ethnic profiling). See <https://menneskeret.dk/udgivelser/etnisk-profilering>

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

In April 2022, the Act on the Prohibition of Discrimination in the Labour Market etc. was amended and, from the new Section 5(2), it follows that an employer may not request information about an applicant's age in connection with the recruitment process.²⁹¹

12.2 Case law

Race, ethnic and national origin

Name of the court: Board of Equal Treatment

Date of decision: 31 March 2022

Reference number: Decision No. 9450

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220945025>

Brief summary: A group of eight Romanian Roma were denied access to a campsite. They wanted to stay for a period of time at the campsite but the respondent campsite stated that there was no room for the group. The campsite had, however, sent an email stating that there was room for a group of 10 people from the Faroe Islands.

The Board therefore found that factual circumstances had been established that gave reason to suspect that the group had experienced discrimination based on ethnic origin. Despite repeated requests from the Board, the defendant campsite did not come forward with comments on the case. Thus, the defendant had not satisfied the burden of proof that the principle of equal treatment had not been violated. The complainant was therefore awarded compensation of EUR 672 (DKK 5 000) for discrimination because of his ethnic origin.

Name of the court: Board of Equal Treatment

Date of decision: 29 April 2022

Reference number: Decision No. 9518

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220951825>

Brief summary: The Danish Institute for Human Rights brought a complaint to the Board of Equal Treatment arguing discrimination on the grounds of ethnic origin in connection with the use of the criterion 'non-Western origin' in a digital profile clarification tool by the Danish Agency for the Labour Market and Recruitment.

The Board of Equal Treatment argued that the term 'non-Western origin', as used in the profile clarification tool, did not say anything about ethnic origin. The term used was therefore not covered by the Act on the Prohibition of Discrimination in the Labour Market etc. In the assessment, the Board referred to the CJEU ruling in the Jyske Finans A/S case (C-668/15). On this basis, the Danish Institute for Human Rights was unsuccessful in succeeding with the complaint.

Name of the court: Eastern High Court

Date of decision: 27 July 2022

Reference number: Case No. BS-47813/2020-OLR

Address of the webpage: *Not available*

Brief summary: In 2018, the public housing area Nøjsomhed in Helsingør was put on the national Danish 'ghetto' list. In order to avoid the status as a 'hard ghetto', the housing association adopted a comprehensive plan, which included remodelling selected stairways to make apartments accessible for persons with disabilities. As a result, the housing association terminated 96 tenancies in the Nøjsomhed housing area in January 2020 to allow for the remodelling. Two out of three of the residents whose tenancies were

²⁹¹ Amendment Act No. 372 of 28 March 2022 entering into force on 1 July 2022.

terminated were immigrants or descendants from non-Western countries. A number of them brought their cases to court, claiming that the terminations constituted discrimination based on ethnic origin and should be deemed invalid. They argued that one of the criteria for getting on the 'hard ghetto' list was that more than half of the residents were immigrants or descendants from non-Western countries. They pointed out that, through the tenancy terminations, the housing association ensured that the percentage of immigrants or descendants from non-Western countries among the residents was below 50 %. The housing association argued that it was entirely legal to adopt and implement a plan to change the demography of Nøjsomhed in order to avoid getting on the government's 'hard ghetto' list.

The Eastern High Court found that it had not been proven that the decision on which parts of the buildings to renovate was based on whether the residents came from Western or non-Western countries. Since the decision to terminate tenancies was based on assessments on where to build lifts etc., the Court therefore concluded that direct discrimination had not taken place. With regard to indirect discrimination, the Court pointed out that the criterion 'immigrants and descendants from non-Western countries' did not 'in itself refer to a population group of the same ethnic origin'. Since there was no information about the ethnic origin of the residents whose tenancies were terminated or the ethnic origin of the residents in Nøjsomhed's other tenancies, the Court found that it had not been proven that indirect discrimination prohibited by the Act on Ethnic Equal Treatment had taken place. In conclusion, the High Court found that the terminations constituted neither direct nor indirect discrimination because of ethnic origin and that the housing association legally terminated the tenancies. The case is under appeal to the Supreme Court.

