

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

COUNTRY REPORT

Denmark

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This report has been drafted for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of Race or Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation), established and managed by:

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http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government

According to the Danish Constitution (1) Denmark is a Kingdom consisting of Denmark, Greenland and the Faroe Islands. Antidiscrimination legislation enacted by the Danish Parliament does not become the law in the Faroe Islands or Greenland, unless similar legislation is enacted there.(2) The Faroe Islands and Greenland are not members of the European Union, and consequently under no obligation to transpose the Race Equality Directive or the Framework Directive. (3) When it comes to legislation in Denmark (including anti-discrimination legislation), all legislation is made by the Danish Parliament. There is no division of legislative powers between Parliament and regional or local bodies.

The legal system is a continental legal system following primarily German legal traditions. The important legal principles are laid down by the Constitution the constitutional rules are expounded by laws, while detailed regulation is provided by governmental and ministerial decrees. In contrast to the German legal system, however, Denmark has no Constitutional Court. The Danish Supreme Court has traditionally been very reluctant to use its power to annul statutes that may be in contradiction with the Danish Constitution. This is due to the democratic principle that laws made by a majority of members of Parliament are the will of the nation, and (even Supreme Court) judges should not compromise such rules. Within the last decade, however, some Supreme Court decisions seem to represent a more active role being taken by the Supreme Court in order review legislation that may violate the Constitution. (4) This new tendency is very important when it comes to the enforcement of minority rights that may be protected by the Constitution or International standards. If, or when, a majority of members in the Parliament enact legislation violating such minority rights it is crucial that the Danish Supreme Court annuls any such statute that is in contradiction with the Constitution or International Conventions ratified by Denmark.

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

For example “Hate speech” is prohibited by criminal law⁵, as is the denial of access to public places, like bars and restaurants etc.⁶. It is important to notice that criminal law was chosen due to the recommendations of a Commission of experts established in 1966 by the Ministry of Justice. This Commission had to consider whether Denmark needed to enact further legislation in order to ratify the International Convention on the Elimination of all forms of

¹ Act No. 169 (1953) Danmarks Rige Grundlov (The Constitution of the Danish Kingdom, hereafter The Constitution 'Grundloven').

² Act No. 374 (2003) Lov om etnisk ligebehandling (Act on the prohibition against unequal treatment due to race and ethnicity, hereafter Ethnic Equal Treatment Act.), section 12 states that the Act only applies in Greenland and Faroe Islands if all or parts of the provisions are made applicable by Royal Decree.

³ Race Equality Directive No. 2000/43/EU and Framework Directive No. 2000/78/EU (hereafter “the Directives” or if mentioned separated “The Race Equality Directive” and “The Framework Directive”).

⁴ Danish Law weekly 1996, p. 1300 (the so-called Maastricht case)/UfR 1996 1300 H (Maastricht)

⁵ Section 266b of the Criminal Code (Straffelovens § 266b)

⁶ Act on Prohibition against Differential Treatment on Grounds of Race etc, (Lov om forbud mod forskelsbehandling pga. Race m.v) Act from 1971 but changed by Act no. 357 of 3 June 1987, It prohibits discrimination due to race, colour, national or ethnic origin, religion and sexual orientation

Racial Discrimination (ICERD). In 1969 the Commission published a report⁷ (White paper), stating that in order to meet the requirements of Article 4 and Article 5 of ICERD, Denmark had to enact further anti-discrimination legislation. This legislation was passed by the Danish Parliament in 1971 as criminal law. Since then almost every court case on hate speech or discrimination in other areas has made reference to the Commission of Experts and their Report from 1969 as the main travaux préparatoires of the anti-discrimination legislation in Denmark. The Report had in fact a major impact on the interpretation and the (lack of) enforcement of the (criminal) anti-discrimination legislation.

This observation is extremely relevant in relation to the transposition of the Race Equality Directive, because on June 8, 2001, the Ministry of the Interior appointed the “*Committee on implementation in Danish law of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Equal Treatment Committee).*”

In September 2002 this Committee published their more than 300 page long report (White paper) on: “*The implementation in Danish law of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*”⁸ (henceforth: “the White paper”), including proposals for amendments to the present anti-discrimination legislation in Denmark. These amendments are mainly in the form of civil law supplementing the existing criminal law.

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

When it comes to anti-discrimination legislation in the employment field, the 1969 Report did not suggest legislation, but rather to respect the “division of powers” between Parliament and other social partners. The Danish private and public labour market is dominated by the so-called ‘Danish model’, that is, regulation of the labour market is generally based on collective agreement between the labour market social partners. The collective agreement is based on the so-called ‘Hovedaftale’ (‘Main agreement’) between LO (the employees umbrella organisation) and DA (the employers umbrella organisation) of 31 October 1973, modified on 1 January 1993⁹. The Danish labour law is broadly speaking governed by these collective agreements and a specific “labour court” is established in order to solve conflicts between the social partners. Anti-discrimination is also to some degree covered by the collective agreements, for example the question of “equal pay”, and the Report from 1969 recommended that the social partners should handle problems relating to discrimination in the labour market by collective agreements.

This tradition of labour market rules made by collective agreements is, however, in many areas supplemented by a number of statutory provisions, such as those for safety in the workplace, made by the Danish Parliament.¹⁰ One major difference between those conflicts in the labour market covered by collective agreements and those covered by civil law, is the mandate of the courts. As mentioned above, areas covered by collective agreements are the mandate of the “labour courts” while areas covered by civil law are the mandate of the ordinary courts.

⁷ Commission of Experts report no. 553/1969

⁸ Report No. 1422/2002, henceforth the White paper

⁹ “Arbejdsmarkedets regler” (2001) Ole Hasselbalch.

¹⁰ Act No. 784 (1999) Arbejdsmiljø beskyttelsesloven (Act on the protection of labour market environment).

Since 1971, however, no collective agreements have been made in the field of anti-discrimination and the Danish Parliament finally made rules supplementing the (lack of) protection given by collective agreements. Since 1996, Denmark has had a civil law protecting against discrimination due to race, colour, national or ethnic origin, religion and political opinion.⁽¹¹⁾ According to the Labour Market Discrimination Act, provisions in this Act may be replaced by similar provisions reached by collective agreements ⁽¹²⁾. In other words the statutory provisions of this civil law Act only cover those parts of the labour market which are not already covered by collective agreements. And if new Anti-discrimination rules are made by collective agreements in the future, these rules may preside over the civil Labour Market Discrimination Act. Consequently, victims of discrimination must use the labour courts instead of the civil courts.

In order not to lower the standards, collective agreements are only applicable if they provide the same or even better protection against discrimination than the statutory provisions made by law, and, in fact, no such collective agreements are yet in place.

¹¹ Act No. 459 (1996) Lov om forbud mod forskelsbehandling på arbejdsmarkedet, m.v. (Act on the prohibition against unequal treatment in employment and occupation etc. – hereafter: Labour market Discrimination Act). This Act was amended two times in 2004 in order to transpose parts of the two Directives.

¹² Race Equality Directive Recital 27 and Framework Directive Recital 36

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

By the end of year 2004 the transposition of the Race Equality Directive and the Framework Directive appeared to be in place in most aspects in Denmark.

In some areas the implementation did not take place on time, thus affecting the rights of victims of discrimination in the period from the deadline until the transposition did take place (a).¹³ In such a case the injured party may claim compensation from the state.¹⁴

In other areas it is a matter for debate whether the implementation did take place fully and in a correct manner (b).

AD a) Transposition delayed.

Race and Ethnicity

On July 1, 2003 a new Ethnic Equal Treatment Act¹⁵ came into force covering the non-employment aspects of the Race Equality Directive, including non-discrimination due to race and ethnicity in the fields of social protection, access to goods and services, education and housing. A body¹⁶ was designated to assist victims of discrimination in these fields as foreseen by Article 13 of the Directive.

On 19 July 2003 (deadline for transposition of the Directive) Denmark did not meet the requirements of the Race Equality Directive in the area of employment in relation to the need for new provisions concerning the burden of proof Article 8, discriminatory instruction Article 2 (4) and victimisation Article 9 etc.

Further more no body was designated to assist victims of racial discrimination in the employment area.

Implementation of the employment aspects did take place the following year 2004, see Ad b.

Religion and Belief

On December 3, 2003 (deadline for the transposition of the Framework Directive) no parts of the Framework Directive were implemented by Denmark. Victims of discrimination due to religion or belief in the area of employment did not have protection against victimisation Article 11, discriminatory instruction Article 2 (4) etc.

¹³ For example, a Muslim man was fired from his cleaning job in a Christian organisation in February 2004. The employer argued, that until the amendment of the Danish Labour Market Discrimination Act in April 2004, it was not illegal to fire the employee because of his (non Christian) religion. Consequently, this case is now pending at the City Court of Copenhagen. If the transposition of the Framework Directive had been made on time (December 2003), the employer could not argue in this way.

¹⁴ State liability was found in the "Francovich case"; C-6/90, Francovich [1991] ECR I-5357

¹⁵ See footnote 2

¹⁶ Act No. 4116 (2002) Lov om Institut for internationale studier og menneskerettigheder (Act on the Institute for International Studies and Human Rights), also the Ethnic Equal Treatment Act section 12 states that the Institute for Human Rights is designated to receive complaints about racial discrimination and to promote equal treatment.

Partial transposition of the Framework Directive took place in April 2004. In the period from December 2003 until April 2004 victims of discrimination due to religion or belief, suffered from lack of protection against discrimination in the labour market which the Danish state was obliged to prohibit according to the Framework Directive.¹⁷

Sexual orientation

On December 3, 2003 (deadline for the transposition of the Framework Directive) no parts of the Framework Directive were implemented by Denmark. Victims of discrimination due to sexual orientation in the area of employment did not have protection against victimisation Article 11, discriminatory instruction Article 2 (4) etc.

Part transposition of the Framework Directive took place in April 2004. In the period from December 2003 until April 2004 victims of discrimination due to sexual orientation, suffered from lack of protection against discrimination in the labour market which the Danish state was obliged to prohibit according to the Framework Directive

Age

Denmark took advantage of the option to defer implementation of the Framework Directive in relation to age. The deadline for transposition (December 3, 2003) was postponed for one year, after approval from the EU Commission. It was the intention of the Danish Government that implementation should take place by collective agreements between the social partners.

When the social partners failed to reach agreement, the implementation did take place on December 28, 2004, when Act. No. 1417 amending the Labour Market Discrimination Act came into force.

Victims of discrimination due to age in the period from December 3 until December 28, 2004 thus suffered from lack of protection against discrimination in the labour market which the Danish state was obliged to prohibit according to the Framework Directive.¹⁸

Disability

Denmark also took advantage of the option to defer implementation of the Framework Directive in relation to disability (handicap). The deadline for transposition was postponed for one year, after approval from the EU Commission. It was the intention that implementation in this field should take place by collective agreements between the social partners. When this failed the implementation did take place on December 28, 2004, when Act. No. 1417 amending the Labour Market Discrimination Act came into force.

Victims of discrimination due to disability in the period from December 3 until December 28, 2004 thus suffered from lack of protection against discrimination in the labour market which the Danish state was obliged to prohibit according to the Framework Directive

Ad b) Lack of Transposition by the end of year 2004

¹⁷ As described by the example in footnote 8

¹⁸ For example, several job advertisements were published in this period including requirements that applicants must meet age requirements like: "between 20 - 30 years" etc.

Race and ethnicity

Denmark did have antidiscrimination legislation on the grounds of race and ethnicity, however, in order to fully transpose the Race Equality Directive a number of amendments were needed. The amendments to the Labour Market Discrimination Act (April 2004) and the Ethnic Equal Treatment Act (July 2003) transposed those provisions of the Race Equality Directive that were not already covered by Danish legislation before 2000. This included “shared burden of proof” Article 8, discriminatory instructions Article 2 (4), victimization Article 9, and a body to assist victims of discrimination Article 13.

When it comes to the Race Equality Directive Article 13, however, the transposition did not take place in a correct manner. In violation of non-regression principle Article 6 (2) and Recital 25 of the Directive, the resources and assistance for victims of discrimination is less after the transposition than before.

Also the decision not to change legislation in order to give interest groups legal standing as prescribed by Article 7 (2) is a lack of implementation of this provision of the Race Equality Directive.

Religion and belief

Denmark did have antidiscrimination legislation on the grounds of religion, but not on the grounds of belief. In order to fully transpose the Framework Directive a number of amendments were needed, including protection on the grounds of belief. The amendments of the Labour Market Discrimination Act (April 2004) secured in general a full transposition of the Directive in respect of religion and belief.

In connection with the Framework Directive Article 9 (2) however no change of Danish legislation was made in order to give religious or other interest groups legal standing in cases of discrimination due to religion or belief.¹⁹

Sexual orientation

Denmark did have antidiscrimination legislation on the grounds of sexual orientation. In order to fully transpose the Framework Directive a number of amendments were needed, amongst them the inclusion of protection against victimisation, discriminatory instructions etc.. The amendments to the Labour Market Discrimination Act (April 2004) secured in general a true transposition of the Directive in respect of sexual orientation.

As regard Framework Directive Article 9 (2) no change of Danish legislation was made in order to give interest groups legal standing in cases of discrimination due to sexual orientation.

Age

¹⁹ According to the rules of the Christian organization mentioned in footnote 8, only members of the *Evangelical-Lutheran Church, which is the National Church of Denmark, can be hired for positions in the organisation. In such cases other non Lutheran religious communities, interest groups for atheism etc. do have a legal interest in challenging such a rule on behalf of their members, whether or not individuals of these groups are directly affected.*

Denmark had no general antidiscrimination legislation on the grounds of age. In order to transpose the Framework Directive all provisions relating to the prohibition of age discrimination had to be implemented by collective agreement or by legislation.

The amendments to the Labour Market Discrimination Act (December 2004) secured in general a true transposition of the Directive in respect of age.

In connection with the Framework Directive Article 9 (2) however no change of Danish legislation was made in order to give interest groups legal standing in cases of discrimination due to age.

Disability

By Act no. 55 of 29 January 2001 on compensation to persons with disabilities, and Act no. 577 of 19 June 2003 on the integration of disabled persons into the job market, some protection existed for persons with disability. However, none of these Acts implemented the Framework Directive and consequently further transposition was needed.

The amendments to the Labour Market Discrimination Act (December 2004) secured in general a true transposition of the Directive in respect of disability.

In connection with the Framework Directive Article 9 (2) however no change of Danish legislation was made in order to give interest groups legal standing in cases of discrimination due to disability.

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives

One case has so far been decided by a Danish court with a reference to the Framework Directive (not on the basis of the directive)

Supreme Court decision 21 January 2005, 22/2004²⁰

After working for a company from 1996 until 2001, an employee decided, for religious reasons, to start to wear a headscarf. Since the dress code prescribes a uniform and employees are not allowed to wear anything on their head (if this is not part of the uniform), she was thus dismissed.

The High Court decided on December 18, 2003 that this was not a violation of the Labour Market Discrimination Act.

This case was appealed to the Supreme Court with the support of the labour union (HK). *The Supreme Court stated that the company's dress code from August 2000 is enacted in order to signal that the company is politically and religiously neutral. This policy affects Muslim woman in a negative way, but it is objective and thus not a violation of the Labour Market Discrimination Act or the European Convention on Human Rights Article 9.*

The Supreme Court also mentions that this interpretation follows from the travaux préparatoires of the Act from 1996, however, the Labour Market Discrimination Act was amended in april 2004 (in order to transpose the Directives). It is the opinion of the Supreme Court that the travaux préparatoires for the amendment of the Act did not change the interpretation of the rules.

When it comes to caselaw in relation to discriminatory acts committed after the transposition of the Directives, no decisions have been made so far. This is partly due to the late transposition of parts of the Directives. Also, in relation to those parts of the Directives that were transposed on time, case law is still only in the pipeline. This may be due to other reasons.

The Complaints Committee statement 1 September 2004²¹

In November 2003 the new Complaints Committee received a complaint against a technical school in Copenhagen. On 1 September 2004 (ten months later) the Committee issued a statement²² that the petition was covered by the Ethnic Discrimination Act (which amongst other matters covers education) but not by the Labour Market Discrimination Act.

It was not disputed that an employee of the school made a note about unwanted "Perkere" (i.e. 'Pakis') and this employee was thus, according to the opinion of the Complaints Committee, directly discriminating against the complainant. The headmaster disputed that this was the general practice of the school.. The Complaints Committee consequently decided that this was up to the Danish Courts to decide as it was a matter of proof. Similar reasons were given to

²⁰ See www.hoejesteret.dk

²¹ The Complaints Committee was established as part of the specialised body in Denmark in accordance with Article 13 Racial Equality Directive. Further information is included in this report in connection with comments on Article 13.

²² See statement on: www.klagekomiten.dk

reject the complainant's argument that he suffered from victimisation. The Committee recommended free legal aid for a court case.

After the Statement made by the Complaints Committee in September 2004, the case was forwarded to the Danish authority (Civilretsdirektoratet) mandated to make decisions on the granting of free legal aid. By the end of 2004, however, no answer had been received and the court case has not yet started.

The complaint was originally filed with the Complaints Committee in November 2003. Today – more than a year later – the complainant still waits for the decision on whether or not he will be granted free legal aid in order to go to the Courts. As a young person in education, he has no financial resources to bring a case to court without free legal aid. If, however, his application for free legal aid had been filed directly to the relevant Danish authority in November 2003, the decision would have been made no later than summer 2004. In this concrete case the Committee's examination of the case from November 2003 until September 2004 has merely delayed its start. Other claimants may prefer to go directly to the Danish authority entitled to make decisions on the granting of free legal aid, and then go to court without delay.

It seems to be a problem that the Complaint Committee's "statements/recommendations", which have no binding effect, may in fact only delay the process of producing case law in relation to the Race Equality Directive.

This case also reveals another general problem relating to the handling of the burden of proof. The Complaints Committee started its work on July 1, 2003 but until now no other case has been "decided" in favour of the claimant. If facts are being disputed by the parties, it is the view of the Committee that it is up to the Danish Courts to make an assessment of these disputed facts. Consequently such petitions are automatically rejected.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on the protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives? The Danish Constitution²³ does not contain a general provision prohibiting discrimination as such.

Denmark had its first democratic Constitution in 1849. The Constitution has been changed and amended in 1866, 1915, 1920 and 1953. The latest revision of the constitution took place after the Second World War and was naturally very much influenced by what the Danish people experienced during the Nazi occupation in 1940-45. A proposed amendment for a specific provision to secure the rights and freedom of individuals, without discrimination on the basis of race, colour, sex, language, political or other beliefs, national or social origin, financial circumstances, birth or other social position, was rejected. A majority of the members in the Commission that suggested amendments to the Danish Constitution in 1953 rejected such a general provision. Consequently, only one of the grounds mentioned in the

²³ Act 169 (153) The Constitution.

Race Equality Directive or the Framework Directive is directly covered by the protection of the Danish Constitution. This is religion which is covered by a number of specific provisions.

According to Article 69 of the Danish Constitution, "The affairs of religious communities outside the Danish National Church shall be regulated by statute." Nevertheless, no statute has ever been enacted on the recognition of religious communities in Denmark and the legal framework foreseen in the Danish Constitution covering these communities is yet to come.

The Constitution Article 70 states that no one on the ground of belief or descent can be deprived of his or her political or civil rights, and that no one relying on his or her belief or descent can refuse to complete his or her duties as a citizen in Denmark.

Discrimination on grounds of race or ethnic origin may be covered by the prohibition against discrimination on grounds of descent, but no case law exists clarifying this issue.

Further Article 71 of the Constitution reads that personal freedom is inviolable, a sentence that has been read more as a political statement than a legal rule²⁴. Furthermore, art. 71 states that no one can be imprisoned in any way because of his or her political or religious belief or due to his or her descent.

Article 75(1) of the Constitution completes the constitutional framework by stating that 'to promote the public good [the State] shall try to ensure that every able-bodied citizen has a possibility to work in a way that secures his existence'.

The Principle of Equality in administrative law.

Even if non-discrimination clauses are not to be found, one can ask if the lack of such rules is partly compensated for by other rules, for instance, the principle of equality within administrative law.

Danish administrative law covers an area where there are no special statutes, but where there are unwritten principles, which over time have been deduced from case law and the practice of the Danish Parliamentary Ombudsman.²⁵

According to Article 63 of the Danish Constitution, the courts can legitimately review any question concerning the limits of administrative authority. Such judicial review can take place during both civil and criminal cases encompassing both legal questions and the limits of discretionary decisions.

Danish Constitution Article 63, control of executive power:

"(1) The Courts of justice shall be entitled to decide any question bearing upon the scope of the authority of the executive power. However, a person who wants to query such authority shall not, by bringing the case before the courts of justice, avoid temporary compliance with orders given by the executive power.

(2) Questions bearing upon the scope of the authority of the executive power may be referred by Statute for decision to one or more administrative courts. Provided that an appeal from the decision of the administrative courts shall lie to the highest court of the Realm. Rules governing this procedure shall be laid down by statute."

²⁴ Karnov (2001), p. 11, note 195.

²⁵ Jens Garde m.fl. (1997), p. 210 and Hans Gammeltoft Hansen (1994) p. 236 and p. 251.

Further more the Constitution from 1953 introduced the office of the Parliamentary Ombudsman with power to investigate the administration.

The lack of non-discrimination rules are to some extent compensated for by the principle of equality within administrative law. When an administrative authority is exercising discretionary power it is obliged to treat citizens equally. This means that citizens can only be treated differently if there is a legitimate reason to do so, and here the burden of proof lies, generally speaking, with the administration.

These general principles shall - unless otherwise provided by an individual special act -be applied by all administrative authorities in all types of cases. If the rules in a special area are not complete, they are supplemented by the principles of general administrative law. Likewise an act of Parliament is normally interpreted in the light of the general principles of administrative law.

In a society like the Danish, the principles of administrative law are based on a balancing of different principles, which may sometimes be of opposing character: For instance the public interest, including the interest of an effective public administration, on the one hand, and on the other hand, the consideration of the individual citizen and his legal rights.

The leading and fundamental principles of Danish administrative law are, among others:

- The principle of legality, or the rule of law.*
- The principle of proportionality, and*
- The principle of equality.*

In this connection the principle of equality is of special interest. When an administrative authority is exercising discretionary power it is obliged to treat citizens equally. This means that the citizens can only be treated differently if there is a legitimate reason to do so.

For example, if a couple apply for permission to adopt, it may be legitimate for the public body making the decision to include information about the age of the man and/or the woman in order to make an assesment of what is in the best interest of the child, and consequently whether the adoption is permitted. In this case "age" may be a legitimate reason for differential treatment.

Another situation could be of a child born to a couple where one of the parents is an elderly person receiving a pension. If this couple applies for public daycare, it would constitute a violation of the principle of administrative equality to disallow such an application solely because the one parent is no longer in the labour market, and can take care of the child at home. In this case "age" would not be a legitimate reason for differential treatment of this family.

Statutes are often formulated in a way that leaves some discretion to the administration. It is characteristic of Danish administrative regulations that they are relatively brief, and consequently leave more detailed regulations to the administration. It is traditionally a much debated issue in Danish jurisprudence what degree of freedom various authorities have when they have been left with administrative discretion.