Name of the court: Board of Equal Treatment

Date of decision: 7 December 2022

Reference number: Decision No. 9026

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20230902625>

Brief summary: A woman with a foreign-sounding name complained about discrimination on the grounds of race and ethnic origin in connection with her inability to reserve a home with a housing association. For the Board, the woman had presented a series of email exchanges between fictitious persons and the housing company. She had carried out a kind of situation testing by sending emails from fictitious persons to support her case. In these emails, persons with Danish-sounding names were always offered the opportunity to reserve housing, while persons with foreign-sounding names were not offered the opportunity to reserve housing.

The housing association had informed the Board that reservations and cancellations of homes were made arbitrarily and quickly. However, after an overall assessment of the information in the case, including the number of email exchanges submitted by the complainant, the Board assessed that the housing association had not met the burden of proof that the principle of equal treatment had not been violated. The woman was therefore successful in her complaint and was awarded compensation of EUR 1 350 (DKK 10 000).

Disability

Name of the court: Board of Equal Treatment

Date of decision: 3 February 2022

Reference number: Decision No. 9233

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220923325>

Brief summary: The case dealt with a complainant who had dyslexia and claimed that the website of a private company was not dyslexia-friendly. He argued that the lack of accessibility constituted discrimination based on disability. The Board found that the complainant's dyslexia constituted a disability covered by the Act on the Prohibition of discrimination due to Disability. However, the Board concluded that the act does not entail

a duty of accessibility and that the Board therefore could not adjudicate the complaint. The case was dealt with as a test case.

Name of the court: Eastern High Court

Date of decision: 5 May 2022

Reference number: Case No. BS-15105/2021-OE

Address of the webpage: *Not available*

Brief summary: The case dealt with a shop assistant who had a disability in the form of back and neck problems. It was undisputed that the shop assistant had a disability covered by the Act on the Prohibition of Discrimination in the Labour Market etc. The inability to work, which led to the shop assistant's sick leave in March 2016 and dismissal in May 2016, was due to the fact that he had a heel spur, which did not constitute a disability. However, it was also due to an aggravation of his pre-existing disability in the form of back and neck problems.

Based on the information in this case, the High Court argued that, throughout the shop assistant's employment, the employer had given extensive and appropriate consideration to his disability and had provided reasonable accommodation. After the evidence was presented, the High Court assumed that the disability of the shop assistant had worsened and, at the time of dismissal in May 2016, it was not possible to identify even very modest work tasks that, with reasonable accommodation, he would be able to handle. The Court therefore concluded that, at the time of dismissal, the shop assistant was no longer competent, suitable and available to perform his job.

Name of the court: Board of Equal Treatment

Date of decision: 18 May 2022

Reference number: Decision No. 9684

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220968425>

Brief summary: A man complained of discrimination on the grounds of disability because he was refused a position as a driver. The man was born deaf, and the reason for the refusal was that the respondent company needed the driver to be able to call customers. Prior to the refusal, the respondent had entered into a dialogue with the complainant about whether he would be able to receive calls through alternative communication channels. The Board found no basis for overriding the respondent's assessment that the relevant adaptation measures would lower the efficiency of the complainant significantly and thus be disproportionately burdensome for the respondent. The complainant was therefore not successful in this part of the complaint.

However, the Board did find that the owner of the respondent company, in response to the complaint to the Board, was instrumental in the complainant being excluded and blocked from a job search group for drivers on Facebook. The complainant was therefore awarded compensation of EUR 2 015 (DKK 15 000) for victimisation.

Name of the court: Western High Court

Date of decision: 31 May 2022

Reference number: Case No. BS-50022/2021-VLR

Address of the webpage: *Not available*

Brief summary: A bus driver had a flex-job because of chronic lower back pain. According to the flex-job scheme, his employment consisted of a part-time position corresponding to his working ability and, in addition to the pay from his employer, he received a supplementary wage subsidy from the public sector. Because of his health issues he became sick and was dismissed. The bus driver argued that he had been discriminated against based on his disability and the Western High Court agreed.