If an administrative authority makes use of discretionary power vested with it in a way that is discriminatory, for instance by denying persons with disabilities the same rights as other citizens to make use of publicly provided goods or services, this would no doubt be declared invalid when brought to court according to the Constitution Section 63, or by the Ombudsman. Depending on the evidence, the result would be the same if the discrimination was indirect.

When it comes to the authority exercising discretionary power as an employer, the same principle applies. The Danish Parliament's Ombudsman has stated²⁶ that public employers are obliged to make a fair assessment of all jobseekers and to choose the applicant who is the most qualified, thus ruling out the possibility of giving preference to applicants of a certain sexual orientation, ethnic or religious background etc.

This is also the case when it comes to promotion of public employees, salary and other job conditions. It is the qualification of the employee that counts and not e.g. age and disability or any other grounds.

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

When it comes to private employers, however, administrative law does not apply.

Non discrimination in international law

During the last twenty years human rights in general have been playing an increasingly prominent role in Danish law. When the European Convention on Human Rights in 1992 was incorporated and made an integral part of Danish National Law, the influence of the convention became very strong, much stronger than was foreseen. The courts have made good use of the convention in a great number of cases, and practice in many different fields has been remarkably influenced by its rules.

It has been said that the European Convention on Human Rights has had more influence in the last 10 years than the Danish Constitution in 50 years. From 1992 to 2001 the European Convention on Human Rights was cited in more than 150 cases published in the leading legal periodical, Danish Law weekly (Ugeskrift for Retsvæsen). Lower courts, the two courts of appeal, and the Supreme Court, have all welcomed the possibilities and chances which the European Convention on Human Rights gives the judge to examine all cases in the light of human rights including the non-discrimination provisions in ECHR Article 14, ILO Convention 111, CCPR Article 26, ESCR Article 2 and CERD.

b) Are constitutional anti-discrimination provisions directly applicable?

As mentioned in the start of this report the Supreme Court judges have traditionally been very reluctant to annul legislation made by a majority of members in the Danish Parliament. Any individual may sue the State in connection with legislation which violates his/her right to freedom of religion according to the Constitution section 70. Until now the chances of winning such cases were very small, but within the last decade the tendency is changing.

²⁶ Annual report of the Parliaments Ombudsman 1987 p. 107 ff. (FOB 1987, s. 107)

For example, a group of members of the Catholic Church in has sued the Danish state for violation of the Constitutional Right to freedom of religion and non-discrimination on grounds of faith, because the legislation on burial grounds is in favour of members of the dominant Lutheran Church in Denmark.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

No.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The following Acts include a number of protected grounds:

Act 169 (1953) Danmarks Riges Grundlov. Article 70 of the Constitution states, no one can be deprived of any civil or political rights on grounds of faith or descent.

Article 71 (1) states no Danish citizen can be deprived of personal liberty on grounds of political opinion, faith or descent.

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

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

Act. No 459 (1996) amended by Act No. 253 (2004) and further amended by Act No. 1416 (2004) and presently published as Act. No. 31, (2005) Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v (Civil Act on prohibition against discrimination in respect of employment and occupation etc, henceforth 'Labour Market Discrimination Act'), It covers the following grounds: race, colour, religion, political opinion, belief, sexual orientation, age, handicap and national, social or ethnic origin.

Act No.374 (2003) Lov om etnisk ligestilling (Civil Act on the prohibition against unequal treatment due to race and ethnicity), henceforth Ethnic Equality Act.

Act No. 553 (2002) Ligestillingsloven (Act on the prohibition against unequal treatment due to sex).

The protected grounds according to various Acts are thus race, colour, national or ethnic or social origin (descent), sex, sexual orientation, religion, faith (belief), age, disability and political opinion.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?

Definition of race and ethnicity

“Race” or “Racial origin” is not defined in Danish law, or practice. The anti-discrimination legislation from 1971, however, was enacted in order to ratify the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and consequently the definition of “racial discrimination” in article 1 of the ICERD is also relevant in a Danish legal context, courts cases, public administration etc. In recent years, race or racial origin are terms hardly ever used. They have been replaced with ethnic or ethnic origin/ethnic minority. These terms are used as the dominating terms for the visible minorities in Danish society of today, whether they are Danish citizens or not, and whether they (or their parents) originally came as migrants or refugees to Denmark. Also in a legal context ethnic is used instead of race, for example, in the Act from 1993 establishing the Board for Ethnic Equality.²⁷ Further more a Council for Ethnic Minorities was made part of the Act on Integration from 1998.²⁸

Definition of sexual orientation.

In the existing Danish law the term ‘sexual orientation’ is used, which means homo- and heterosexual relations and other kinds of lawful sexual inclinations (like transvestism)²⁹. It is important to note that the implementation of the Directive has not changed the current notion.

Discrimination on grounds of a person's coming out with, or not hiding, his or her sexual orientation

A person’s sexual preference (be it secret or not) as well as sexual behaviour (secret or not) is covered by the Act on Discrimination.

Discrimination against groups, organisations, events or information of/for/on lesbians, gays and/or bisexuals

This topic is not mentioned directly in the Labour Market Discrimination Act – but Article 2 reads: ‘An employer may not use differential treatment between employees and between applicants to vacant jobs in relation to employment, dismissal, transfer, promoting or in relation to payment or working conditions’. There is no practice in relation to this topic but in my opinion, it would be a breach of the Act if an employer denied homosexual employees the right to inform their colleagues of homosexual social events if the employer allowed heterosexual employees to do so.

Discrimination on grounds of a person’s refusal to answer, or answering incorrectly, a question about sexual orientation

In Denmark it is illegal to ask for information about a candidate’s sexual orientation. The Labour Market Discrimination Act Article 4 reads: ‘An employer is not allowed, in connection with or during the employment of an employee, to request, make inquiries about, or receive and use information about his or her race, colour of skin, religion or belief, political belief, sexual orientation, or national, social or ethnic origin.’ Since it is illegal to ask for

²⁷ Amended in 1997 as Act No. 408, June 10, 1997. By the end of 2002 the Board was closed.

²⁸ Please note that the “Board” and the “Council” mentioned here differs from the two Committees mentioned several times in this report, namely the Equal Treatment Committee and the Complaints Committee.

²⁹ See *Anti-diskrimination Lovgivningen med kommentarer* p. 59 and Karnov 2001 p. 4464 note 2

information about a candidate's sexual orientation, the candidate is not obliged to give a true answer.

Discrimination on grounds of a person's previous criminal record due to a conviction for a homosexual offence without heterosexual equivalent.

The problem of discrimination on grounds of a person's previous criminal record due to a conviction for a homosexual offence without a heterosexual equivalent is of no relevance in Denmark.

The ban on homosexuality was repealed in 1930³⁰, but the penal code still distinguished between homo- and heterosexual relations in e.g. prostitution, age of consent etc.³¹

In 1976 the same age of consent was introduced for both hetero- and homosexual relations³².

In 1981³³ the same penalty was introduced for sex crimes involving persons of the same sex as applicable for sex crimes involving persons of a different sex³⁴ and from then on there was complete equality between homo- and heterosexuals in the Penal Code.

I have not seen cases reported where foreign judgements have led to discrimination in Denmark.

Definition of "Person with a Disability."

In Denmark we have no legal definition of disability or of the concept of 'persons with a disability'. Persons with disabilities are not registered as such but only in special relations for instance as pensioner, persons with an impairment in need of special sorts of medication or medical treatment, vocational training, or severely disabled persons with a personal assistant paid for by the municipality etc.

A common way of describing disability, which is used by the disabled' own organisations, has been formulated as: *A person is considered to have a disability if he has a permanent, usually lifelong functional limitation that is significant, be it of mental, sensorial or physical nature. A functional limitation is significant if a function is impaired or completely lost so that the person is unable to do or perform what other persons of the same age and gender belonging to the same cultural group can do or perform. A functional limitation is not to be considered permanent if it is amenable to treatment and cure within a foreseeable period of time.*

Disability is often seen by doctors and health professionals as an intrinsic feature of the person, while rehabilitation experts and disabled persons themselves usually consider disability as the function of an interaction between the person and his environment.

Perceived but totally unfounded disability, e.g. a person with a facial disfigurement, is usually not what would be included in the concept of disability in Denmark. One could perhaps here instead talk about a socially generated handicap because of prejudices among ordinary citizens and employers which might have a similar effect as disability, especially when it comes to non-integration.

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?

³⁰ Lov nr. 126 of 15 April 1930.

³¹ See Steffen Jensen, Recognition of sexual orientation: The Scandinavian Model (1998, 2 – 3).

³² Lov nr. 195 of 28 April 1976, *der ophævede Straffelovens art. 225, stk. 2.*

³³ Lov nr. 256 of 27 May 1981.

³⁴ See Steffen Jensen, Recognition of sexual orientation: The Scandinavian Model (1998, 2 – 3).

Definition of religion

“Religion” is not directly legally defined in Denmark. Indirectly a definition may be found due to the practice of the Danish authorities in relation to the recognition of: “religious communities”.

This recognition takes place in order to allow recognized communities to perform marriage ceremonies with legal validity. On the other hand, a number of communities are not recognised by the state, and consequently not a “religious community” in a legal sense.

The Constitution guarantees the religious freedom of, and non-discrimination against, religious faiths other than the national Church of Denmark according to article 67-70. The question of recognition of religious communities may influence the definition of what is discrimination due to religion in the labour market field. For this reason the recognition procedure will be described.

Religious communities in Denmark may be grouped into four categories: According to section 4 of the Danish Constitution (‘Grundloven’), the Evangelical-Lutheran Church is the National Church of Denmark. The status as national church is associated with certain rights, which distinguish the legal position of the Danish national church markedly from that of other religious communities.

The second category of religious communities comprises the so-called recognised religious communities. Before 1970, religious communities were recognised by a Royal Decree following the recommendation of the Minister of Ecclesiastical Affairs. The Royal Decree grants full recognition of the religious community concerned and the right to celebrate religious ceremonies with legal effect according to civil law, such as baptisms and marriages, the right to maintain its own ministerial records and the right to issue certificates. A total of eleven religious communities have been recognised by Royal Decree.

The third category consists of religious communities with only limited recognition. The coming into force of the Danish Formation and Dissolution of Marriage Act in 1970 changed the policy of the Ministry of Ecclesiastical Affairs with regard to the recognition of religious communities. Section 16 of the said Act empowers the Ministry to take administrative action to afford limited competence to ministers of religion, imams, and other spiritual leaders of newly arrived religions, to celebrate marriage ceremonies with legal effect, according to civil law. The fact that a minister of religion or an imam has authority to celebrate marriages implies that the religious community in question has obtained a certain degree of recognition. In addition to the authority to perform marriage ceremonies, this limited recognition makes it possible for the religious community to obtain permission to establish its own burial ground, and aliens who are ministers of religion or missionaries of the religious community concerned may obtain a residence permit.

A Committee on Religious Communities set up under the Minister of Ecclesiastical Affairs has drawn up a set of indicative guidelines as a basis for advising the Minister. The guidelines provide a basis for the Committee’s consideration of applications for recognition of religious communities. The Committee decides, in accordance with the guidelines, what constitutes a religion, and what constitutes a religious community, and the Minister of Ecclesiastical Affairs subsequently approves the Committee’s recommendation. Presently 56 religious communities are included in the third category.

The fourth category comprises non-recognised religious communities, which are religious communities that either cannot or do not wish to obtain recognition, and therefore do not enjoy the same rights as the religious communities with full or limited recognition.

The policy of the Ministry of Ecclesiastical Affairs with regard to recognition of religious communities has given rise to a historically conditioned and inappropriate distinction between the fully recognised religious communities that deviate from the Danish National Church, and the religious communities that have obtained authority to perform marriage ceremonies, etc. Religious communities such as the Roman-Catholic Community and the Mosaic Community are fully recognised in Denmark, whereas, for example, the Islamic and Hindu are religious communities with only limited recognition.

Definition of belief

It is stated in the Danish Constitutional Act (as of 1849, present wording as of 1953), section 70, that no one can be deprived of any civil or political rights on the grounds of faith or origin. Section 71 states that no Danish citizen can be deprived of personal liberty, on the grounds of political opinion, faith or origin. Apart from these general provisions, there are no specific anti-discrimination provisions in the Danish Constitution.

A proposed Constitutional amendment made in 1953 for a more specific provision to secure the rights and freedom of individuals, without discrimination on the basis of race, colour, sex, language, political or other beliefs, national or social origin, financial circumstances, birth or other social position, was rejected by a majority of the members in the Commission that suggested amendments to the Danish Constitution in 1953.³⁵

On the other hand, the so-called Maxim of Equality in the public sector may include a prohibition against discrimination due to belief in connection with employment in the public sector. The Danish Parliament's Ombudsman has stated that public employers are obliged to make a fair assessment of all jobseekers and to choose the applicant with the best qualifications, thus preventing the possibility of giving preference to applicants of a certain religious background or to discriminate against applicants holding a specific belief (whether this belief is of a political or religious nature).⁽³⁶⁾

Further more Denmark has signed the UN Convention on Civil and Political Rights (CCPR). According to General Comments No. 22 (para. 2) it is the opinion of the UN Human Rights Committee, that: Article 18 of the CCPR protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. This interpretation is also relevant for the interpretation of the definition of "belief" in connection with the protection against discrimination in the public sector.

In the private sector (private employers, organisations etc.) however, there is a need for legislation in order to protect victims from discrimination in seeking jobs etc. In this connection the legal definition of CCPR article 18, is not of much help.

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

Definition of Age

No definition was provided in Act no. 1417 amending the Labour market Discrimination Act when including the prohibition against age discrimination. According to the travaux préparatoires of the Act³⁷, however, in the best interest of a child/young person, an employer

³⁵Report from the Commission on amendment of the Danish Constitution, 1953, p. 24, 39-40, 77.

³⁶The Danish Parliaments Ombudsman, Annual report 1987, p. 107 ff. (FOB 1987, s. 107)

³⁷Proposal for a Bill amending the Labour Market discrimination Act in order to include Age and disability, September 23, 2004

may have good reasons to restrict the right to seek employment for such young people. In other words people of any age are protected, but in some cases unequal treatment may be justified. Children may formally be inside the scope of protection, but in fact they may not be protected and this leaves children outside the definition of age.

2.1.2 Assumed and associated discrimination

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

The Equal Treatment Committee proposed that persons experiencing unequal treatment on the grounds of perceived racial or ethnic origin should be protected. The Act on Ethnic Equality (2003) and the amended Labour Market Discrimination Act (2004) do not directly state this in the text, but according to the travaux préparatoires (the White paper) this situation is included in both Acts.

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

The Equal Treatment Committee proposed that the person experiencing unequal treatment on the grounds of a third person's racial or ethnic origin be protected by the prohibition of unequal treatment. The Act on Ethnic Equality (2003) and the amended Labour Market Discrimination Act (2004) do not directly state this in the text, but according to the travaux préparatoires this situation is included in both Acts.

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

a) How is direct discrimination defined in national law?

There is no general prohibition and definition of direct and indirect discrimination in the Danish Constitution.

Until 1996 Denmark only had criminal law regulations covering anti-discrimination. The Act on the Prohibition against Discrimination Based on Race etc covers intentional discrimination in relation to access to public places, housing, goods and services etc. Consequently, this Act has been used in connection with direct discrimination, but never in connection with indirect discrimination.

In 1996, however, Denmark introduced civil anti-discrimination legislation in the labour market field. The Labour Market Discrimination Act was the first Act which covered both direct and indirect discrimination on the grounds of race, colour, political opinion, national or ethnic origin, sexual orientation and religion.

The exact meaning of direct and indirect discrimination in the labour market is not defined in the Act. According to the travaux préparatoires of the Act, the concept of discrimination should be interpreted in accordance with the Danish legislation on gender equality. The concept in this act, however, is "unequal treatment" rather than "discrimination"

It is stated by the Equal Treatment Committee in the 2002 White paper, that according to Article 2(2)(a) of the Race Equality Directive, direct discrimination occurs where one person

is treated less favourably than another is, has been, or would be treated, in a comparable situation on grounds of racial or ethnic origin.

All members of the Committee propose that a provision corresponding to the provision in the Race Equality Directive on direct discrimination be inserted in the text of the new Danish legislation implementing the Directive.

The Committee also considered whether Danish legislation should use the concepts of direct or indirect unequal treatment, or the concepts of direct and indirect discrimination. In Danish, both 'forskelsbehandling' (unequal treatment) and 'diskrimination' (discrimination) can be used to describe the situation when one or more persons are treated less favourably than others. The Danish version of the Race Equality Directive uses the term 'forskelsbehandling' rather than 'diskrimination'.

A majority of the Committee members (the chairman and the representatives of the Ministry of Employment, the Ministry of Economic and Business Affairs, the Ministry of Integration, the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Education, as well as of the Council of the Danish Bar and Law Society (Advokatrådet), the Danish Employers' Confederation (Dansk Arbejdsgiverforening (DA)) and the Danish Confederation of Trade Unions (Landsorganisationen i Danmark (LO)) found it most expedient to use the concept direct 'unequal treatment', particularly as this is used in the Danish version of the Directive and is in general widely used in Danish legislation.

A minority of the Committee members (the representatives of the Danish Centre for Human Rights (Dansk Menneskerettighedscenter), the national association of ethnic minorities ELO (Etniske Minoriteters Landsorganisation), the National Association of Local Authorities in Denmark (Kommunernes Landsforening), the Board for Ethnic Equality (Nævnet for Etnisk Ligestilling) and the Council for Ethnic Minorities (Rådet for Etniske Minoriteter)) found it most expedient to use the concept direct 'discrimination', particularly because this term is widely used in the other Member States and so seems to accord well with the general development in the international community.

The Bill (L no. 152) presented by the Government on January 29, 2003 suggesting amendments to the Labour Market Discrimination Act, uses the concept of direct "unequal treatment" in line with the majority of Committee members. Concerning the use of the terms "unequal treatment" vs. "direct discrimination" it seems to be that the minority of Committee members is using the best argument. As the Race Equality Directive and the Framework Directive standards are used in all member states it is important to use the same terminology in order to allow the Court of Justice to provide a common interpretation of this term, which is "discrimination".

The term "direct unequal treatment", however, was approved by the Danish Parliament, and thus came into force as Act no. 253, (7 April 2004) which is now replaced by Act No. 31, 2005. According to this Act Section 1(2):

Direct unequal treatment occurs where one person on grounds of race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin is treated less favourably than another is, has been, or would be treated in a comparable situation

This definition covers the direct unequal treatment in the labour market. When it comes to the non-employment aspects of the Race Equality Directive the Danish Act on Ethnic Equality (2003) Section 3 (2) stipulates that:

Direct unequal treatment occurs where one person on grounds of race or ethnic origin is treated less favourably than another is, has been, or would be treated in a comparable situation

b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination.

In general direct unequal treatment can not be justified, however, when it comes to differential treatment due to religion or belief (and political opinion) it may be justified in some cases. Also in connection to differential treatment due to age direct unequal treatment may be justified. This is further described below, see chapter 4 on exceptions)

c) In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?

No.

2.3 Indirect discrimination (Article 2(2) (b))

As with direct discrimination it should be noted that the Danish legislation uses the term “unequal treatment”. The Act on Ethnic Equality Section 3 (3) reads:

Indirect differential treatment is if a provision, a criteria or a praxis which apparently is neutral will leave persons of a specific race or ethnic origin in an inferior position to other persons, unless the above mentioned provision, criteria or praxis is objectively justified by a factual purpose, and the means to fulfil it are appropriate and necessary. (Covering the non employment aspects of the Race Equality Directive)

The Act on Discrimination in the Labour Market Section 1 (3) reads:

The Act on Ethnic Equality Section 1(3) reads: 'Indirect differential treatment is if a provision, a criteria or a praxis which apparently is neutral will leave persons of a specific race, colour of skin, religion or belief, political belief, sexual orientation, or national, social or ethnic origin in an inferior position to other persons, unless the above mentioned provision, criteria or praxis is objectively justified by a factual purpose, and the means to fulfil it are appropriate and necessary.

Indirect unequal treatment occurs when a formally neutral condition has in practice a disproportionate effect on e.g. certain ethnic groups, unless this condition is objectively justified by work performance. These Acts do not cover unequal treatment due to citizenship. However, discrimination in the labour market on account of citizenship must not indirectly reflect discrimination due to, for instance, national origin. Even though the Act is not as detailed as the Directives, the definition of direct and indirect unequal treatment in the labour market can be interpreted to be in accordance with the Directives.

This may also be confirmed by reference to the existing case law interpreting the definition of indirect unequal treatment.

The Danish High Court made on August 10, 2000 an assessment of “indirect unequal treatment” according to the Act on Labour Market Discrimination (1996) in connection with the dismissal of a Muslim woman, who was rejected for employment by the department store named “Magasin” for the sole reason that she was wearing a headscarf. The department store stated that this was not intentional discrimination, but simply the company enforcing their

clothing guidelines on all applicants for jobs as well as on the staff members. They had to dress “business-like”. High Court found that the dismissal of the plaintiff, solely on the grounds that – based on her religious convictions – she wore a headscarf, is an expression of indirect unequal treatment of the plaintiff. The emphasis is thus on the fact that enforcing the clothing guidelines, as happened here, will typically affect a specific group with the same religious background as the plaintiff. Consequently the High Court ruled that:

"The High Court does not find that the defendant – whose clothing guidelines admit of a certain amplitude – has demonstrated conditions at the company such that the dismissal of the plaintiff can be regarded as objectively justified. Pursuant to section 7 of the Act, cf. sections 2 and 3, the plaintiff is entitled to damages..."

The test, whether the requirement is “objectively justified” has also been invoked in other Court cases after the High Court decision in year 2000, for example in a High Court decision from March 2001.

2.4 Harassment (Article 2(3))

Until 2004 there was no direct prohibition of harassment on account of race, ethnic origin, religion or belief, sexual orientation, age or disability in Danish legislation. However, section 2 of the Labour Market Discrimination Act inter alia, prohibits the employer from discriminating in regard to what is called “labour conditions”.

Interpreted in accordance with section 4 of the Act on Equal Treatment of Men and Women, this provision may include a protection against harassment on account of race, colour, national or ethnic origin, sexual orientation or religion.

Case law on the issue is very limited (³⁸), however, there seems to be a need to introduce a definition and a clear legal basis for the prohibition of harassment related to race, and ethnic origin, as well as to religion and belief, into national legislation. When it comes to age and disability no prohibition existed before.

As regards the Race/Framework Directive provision of Article 2(3) on harassment, the Equal Treatment Committee stated in the White paper that a corresponding provision should be inserted in new Danish legislation.³⁹ At one point, however, the provision should be specified so that, according to circumstances, the creation of a threatening climate for the person subjected to harassment would suffice.

As regards the prohibition of harassment, the Equal Treatment Committee states that no prohibition of ethnic harassment among employees can be inferred from the Directive, and therefore the Committee has considered whether rules to this effect should be laid down. The Committee members agree that new legislation should not cover harassing conduct between employees, particularly in view of the provisions of the Directive on the burden of proof. In this respect, the Committee finds that the question against whom any claim for breach of the prohibition of unequal treatment should be brought, should be decided under the general Danish law of damages, and therefore no rules to this effect should be laid down.