Regarding the calculation of the compensation, the High Court stated that, according to established practice, a certain number of months' salary is set, depending on the seriousness of the infringement and the employee's seniority. This practice also applies to

part-time employees. Taking into account the fact that it was a question of compensation, the Court found that it was best, in line with previous practice and the nature of the employment relationship, that the compensation be set based on the employer's actual salary expenditure to the bus driver. Such compensation would constitute a sanction with a deterrent effect and would thus comply with the EU legal principle of effectiveness. The bus driver therefore received compensation of EUR 12 100 (DKK 90 000), corresponding to nine months' salary without the addition of public sector wage subsidy.

Name of the court: Board of Equal Treatment

Date of decision: 1 July 2022

Reference number: Decision No. 9879

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220987925>

Brief summary: A woman complained about discrimination on the grounds of disability because she was refused a position as a lawyer. The woman had congenital anaemia, requiring blood transfusions every three weeks. The Board found that she had a disability covered by the Act on the Prohibition of Discrimination in the Labour Market etc. because of her need to be absent from work every three weeks to get treatment for her chronic illness.

The job refusal was issued 14 days after the complainant had disclosed her chronic illness and the employer justified the refusal by a change in strategy, meaning that there were not as many legal positions to be filled as initially assumed. Nevertheless, the employer posted a job advertisement seeking lawyers for the same unit shortly after the complainant had been denied employment. On this basis, the Board concluded that discrimination based on disability had taken place. The complainant was awarded compensation of EUR 5 375 (DKK 40 000) and, when determining the level of compensation, emphasis was placed on the fact that the denial of employment occurred at a time in the employment process after the complainant had already participated in several interviews.

Name of the court: Supreme Court

Date of decision: 6 September 2022

Reference number: Case No. BS-26753/2021-HJR

Address of the webpage: <https://domstol.dk/media/gwsfzzza/26753-anonymiseret-dom.pdf>

Brief summary: In November 2018, the complainant was granted a flex-job (an adapted job for individuals with disabilities) because of her diagnoses of anxiety, depression and ADHD. She worked as a sports coordinator at a sports association for four hours and later seven hours per week. The sports association was a small organisation for people with psycho-social challenges, which was primarily run by volunteers.

In addition to office work, the complainant conducted swimming lessons, which required her to take an annual lifeguard test. She had passed the lifeguard test in 2019 and had to take a new test in January 2020, which she refused because she did not think that she was up to it. In November 2019, the complainant was dismissed on the grounds that the sports association could not meet her special needs, which included an exemption from conducting swimming lessons and from taking a lifeguard test, as well as a need for an available contact person when she was at work.

The complainant argued that she had been discriminated against because of her disability.

The question for the Supreme Court was whether the sports association as an employer had complied with its obligation to provide reasonable accommodation. The Supreme Court found that running the swimming lessons was an essential function of the sports coordinator's position and that the employer had considered and examined several alternative solutions, for example, whether others could take care of the swimming lessons. The Supreme Court concluded that the employer was not required to have made further considerations or investigations. Taking into account the nature, size and finances of the

association, there was also no basis for challenging the employer's assessment that it would not be possible to exempt the sports coordinator from conducting swimming lessons or to make a contact person available. The employer had thus fulfilled its obligation to provide reasonable accommodation and was acquitted. The Western High Court had reached the same result.

Name of the court: Board of Equal Treatment

Date of decision: 16 December 2022

Reference number: Decision No. 9032

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20230903225>

Brief summary: The case dealt with a six-year-old boy with cerebral palsy. The father of the boy argued that his son had experienced discrimination based on disability in connection with screening and admission to a municipal school. From the medical information in the case, the child had cerebral palsy and therefore had difficulty with actively expressing himself verbally.

In the case, the Board assessed that the offer of extra time for the screening process by the respondent municipality was not a relevant accommodation and adjustment measure for the child in question. The Board also found that the municipality knew or should have known this. The Board therefore concluded that the municipality had not proven that its non-compliance with the reasonable accommodation obligation was objectively justified. The complainant was therefore awarded compensation.

Age

Name of the court: Board of Equal Treatment

Date of decision: 23 March 2022

Reference number: Decision No. 9412

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20220941225>

Brief summary: A man complained of age discrimination in connection with his dismissal from his position as a workman. The complainant was 56 years old at the time of his dismissal. The reason for the dismissal was a restructuring of the work. Three other employees were dismissed at the same time for the same reason. They were respectively 61 years of age; 57 years of age and the last employee was in his late 40s.