The new Bill (L no. 152) presented by the Government on January 29, 2003 suggesting amendments to the Labour Market Discrimination Act, included a more explicit prohibition

³⁸ The Documentation and Advisory Centre filled a lawsuit on behalf of an employee, who was called “An Arabic pig” by his employer. The Court, however, stated that because it was only a single statement, this was not harassment.

³⁹ White paper 1422/2002 page 38 and p. 169

against harassment in section 1, subsection 4. Also the Bill on Ethnic Equality included a similar provision. These provisions came into force in 2004 by Act No. 253 and Act. No. 1416, and by Act no. 374 on Ethnic Equality from 2003 (protection against harassment outside the labour market field)

The proposal from the Equal Treatment Committee and the implementation by the Parliament of corresponding provisions to Article 2 (3) of the Directive in the new Danish legislation is welcomed. This has clarified the definition of harassment in connection with the labour market field, and extend the scope to those areas not previously protected (age and disability) and also extended the scope to other areas than the labour market (e.g. education) which are also covered by the Race Equality Directive.

However, the proposed scope of the protection against harassment might be too narrow. The provision states, that “the concept of harassment may be defined in accordance with the national laws and practice of the Member States”, however, this is not to say for example that: “no prohibition of ethnic harassment amongst employees can be inferred from the Directive.”

First of all, the White paper seems to make a narrow interpretation of the Directive Article 2 (3) by arguing that ethnic/religious harassment amongst employees can not be inferred from the Directive, and that this would also be a problem in relation to Article 8 on the burden of proof.

Secondly, the White paper does not make an assessment of the scope of the existing legislation and practice in connection with the protection against racist harassment e.g. between employees, from clients, patients and in other service users. The White paper has no information on Danish practice in connection with this subject.

When the Bill (L no. 152) was presented to the Danish Parliament, it was clarified that the prohibition against harassment is to be interpreted in accordance with the courts interpretation of sexual harassment. This includes a duty for the employer to provide work conditions free of harassment, whether this is harassment be from the employer or from other employees. If the employer fails to stop harassment from other employees, the person subject to harassment may claim compensation from the employer.

No comments are made in relation to the question of whether the employer is also responsible in relation to harassment coming from clients, patients, etc. This may, thus be up to the Danish courts to interpret.

2.5 Instructions to discriminate (Article 2(4))

Until 2004 prohibition against discriminatory instructions was never part of the Danish anti-discrimination legislation. However, incitement or pressure to racial discriminatory speech according to section 266 b in the Penal Code, has been criminalised since 1995, according to either subsection 2 on propaganda, or according to the provisions on the assistance to, or the attempt to, discriminate in the Criminal Code Sections 23 and 21 (compare section 266b). The purpose of the amendment of subsection 2 was to extend the enforcement of the provision to prevent Denmark from becoming a sanctuary for the dissemination of Nazi and racist propaganda.

There seem to be very few court case on Section 266b, subsection 2. The case most known deals with a politician who on a TV programme had accused Muslim people of being criminals and of wanting to kill and castrate the Danish population. The politician was

sentenced to 7 days of ordinary imprisonment by the city court⁴⁰, which was upheld by the High Court and the Supreme Court⁴¹.

Incitement and instruction to racial or ethnic discrimination in regard to the provision of goods, facilities and services is equally prohibited according to the provisions on the assistance to, or attempt to, discriminate in the Criminal Code Sections 23 and 21 (compare the Act on Prohibition against Differential Treatment on Grounds of Race etc.)

Incitement to racial discrimination in the labour market, or in the public sector or in any other area covered by civil law, is not directly prohibited.

Consequently, it is stated by the Committee making the White paper⁴² a provision should be inserted in new legislation prohibiting an instruction to treat someone unequally due to the protected grounds, which would correspond to Article 2 (4). Further it is considered whether “incitement” (in Danish: “opfordring”) to racial discrimination is covered by the Race Equality Directive. In the opinion of the Committee incitement is not covered, but it was discussed whether this form of discrimination should be covered by Danish legislation. The Committee concluded that there was no need for this, as it may already be covered by the Danish legislation on “Torts”.

With the adoption of the Act on Ethnic Equality in 2003 – covering the non-employment aspects of the Race Equality Directive – discriminatory instructions have now become illegal.

In the labour market field a similar prohibition came into force in April 2004 stating that *‘An instruction to differential treatment of a person on the grounds of race, colour of skin, religion or belief, political belief, sexual orientation, national, social, or ethnic origin is differential treatment’ and is therefore unlawful.*⁴³

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

A rule about reasonable accommodation has been adopted with the amendment of the Labour Market Discrimination Act in 2004. The new concept of reasonable accommodation in section 2 a, obliges the employer to adapt the workplace in order to accommodate the employment of handicapped persons, unless this will place an unreasonable burden on the employer.

Even if it is a new concept in Danish law, the application as such is not going to be especially difficult. The evaluation of opposing parameters, principles or phenomenon, to strike a balance or come to a result which is compatible with a principle of proportionality, is a known legal mechanism in Danish law. However, coming to the right decisions when a case depends on whether certain measures are considered to be, or not to be, reasonable accommodations will give rise to court cases, which may have to make the interpretation of this concept.

⁴⁰Utrykt afgørelse fra Københavns Byret nr. 851-98 af 23. marts 1998. Decision by the Court of Copenhagen from March 23. 1998.

⁴¹Ugeskrift for Retsvæsen 2000. 2234 H. Danish Law Weekly 2000, page 2234.

⁴²White paper 1422&2002 p.39 and 174

⁴³Lov om forbud mod forskelsbehandling på arbejdsmarkedet, Lov nr. 31, 2005 Section. 2.

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)

There are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives.

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

As regards the protection of legal persons, the Committee on the transposition of the Race Equality directive found that Danish law already had a rather comprehensive protection against unequal treatment of legal persons, and therefore they found no reason to extend the prohibition of unequal treatment to a prohibition of unequal treatment of legal persons.

It seems however that the issue of protection of “legal persons” needs to be clarified, as well as the limits of what is considered “private” and thus outside of the scope of the legal protection against discrimination.

3.1.3 Scope of liability

As a general rule an employer is responsible for what his employees do when they act in his service.

According to Danish law an employer is responsible not only for his own negligence and faults, but also for faults committed by his employees acting on his behalf. If a sub-contractor is an independent legal entity, person or company, the responsibility lies with the sub-contractor and not with the contractor.

Peer-workers and other workers as well who are employed by a firm belong to its personnel. Faults committed by such staff are the employer's responsibility if (new) statutory rules do not lead to another result. Harassment by such personnel is not a part of their job performance, and will not therefore be considered to be included in, or to be a part of, the employer's responsibility, unless he has neglected his duty to instruct or correct his personnel as a good employer ought to do to avoid harassment among the employees.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Article 3(1) of the Directive reads: ‘This Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) ‘conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment condition (...)’.

All these demands, with the exception of self-employment, are covered in section 2 (1) of the Labour Market Discrimination Act. Self-employment is covered in section 3 (3) of the same Act.

Discrimination in the exercise of a professional activity, whether salaried or self-employed, is also prohibited according to section 3, sub section 3. Section 2 of the Labour Market Discrimination Act states that the prohibition of differential treatment applies to anybody laying down rules, or makes decisions on access to, or the exercise of independent business or trade. Discrimination in the exercise of a salaried professional activity is prohibited by section 2 of the Labour Market Discrimination Act. This protection covers all the grounds race, color, national or ethnic origin, sexual orientation, age, disability religion and belief are covered by this Act.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

According to the Labour Market Discrimination Act all of these areas are covered (see 3.2.1)

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

Article 3 (1) (c) of the Directive states that employment and working conditions, dismissals and pay are included in the protection of the Directive.

These requirements are met in section. 2 (2)⁴⁴ of the Labour Market Discrimination Act and covers all the protected grounds (see 3.2.1).

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

According to section 3 (1) (b) of the Labour Market Discrimination Act, 'access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience' are covered in section 3(1) of the Act. All the protected grounds are included (See 3.2.1)

There is one case concerning adult vocational training (AMU) which in a Danish context is considered to be similar to paid work. A participant was subject to religious/racial harassment from other participants while he was praying in the corridor at the AMU-centre. Consequently the AMU-centre decided to dismiss him, as he provoked the other participants by his act of prayer.

The court passed judgement in favour of the AMU-centre with the argument that the dismissal was justified by the need to keep order. The decision was upheld by Supreme Court.

On the contrary it was not disputed that this situation was covered by the Labour Market Discrimination Act (1996).

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

⁴⁴ Art. 2(2) of the Act on Discrimination states: 'Discrimination in relation to payment conditions is, if equal salary is not offered for the same job or for jobs which are regarded as having the same value'.

Membership of, and involvement in, an organisation of workers or employers, or any organisations whose members carry on a particular profession, including the benefits provided for by such organisations’.

These demands are met in a new section 3(4) of the Labour Market Discrimination Act and covers all the protected grounds (see 3.2.1).

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

The 1971 Criminal Antidiscrimination Act section 1(1) warrants penalties for differential treatment of persons on the ground of colour of skin, national or ethnic background, belief and sexual orientation in a number of areas of life including social security and healthcare.

Any public or private health services or social security services open to the public, whether it is commercial or non profit must be offered on an equal footing on the same terms as others. It is also an offence to refuse a person admittance on the same terms as others to a place, hospital, clinic, or the like that is open to the public, if the refusal is based on one of the protected grounds. In practice this criminal act has been very difficult to use in the area of social protection and healthcare.

With the adoption of the Act on Ethnic Equality in 2003 – covering the non-employment aspects of the Race Equality Directive – both direct and indirect unequal treatment in the area of social protection and healthcare are now protected. Also with the new provision on shared burden of proof the possibility of victims of discrimination to bring successfully cases to court may increase in the future.

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

Same as comments on chapter 3.2.6.

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

The 1971 Criminal Antidiscrimination Act section 1(1) warrants penalties for differential treatment of persons on the ground of colour of skin, national or ethnic background, belief and sexual orientation in a number of areas of life including education.

Any public or private educational activity open to the public, whether it is commercial or non profit must be offered on an equal footing on the same terms as others. It is also an offence to refuse a person admittance on the same terms as others to a school, training centre or the like that is open to the public, if the refusal is based on one of the protected grounds. In practice this criminal act has been very difficult to use in the area of education.

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

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

The 1971 Criminal Antidiscrimination Act section 1(1) warrants penalties for differential treatment of persons on the ground of colour of skin, national or ethnic background, belief and sexual orientation in a number of areas of life including the supply of goods and services.

Any public or private supply of goods and services open to the public, whether it is commercial or non profit must be offered on an equal footing on the same terms as others. It is also an offence to refuse a person admittance on the same terms as others to a place, restaurant, shop, or the like that is open to the public, if the refusal is based on one of the protected grounds. In practice this criminal act has been very difficult to use in the area of goods and services.

With the adoption of the Act on Ethnic Equality in 2003 – covering the non-employment aspects of the Race Equality Directive – both direct and indirect unequal treatment in the area of the supply of goods and services are now protected. Also with the new provision on shared burden of proof the possibility of victims of discrimination to bring successfully cases to court may increase in the future.

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

The Act on the Prohibition of Differential Treatment on Grounds of Race etc. warrants penalties for discrimination in public services, establishments and at events open to the public. It is thus an offence to refuse, in connection with commercial or non-profit business, to serve a person on the same terms as others because of his or her race, colour, national or ethnic origin, religion or sexual orientation. It is also an offence to refuse a person admittance on the same terms as others to a place, performance, exhibition, meeting or the like that is open to the public. The Act has a penal law character.

Discrimination in housing is generally prohibited according to the Act on the Prohibition of Differential Treatment on Grounds of Race etc. and in relation to public housing it is furthermore prohibited according to the Principle of Equality in Administrative Law.

As a main rule, the rental of public dwellings is done in accordance with a waiting list. In 1997, it was approved by the Danish Parliament to experiment with the rental and assignment of public dwellings. The intention was to attract applicants from a broader segment of the population to troubled areas. From 1997 until April 1999 the experiments departing from the waiting list included more than 43,000 residences. When priority is given to certain groups in an experiment, other groups get limited access to the pertinent residential area. This approach may thus result in the discrimination against ethnic or religious minorities.

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

4. EXEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Article 4 of the Race Directive and Article 4 (1) and (2) of the Framework Directive authorises the Member States to grant an exception from the prohibition of unequal treatment if a genuine and determining occupational requirement requires this. The authority to make exceptions as a consequence of occupational requirements constitutes an exception from the prohibition of unequal treatment in the labour market.

Section 6(1) and 6(2) of the Labour Market Discrimination Act (1996), thus contains two exceptions to the prohibition of discrimination in the labour market.

According to the wide exemption in section 6(1), the Act does not apply to employers whose establishments have the aim of promoting a certain political or religious point of view (for example a Church that wants to hire a priest can exclude all applicants of another faith, because religion in this case is a bone fide occupational requirement). The same applies to organisations with a specific ethos, for example, private schools established on the basis of a specific religion.

According to the 1996 Act it seems that such employers (churches/schools etc.) can make religious demands on every employee in the establishment regardless of the actual function of the person (cleaning, care taking etc). This is against the idea that only in cases of solid bone fide occupational requirements can such exceptions be invoked.

According to the 1996 Act there is, furthermore, no requirement that any such exclusion should be reviewed periodically by the Danish government. Finally the exemption in section 6(1) was much too broad, because the wording of the exemption was formulated as a total exception for this category of employers to exclude on any of the prohibited grounds (for example, allowing the church to reject a black person due to skin colour). The formulation needs to be changed, which happened in April 2004 (See below).

The only way for other employers (than those established with the aim of certain religious point of views/ethos) to take special measures for employees with a specific religion is in pursuance of section 6(2). According to this provision it is possible to deviate from the anti-discrimination rules if it is of decisive importance for the performance of the work that the employees are, for instance, of a particular religion or ethnic origin. It is a requirement in cases where it is a matter of objective, occupational and relevant requirements related to the nature of the work in question or the conditions under which the work in question is performed. This means that a private employer cannot give preferential treatment to one group with a view to contributing to the integration of such minorities into the labour market, or in order to make the workplace reflect the surrounding society. If a private employer, however, needs an employee with a specific religious or ethnic background for the particular job in question, the employer has to apply for the granting of an exemption by the relevant Ministry (If an actor must be of a specific ethnic origin, the Ministry of Culture can grant the permission to hire actors of the ethnic origin).

Bill no. 152 presented by the Danish Government on January 29, 2003 suggesting amendments to the Labour Market discrimination Act, included a proposal for amendments to section 6 (1) and (2). The principle of proportionality is included in both subsections, in order to secure that those employers who demand a certain faith amongst applicants can objectively

justify that this is due to a legitimate aim, and that the means of achieving that aim are expedient and necessary. These changes entered into force in April 2004.

4.2 Employers with an ethos based on religion or belief

The amended section 6(1)⁴⁵ of the Act on Discrimination includes three exceptions to the general ban on discrimination. These exceptions are political opinion, religion or belief. This is in contradiction to art. 4 (2) of the Framework Directive, which allows only two exceptions: 'religion' and 'belief' – but not 'political opinion'.

Discrimination on these grounds is allowed where the employer or principal has a legitimate interest in doing so (e. g. a Catholic school has a legitimate right in protecting its wish to employ Catholic teachers when they teach Catholic doctrine (and only then) as opposed to geography, where such discrimination is not allowed).

Furthermore it is important to note that this exception does not give the churches the right to discriminate on other grounds like e.g. sexual orientation.

According to the exemption in section 6(1), the Act does not apply to employers whose establishments have the aim of promoting a certain political or religious point of view (for example, a Church that wants to hire a priest can exclude all applicants of another faith, because religion in this case is a bone fide occupational requirement). To comply with the Framework Directive article 4.2 the wide exemption in Section 6 (1) has been narrowed down to fulfil the requirements of objectivity and proportionality.

4.3 Armed forces and other specific occupations

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

Yes, according to the new section 1 a the Labour Market Discrimination Act,⁴⁶ the Ministry of Defence can make exceptions for combat troops, in relation to age and disability. The Ministry most do this in a dialog with the social partners involved in this area.

Another provision may also provide the possibility for exception do to age. The new section 9 a of the Labour Market discrimination Act allows for age requirements invoked in other legislation, if this requirements can pass the proportionality test (the requirements must be objective and so on ..). In other words age requirements within the armed forces set by law by the Ministry of Defence can be upheld if such a requirements meets the proportionality test.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

Section 1 a, mentioned above only applies to the armed forced and not the police or other services. The exception mentioned in connection to section 9 a, however, also applies to the police, prison and emergency services.

⁴⁵ Section. 6(1) of the Labour Market Discrimination Act reads: 'The ban on differential treatment on the ground of political belief, religion or belief does not include employers whose company/organisation has a goal to promote a certain political or religious point of view or belief, and where the employee's political view or religious belief (objectively) is of importance for the company/organisation'.

⁴⁶ Act no 38, 2005

4.4 Nationality discrimination

Discrimination on the basis of nationality has been tried by the

The Danish Parliament passed a bill in 1997, bill no. 329 of 14th May 1997, according to which only persons of Danish nationality, and persons from EU member countries in the future, could obtain a license as taxicab owner. A taxicab owner of foreign nationality was according to the above mentioned bill denied a license for another taxicab. He disputed the validity of this new rule because it was incompatible with art. 14 of the European Human Rights Convention and art. 26 of the UN Convention about Civil and Political Rights. While the High Court upheld his contention, the Supreme Court came to the opposite decision,⁴⁷ granting Parliament a right to judge if nationality could be an appropriate criterion to make use of, because it was not considered out of proportion to the legitimate aim of the bill.

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

4.5 Family benefits

Discrimination between married and registered couples:

There is no legal discrimination in the field of employment between married and registered couples⁴⁸, with one exception. There is no right for the 'social mother' to have parental leave when her registered partner becomes a mother. This right is exclusively for the father of the child.

It is true that Danish legislation allows homosexuals to adopt their registered partner's biological child three months after birth, and that once adoption is granted, so are employment benefits concerning parental leave and others of a similar nature. These may be afforded to gay or lesbian employees on an equal footing with heterosexual employees. However, in the case of a child born in a registered partnership the law does not provide for the automatic establishment of a filiations link between the child and the partner of his or her biological parent. The requirement posed by an employer of being the legal parent – albeit neutral on its face – is particularly disadvantageous for same-sex registered couples because one partner must first go through a costly, lengthy and uncertain adoption procedure. This, between the moment of birth and the moment of adoption, would in my view amount to an example of indirect sexual orientation discrimination.

Discrimination between unmarried and unregistered couples:

If an employee were treated differently compared to his/her colleagues because he or she lives together with a person of the same sex it would be a breach of the Act on Discrimination.

But as mentioned above – the father of a child has the right to parental leave if he becomes a father – it does not matter if he is married to the mother or not.

⁴⁷ Danish Law weekly 2002 page 1789 Supreme Court (Ufr. 2002. 1789.H).

⁴⁸ It should be noted that in Denmark registered partnership is only available to same-sex couples, whilst marriage is only available to different-sex couples.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

No provision directly provides such an exception in relation to disability. If requirements do not allow turban or beards for health or safety reasons this may constitute indirect unequal treatment due to religion. In this case the requirements is only justified if it can pass the proportionality test (the requirements must be objective and so on ..).

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78?

Yes, section 5 a, subsection 3 and 4 of the Labour Market Discrimination Act allows for direct discrimination due to age. It is stated in subsection 3 that the existing collective agreements setting up age requirements for certain professions can be maintained, if such an age requirements is objective, reasonable based on a legitimate reason, and within the ambit of national legislation and that this requirements is necessary in order to active the objectives.

Subsection 4 further states that collective agreements that prescribe the termination of employment at the age of 65 years can be maintained. In subsection 4, however, it is not mentioned that such provisions in collective agreements must meet the proportionality test, as was the case in subsection 3.

According to section 9, subsection of the Labour Market discrimination Act also allows for age requirements invoked in other legislation, if such a requirement is set up in order to protect children and young people.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Yes, section 5 a of the Act provides for exceptions covering any activities within the material scope of the Labour Market Directive.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

Yes, according to section 9, subsection 3 any special conditions set by law for older workers in order to promote their vocational integration

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training?

Same as chapter 4.7.1 a).

4.7.4 Retirement

a) What is the retirement age? Have there been recent changes in this respect or are any planned in the near future?

The official state pension age is 65 years.⁴⁹

b) Does national law require workers to retire at a certain age?

There is no general retirement age, however, in some areas retirement ages are set by collective agreements for certain professions. These agreements includes both men and women on an equal footing.

c) Does national law permit employers to require workers to retire because they have reached a particular age? In this respect, does the law on protection against dismissal apply to all workers irrespective of age?

For both of the above questions, please indicate whether the ages different for women and men.

Yes, the so-called “Danish model” allows collective agreements that require workers to retire when they reach a certain age. By way of example in the banking sector such collective agreements are very common, and these rules apply for both men and women.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

No, but national law do permit to offer seniors specific bonus if they leave before they are obliged to leave do to the collective agreements requirement (So carrots are permitted, sticks are not).

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

See above a)

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

No provision directly provides such an exception in relation to any of the mentioned reasons, public security, public order. If requirements, however, do not allow for the covering of the

⁴⁹ The so called Folkepension is a general allowance (pension) for any citizens in Denmark from the age of 65, whether he or she has previously been working or not. Next to the state pension scheme individuals may have additionally private pensions related to their previous working life, savings etc.

head because there is a need to identify people this may constitute indirect unequal treatment due to religion. In this case the requirements is only justified if it can pass the proportionality test that the identification is need for reasons of public security or public order etc. (the requirements must be objective and so on ..). One recent example was the requirements related to pictures taken for ID cards.

4.9 Any other exceptions

none

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

There is no general provision for special or positive measures in Danish law. The general presumption in Danish public law is against positive measures giving preferential treatment to ethnic minority groups or others.

Two narrow exemptions are found in the Act on the Prohibition of Differential Treatment in the Labour Market etc. The Act contains specific provisions for special measures as exceptions to the prohibition of racial discrimination. The first exemption in Section 6, subsection 2, however, might be more correctly called a provision to allow employers to take into account some genuine, legitimate and justified occupational requirement.

The second exemption is section 9, subsection 2 of the same Act. This section states that the Act does not prevent measures being taken with a view to improving employment opportunities for persons of a specific race, skin colour, religion, political opinion, sexual orientation or national, social or ethnic origin by virtue of other legislation, provisions by virtue of rules with a different legal basis or other public measures. This right to take special measures does not apply to every employer who wants to improve employment opportunities for persons with, for instance a different ethnic background. The protection of the principle of prohibition against discrimination is considered by the authorities to be best ensured if it is only by means of legislation or other public measures that the possibility of improving employment opportunities for persons of a different ethnic origin is made possible. According to the Act, such special measures thus require legal authority and are primarily to be taken by the minister in the course of public projects.

The Act makes it very difficult for private companies to take special measures to integrate ethnic minorities in the labour market. There is, however, a narrow possibility for individual employers according to Section 6, subsection 2, as described above.

According to Article 5 of the Directive, the Member States may maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. The Committee members agree that the bill, which is to apply to the areas of society covered by the Directive, except for the labour market, should include the authority to apply specific measures.