A list of employees was presented to the Board showing the number of workmen employed in the same department as the complainant at the time of the dismissal as well as their ages. The Board assessed that there was a significant over-representation of older employees among the dismissed workmen in the department and that factual circumstances had been demonstrated giving reason to assume that age was a contributing factor determining who should be selected for dismissal. Since the employer had not explained why the complainant was selected for dismissal, the Board found that the employer had not proved that the principle of equal treatment had not been violated. The complainant was therefore awarded compensation of EUR 35 600 (DKK 265 000), equivalent to nine months' salary.

Name of the court: Board of Equal Treatment

Date of decision: 14 September 2022

Reference number: Decision No. 10129

Address of the webpage: <https://www.retsinformation.dk/eli/accn/W20221012925>

Brief summary: The Board dealt with the case of a 23-year-old student who was refused a paid internship at a crisis centre. In a message to the student, the manager of the crisis centre had stated that he was too young. The manager argued to the Board that the complainant was too immature to do an internship at the crisis centre. The Board found that the manager's use of the term 'too young' could be understood as a matter of lack of maturity and personal qualifications rather than age. Based on all the information of the case, the Board therefore concluded that the crisis centre had satisfied the burden of proof

that the principle of equal treatment had not been violated. Thus, the complainant had not experienced discrimination because of age.

Religion and belief

Name of the court: Supreme Court

Date of decision: 7 September 2022

Reference number: Case No. BS-31220/2021-HJR

Address of the webpage: <https://domstol.dk/media/rpxff2v1/31220-2021-anonymiseret-dom.pdf>

Brief summary: The case dealt with a physical education teacher who was dismissed from his job because he declined to comply with instructions from his employer. The teacher was a Seventh Day Adventist and it was a crucial part of his belief not to work on Saturdays. In autumn 2017, his school had planned an open house and the teacher was asked to teach at the special event for three hours. The teacher refused to teach at the planned open house event and argued that another member of his team could do the teaching instead of him, similar to what had been organised the previous year. When the teacher did not show up for the actual Saturday open house event, he was dismissed.

The Board of Equal Treatment had previously made the assessment that there was a clear correlation between the teacher's religious convictions and his refusal to work on a Saturday. Thus, the circumstances were covered by the Act on Prohibition of Discrimination in the Labour Market etc. The Board then assessed whether the dismissal constituted indirect discrimination because of religion or belief. The Board found that the employer's requirement was both legitimate and appropriate. However, the Board did not find the requirement to be necessary and the Seventh Day Adventist teacher received compensation equalling nine months' salary due to discrimination because of religion or belief.²⁹²

The school took the case to the civil courts and the question for the Supreme Court was whether the requirement to work on a Saturday was necessary. After a detailed assessment, the Supreme Court found that requiring the teacher to work for three hours at the open house event was necessary. The Court argued that the school had considered whether other teachers could cover the teaching on the Saturday in question. However, this was not possible as there were no other qualified physical education teachers employed at the school. The Court therefore found that the teacher was obliged to work at the open house event. In conclusion, the Supreme Court stated that it did not constitute indirect discrimination because of religion or belief to terminate the teacher's contract for refusing Saturday work at the open house event.

The Western High Court had reached the same result.

²⁹² Board of Equal Treatment, Decision No. 9192 of 28 February 2019.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Denmark
Date: 1 January 2023

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	04.11.1950	13.04.1953	No	Yes	Yes
Protocol 12, ECHR	Not signed	Not ratified			
Revised European Social Charter	05.1996	Not ratified		Not signed the collective complaints protocol	
International Covenant on Civil and Political Rights	20.03.1968	06.01.1972	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	22.09.1997	Only recognised minority: Germans in southern Jutland	No	Yes
International Covenant on Economic, Social and Cultural Rights	20.03.1968	06.01.1972	No	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	21.06.1966	09.12.1971	No	Yes	Yes
ILO Convention No. 111 on Discrimination	05.06.1958	22.06.1960	No	No	Yes

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	26.01.1990	19.07.1991	No	No (on 10.11.2014 the Danish Government decided that it would accede to the complaints protocol)	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	24.07.2009	No	Yes (acceded to the complaints protocol on 23.09.2014)	Yes

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