For example, a Danish municipality maintained a quota system not allowing more than 10% foreigners in each public housing bloc as a “special measure” to reduce ethnic tension in the housing areas. This policy was maintained for almost 10 years until there was a decision from the Eastern High Court that this was a violation of the Act prohibiting unequal treatment due

to Race.⁵⁰ This was not at all a positive measure, however, in order to avoid similar situations a time limit of such “measures” would be some form of guarantee against an ongoing discriminatory practice.

Sexual orientation

There is no provision that allows for positive action with respect to sexual orientation. Nowadays it is common that a number of public institutions in their advertisements write that they recommend people on the list of the Act on Discrimination to apply for jobs.

Disabled

Denmark has no quota schemes for employment of disabled persons on the labour market, and never had. Even if the employment rate for persons with disabilities is much lower than the employment rate for the non-disabled, quotas were given up beforehand. A government committee made a report 15 years ago in which the issue of quota schemes was analysed. The conclusion was negative towards quota schemes. Quotas were not considered to be an effective instrument. Neither the organisations of employers, the unions, nor the organisations of disabled people wanted quota schemes. So the government dropped the idea. But the problem of the integration of persons with disabilities in the labour market unfortunately remained unsolved. Even disabled persons with high education often have difficulties in finding a job, especially a first job.

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

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

The philosophy is that if you compensate a person who is disabled for his/her impairment in relation to a certain job, in a specific workplace, then there should no longer be any barriers that should prevent such a disabled person from working.

Positive Action on disability under current Law.

The rules about the equalization of job opportunities and positive differential treatment in the labour market for persons with disabilities were compiled in the act of Parliament on the promotion of employment for persons with disabilities, bill no. 55 of 29th January 2001, cf. and bill no 577 of 19th June 2003, cf. page 9.

The aim is by means of affirmative action to enhance the integration of persons with disabilities in the labour market.

The main elements in this bill are the following:

- Priority in relation to certain jobs:

⁵⁰ Ugeskrift for Retsvæsen 1991 358 Ø, Danish Weekly Law Journal 1991, page 358

Persons with disabilities shall be given preferential treatment as applicants for certain jobs in public service, to stalls and stands in a marketplace, and to a license as a taxi driver if the disabled person is as equally qualified as the non-disabled applicants.

This scheme is one of the first job integration initiatives, which was taken in Denmark 20 years ago. These rules have however not been very effective.

- Personal assistance.

A disabled person can be granted a personal assistant on the job for up to 20 hours a week paid by the public. Personal assistance is also offered to disabled persons during supplementary and in-service and on job training.

- "The Icebreaker Scheme":

When a disabled person has finished an education qualifying him/her for a job on the labour market and therefore is entitled to unemployment insurance, but cannot find a job, an employer who is willing to take the disabled person on is entitled to wage compensation- 50% of the wage up to 11.000 kr. a month approximately 1.600 Euro - for 6 months, in special cases 9 months.

The idea is that the disabled person shall be able to prove that he/she is able to perform a job on the labour market and have a job-reference and recommendations for his/her next job-application.

- Technical aids:

Technical aids are free of charge for the disabled in Denmark. Usually technical aids are granted by the municipality. Technical aids which are needed on the job can however be granted by disability consultants (advisors) in the local job assignment centres. The idea is that this should make the administrative procedure and decision making more simple and swift.

- Adaptation of the workplace:

If special tools, technical aids, changes at the place of work are needed for a disabled person to perform a job such equipment and adaptations can be paid for by the municipality. It applies also to specially designed tools, work chairs, installations of grab handles, widening of doorways, installation of ramps, accessible toilets and lifts. Not surprisingly very expensive adaptations like a lift and an accessible toilet can be quite difficult to obtain.

-Wage subsidy:

If a disabled person's capacity to work is so reduced that he/she cannot get an ordinary job, a wage subsidy scheme might be applied. A so-called "flex job", a job with flexible working hours and other arrangements, should be offered to the disabled by the municipality. In practice it will however quite often depend on the initiative of the disabled to find an employer who is willing to take him/her on. The employer, public or private, will pay full wages for the job performed to the disabled but 1/2 or 2/3 of the wages will be reimbursed by the government depending on how many hours the disabled person is able to work. The wage depends on the qualification of the employee.

- A mentor scheme.

If a disabled person needs more instruction or on the job training for a longer time than other employees, a special mentor scheme can be applied. The mentor can be another employee, or a consultant hired from outside to do the job. All costs for such a scheme are paid by the government.

- Quota schemes:

There are no quota schemes for persons with disabilities in Denmark. Quotas have never been considered as an effective instrument in mainstreaming disabled people into the labour force.

There is at present no clear legal distinction between social security measures and affirmative actions in relation to the labour market. Social security measures are the responsibility of the ministry of social affairs and encompass general compensatory regulations in favour of all persons with disabilities, while the specific positive action measures aimed at the labour market are the responsibility of the ministry of labour.

Affirmative action measures are not seen as exceptions to the principle of equal treatment but as necessary compensation enhancing equal opportunities.

6. REMEDIES AND ENFORCEMENT

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

Once again the ‘Danish model’ plays an important role. According to this model the players in the labour market have set up a special court (*Arbejdsretten*), which rules in matters dealing with the interpretation of collective agreements⁵¹.

But it is also possible to agree on leaving a dispute to arbitration. See the Act on Arbitration.⁵² Finally it is important to note that the *Arbejdsretten* only deals with the interpretation of the collective agreements, and not with e.g. a breach of the Act on Discrimination.

Civil, penal, administrative, advisory and/or conciliatory procedures (art. 9(1) Directive)

A person who considers himself discriminated against or subject to unequal treatment because of disability has only limited legal remedies at his disposal until Council Directive 2000/78/EC comes into force. The Directive is, even before it is implemented in Danish law, an integral part of international, European law, which shall be taken in consideration when Danish courts have to interpret Danish law in accordance with international obligations which the Danish government has to respect. Against a private employer a disabled person at the moment can do nothing, or only little. Against a public employer he can start administrative procedures because the principle of equality has been infringed, and finally ask the Parliamentary Ombudsman to intervene. Such a case can also be brought to court against a public employer.

In the White paper the Equal Treatment Committee is considering whether there is a need for new legislation with a view to satisfying the requirement of Article 7 of the Directive that “judicial and/or administrative procedures” must be available for the enforcement of obligations under the Race Equality Directive.

The Committee finds that this requirement has been satisfied by the general rules of Danish law on judicial review and the availability of an administrative control of the activities of public authorities, and therefore there is no reason to lay down in new legislation any specific rules on the availability of a judicial review.

⁵¹ For more details see *Lov om Arbejdsretten*, lov nr. 183 of 12 March 1997.

⁵² *Voldgiftsloven*, lov nr. 181 of 24 May 1972.

The Equal Treatment Committee also finds in the White paper that there is no need for new legislation enforcing the obligations under the Directive to the effect that the Member States must ensure that anybody who feels wronged may complain, and that associations, organisations and other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with the provisions of the Directive, may engage, either on behalf of the complainant, or with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directive.

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

Apart from rules of Danish civil procedure on intervening in a lawsuit (according to which the person or association has to show a *legal* interest in becoming a party to the case), the standing of interest groups that have a *legitimate* interest in ensuring the enforcement of the Directive has not been tackled by the Bill.

With all probability the government considers existing rules of civil procedure to be enough. However, the Framework Directive refers not only to the possibility of acting in support, but also ‘on behalf’ of the victim, without specifying whether the choice between the two options belongs to the government or to the interest groups.

If the latter interpretation is to be preferred, then the lack of action of the government must be seen as failing to properly implement the Directive.

The Committee found that there was no need for new legislation enforcing the obligations under the Race Equality Directive to the effect that the Member States must ensure that anybody who feels wronged may complain, and that associations, organisations and other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with the provisions of the Directive, may engage, either on behalf of the complainant, or with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the Race Directive.

It is difficult to assess whether, for example, NGO’s would be provided a legal standing without the need for an identified individual victim of discrimination. The statement that only NGO’s with a legitimate interest in ensuring compliance with the provisions of the Directive, may engage, either on behalf of the complainant, or with his or her approval, seems to suggest that one individual is involved in the case. In order to challenge more institutionalised forms of discrimination it would, however, sometimes be necessary to challenge this practice by taking legal action without any individual being involved.

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

The Ethnic Equality Act (2003) and the amended Labour Market discrimination Act (2004) introduces the principle of dividing the burden of proof⁵³. This means that the person who feels that he or she has been discriminated against has to show evidence of possible discrimination, whereas the employer has to prove that no discrimination has taken place. This divided (and not a total shift) burden of proof is in line with the (Danish version) of recital number 31 and art. 10 of the Directive.

⁵³ The Ethnic Equality Act section 7 and Labour Market discrimination Act section 7 a.

To live up to the Directives, a shared burden of proof generally has to be introduced in cases of racial and ethnic discrimination, as well as discrimination due to religion and belief.

In the White paper the Equal Treatment Committee found it most expedient that a new statutory provision on shared burden of proof in cases concerning ethnic/religious discrimination is worded in accordance with the description of how the burden of proof is shared in Danish legislation on discrimination on grounds of gender. For this reason the Committee found that the word “establish” of Article 8 must be replaced by “prove”.

This amended wording does not imply any deviation from the requirement on the sharing of the burden of proof which can be inferred from the Directive. The principle of shared burden of proof also applies in cases concerning ethnic and religious harassment and cases concerning unlawful instructions to treat unequally.

Bill no. 152 presented by the Government on January 29, 2003 suggested amendments of the Labour Market discrimination Act, including a new section 7 (a) for shared burden of proof. Section 2, subsection 4 included already a shared burden of proof in connection to unequal treatment in respect of payment, however, this section is now replaced by section 7 (a). This new provision entered into force in April 2004.

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

The Labour Market Discrimination Act in its old text said nothing about protection against victimisation on account of a complaint about discrimination, but a new art. 7(2) reads that the person who has met with disparaging treatment or unfavourable consequences because he or she has asked for equal treatment, as mentioned in arts. 2 to 4, can be given compensation [by the court].

When the protection applies, the comments of the Bill read: ‘Protection against victimisation applies in cases where a formal letter of complaint has been filed with a court of justice or another public authority, as well as in cases where a certain incident is criticised verbally at the place of work, or where the employee has contacted his or her trade union and related the circumstances to the union.’ It is of course a prior condition, that a causal link can be established between the victimisation and the employee’s request for equal treatment.

Victimisation on account of race or religion in the workplace as well as in all other areas was neither defined nor directly prohibited in Denmark. Victimisation is only prohibited in the Act on Equal Payment for Men and Women Section 3. The Act on Prohibition of Differential Treatment in the Labour Market etc. has to be interpreted in accordance with the legislation on gender equality. This means that victimisation against ethnic minorities with regard to equal payment may be covered by the Act on Prohibition of Differential Treatment in the Labour Market etc.

The Committee found in the White paper that a prohibition of victimisation corresponding to the provision of the Directive should be inserted in new legislation. The Committee also found, that in order to ensure correct implementation of the Directive, that no special requirements should be fixed as to which complaint or proceedings an individual must have submitted or instituted, except that the complaint or proceedings must be submitted or instituted to ensure compliance with the principle of equal treatment. This protection thus applies both in relation to an application to a court or another authority, and to a complaint lodged directly with the private enterprise claimed to have committed unequal treatment.

Victimisation is not a kind of unlawful discrimination, and therefore the principle of shared burden of proof does not apply in this respect. As the special considerations which have formed the basis for the application of the special rules on burden of proof in cases concerning unequal treatment do not apply to the same extent to proceedings concerning victimisation, the Committee finds that no special rules on the burden of proof should be laid down for such cases.

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

The Equal Treatment Committee found that the entitlement to compensation for non-pecuniary damage in case of breach of the prohibition of unequal treatment on grounds of racial or ethnic origin or the prohibition of victimisation should be inserted in new legislation.

Unequal treatment of a person on grounds of his or her racial or ethnic origin constitutes a special infringement of his or her person, and furthermore there might be a reason to improve the entitlement to compensation for non-pecuniary damage in relation to section 26 of the Liability in Damages Act (erstatningsansvarsloven) so that any breach of the prohibition of unequal treatment and the prohibition of victimisation should normally trigger payment of compensation. The amount of the compensation for non-pecuniary damage must be fixed on the basis of an overall assessment of the specific circumstances of the individual case, and importance must be attached to the nature of the torts acts and the infringement deemed to have been committed against the individual. The Committee finds that attempts should be made to ensure that the amount of the compensation corresponds to the amount of the compensation safeguarded according to the legislation on equal treatment for breaches of a similar personal nature.

The victim may also claim compensation for any financial loss according to the general principles of Danish law on damages, provided that the general conditions for such compensation have been satisfied. Therefore the Committee finds that there is no need for laying down special provisions to this effect.

The Equal Treatment Committee is considering whether to introduce criminal sanctions for breach of the prohibition of the Directive of unequal treatment on grounds of racial or ethnic origin. According to the opinion of the Committee, compensation would be an efficient sanction and have a deterrent effect, and efficient civil sanctions in the form of compensation would furthermore give the victim the possibility of having established whether he or she has been subjected to unequal treatment and, in the affirmative, of seeking redress through financial compensation. The Committee also finds that compensation as a sanction may work more efficiently than a criminal trial, which might result in acquittal due to the special requirements applying to criminal cases, and seldom leads to the victim being awarded compensation in practice. Furthermore, the victim may institute proceedings for compensation, even if the prosecutor chooses not to pursue a criminal trial. The Committee finds against this background that no criminal sanctions should be introduced for violation of the prohibition of unequal treatment laid down in the Directive.

The suggested regime of civil sanctions will not affect the existing criminal sanctions following from other legislation, including in particular the Act on Prohibition Against Discrimination Based on Race etc.

Discrimination in the labour market may result in a pecuniary compensation and discriminatory advertisements may result in a fine. So far there are only 6 or 7 court cases

dealing with the *Act on Prohibition of Differential Treatment in the Labour Market etc.* One person has been granted compensation and one fine has been issued.⁵⁴

Persons who have been discriminated against in the labour market may now be awarded compensation in pursuance of Section 7 of the *Act on Prohibition against Differential Treatment in the Labour Market etc.* The compensation covers non-pecuniary damages. In addition, the individual may claim compensation for pecuniary damages according to the ordinary rules on damages.

Furthermore, in case of discrimination e.g. in regard to access to public goods and services and to a public place in violation of the *Act on Prohibition against Differential Treatment on Grounds of Race etc.*, it may be possible to bring a civil action before the courts according to Section 26 of the *Act on Torts*.⁵⁵ So far there has only been one written case on tort compensation according to Section 26 for a violation of racial discrimination. The case dealt with the refusal of entry at a discotheque of a person with an ethnic minority background. In a criminal case, the doorman had previously been convicted and fined for violation of the *Act on Prohibition against Differential Treatment on Grounds of Race etc.* In this civil case, the victim was denied compensation because the refusal took place in accordance with the normal procedures of the discotheque (there were already 10 foreigners in the discotheque). Furthermore, the High Court stated that the refusal occurred “quietly and politely”. The offence against the honour of the person “was not of such a grossness and did not involve such a humiliation that there was a basis for claiming compensation for tort from the door man.”⁵⁶ The case was taken to the CERD Committee. In its opinion on the case, the Committee stated that a victim is not necessarily entitled to compensation, in addition to the criminal sanction of the perpetrator, under all circumstances. However, according to the Committee a humiliating experience may merit economic compensation. In spite of this, the Committee did not find a violation of the ICERD Convention in the concrete case.⁵⁷

As illustrated in this case it was not possible to be awarded compensation for an incident of racial discrimination that, according to the court, constituted a breach of the Act on Prohibition against Differential Treatment on Grounds of Race etc. It therefore seems less likely that a person will be compensated for discrimination, which has not even been declared a criminal offence in a previous criminal court case. The access to civil proceedings and compensation seems less accessible in cases regarding access to goods and services.

This discotheque-case regarding compensation for a racial discriminatory offence is the only one that has been dealt with so far. This illustrates that, at least in practice, the Danish legal system does not live up to the Race Directive.

It is very positive that the existing criminal sanctions are to be supplemented by civil law, due to the implementation of the Race Directive. This will allow a victim to get more easy access to bring a lawsuit against the perpetrator, because it is no longer the public prosecutor who alone has the mandate to make such decisions.

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

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

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

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

5) Ugeskrift for Retsvæsen 2000.2350 Ø. Danish Law Weekly 2000, page 2350.

6) *Utrykt afgørelse fra Østre Landsret nr. B-0877-00 af 5. April 2001*. Decision by the Eastern High Court of April 5, 2001.

⁵⁵Act on Torts section 26 (*Erstatningsansvarsloven* § 26)

⁵⁶*Ugeskrift for Retsvæsen* 1999.920 Ø. Danish Law Weekly 1999, page 920.

⁵⁷UN document: CERD/C/56/D/17/1999 (5 April 2000). Opinion on Communication No. 17/1999, B.J. vs. Denmark.

7. SPECIALISED BODIES (for race and ethnicity)

The Danish Centre for Human Rights was established as the first Danish Human rights body by a parliamentary decision on 5 May, 1987. The objective of the Centre was to gather and develop knowledge about human rights nationally, regionally, and internationally. The work of the Danish Centre for Human Rights includes research, information, education and documentation relating to Danish, European, and international human rights conditions. In 1993, the UN General Assembly encouraged all countries to establish a National Human Rights Institute (NHRI) with a mandate clearly set forth in a constitutional or legislative text, specifying its composition and its independence. Much of DCHR's work was directed towards conditions outside of Denmark. However, DCHR has also produced statements on the implications of new and present Danish law with regards refugees, immigrants and ethnic minorities vis-à-vis international conventions. The Human Rights Centre was closed according to an agreement between the Liberal and Conservative Government (that came into power in 2001) and the Danish Peoples Party.

The Danish Board for Ethnic Equality was set up in 1993 as a specialised body and its position was strengthened in 1997. Even though the Board according to the new act from 1997 has a more independent secretariat, it is still connected with the Danish Ministry of the Interior (after November 2002 the Ministry of Integration) and its independence may be questioned. Furthermore, it did not have the power to deal with individual complaints of racial discrimination. The Board had a statutory right to make general statements and may thus issue recommendations, publish reports and give opinions on general issues of racial discrimination. As described below the Board was closed by the end of 2002.

The Documentation and Advisory Centre on Racial Discrimination (DACoRD) is a non-governmental independent organisation. The Centre was founded in 1993 and is today entrusted to a board of trustees comprising of 15 persons of whom many are leading experts in Denmark on issues pertaining to discrimination, and of whom 8 have an ethnic minority background. With its foundation in international human rights conventions, the Documentation and Advisory Centre on Racial Discrimination documents racially motivated discrimination in Denmark, and provides free legal advice to victims of, or witnesses to, racial discrimination. In the absence of an official complaints commission in Denmark to deal with complaints of racial discrimination, the Documentation and Advisory Centre has in many ways performed this function on behalf of the State. This was recognized by the State in that the Centre received 80% of its budget from a fund under the Ministry for the Interior. The present government has however decided that the Centre will not have its grant reissued.

The Danish government thus needed to create a new independent specialised body according to article 13, in order to replace these bodies, which are now closed or no longer receiving public funding (See EU Commission Report on specialised bodies in Europe).

The creation of a new body, however, was a real problem for the governmental coalition which consists of the Liberal Party and the Conservative People's Party, because the government is depending on the Danish People's Party. The Danish People's Party is the party that supports in its party program the removal of section 266b on hate speech from the Danish criminal code and the withdrawal of the Danish ratifications of international human rights conventions. On 31st December 2001 the Danish People's Party made the ultimate conditional demand for voting for the government's national budget that a whole row of organisations working with issues such as integration, anti-discrimination and human rights be systematically dismantled. The Danish People's Party named specifically the Board for Ethnic Equality, the Danish Centre for Human Rights, the Documentation and Advisory

Centre on Racial Discrimination, DAMES (Danish Centre for Migration and Ethnic studies) and the Council of Ethnic Minorities, as those organisations to go.

In his New Year's Day speech to the nation, the newly elected Prime Minister, Anders Fogh Rasmussen (the Liberal Party), confirmed that a whole row of advisory boards, committees, and centres would indeed be closed and/or have their funding removed. He justified his decision by labelling these bodies and organisations, plus the people working for them, as the judges of taste (*smagsdommere*), accusing them of being so-called experts (meant negatively), of being "politically correct", of having the "correct opinions" and of attempting to "repress the public debate with their expert tyranny".

On the 11th January 2002 the government issued the so-called "death list" containing the names of the advisory bodies and governmental funds that would be affected by these cutbacks in the coming Budget. The list contains a whole range of organisations from different specialist areas, including the Danish Centre for Human Rights, the Documentation and Advisory Centre on Racial Discrimination and many others.

However, by Act No. 411 of 6 June 2002 the Government established a new Danish Institute for International Studies and Human Rights. The Institute of Human Rights which has been designated as the new body to carry out the tasks mentioned in Article 13 of the Directive.

A Bill was presented to the Danish Parliament on March 21, 2002 by the Minister of Foreign Affairs, stating that the new The Institute for Human Rights, consisting of the activities previously placed within the Danish Center for Human Rights.

According to section 2 the Institute is to promote the equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, by providing independent assistance to victims of discrimination in pursuing their complaints about discrimination without prejudice to the right of victims and of associations, organizations or other legal entities, by conducting independent surveys concerning discrimination, by publishing independent reports and by making recommendations on any issue relating to such discrimination.

This section also insures that the Institute for Human Rights receives the responsibility for realizing the obligations stipulated in article 13 of the Council's directive, 29th June 2000, on the implementation of the principle of equal treatment of all persons no matter their racial or ethnic origin (EU Law Journal no. L 180, 19/07/2000 page 0022-0036).

In the White paper published in 2002 the Equal Treatment Committee has discussed the detailed scope of the powers granted to the Institute of Human Rights on the basis of Article 13 of the Directive, and the Committee has also given an account of more general considerations concerning the need for the establishment of a board of equal treatment.

The Committee points to three options: (1) The regime corresponding to the requirements of the Directive is deemed sufficient. (2) The establishment of an administrative board of equal treatment which is to be empowered to treat complaints of unequal treatment and issue opinions, including on entitlement to compensation. (3) The establishment of a quasi-judicial board of equal treatment which is to be empowered to make binding decisions on unfair unequal treatment.

The Equal Treatment Committee members agree that there is no basis for proposing that a quasi-judicial board of equal treatment which can make binding decisions be established. The Committee has emphasised the viewpoint that the tasks of such a board would to some extent

coincide with the tasks undertaken by the ordinary judicial system, and if established, a number of requirements of due process have to be made, the result being that the board will not become a swift, inexpensive and flexible alternative to the ordinary courts for the individual, because the proceedings of such a board would, to a great extent, correspond to those of the courts.

On the other hand, the Committee members disagree as to whether there is any reason to establish an administrative board of equal treatment which can make non-binding decisions, or whether the body to be established in connection with the implementation of Article 13 of the Directive must be deemed sufficient.

Eight Committee members (the representatives of the Ministry of Employment, the Ministry of Economic and Business Affairs, the Ministry of Integration, the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Education, the Council of the Danish Bar and Law Society and the Danish Employers' Confederation) state that the Directive does not require the establishment of an administrative complaints body and that, by the establishment of the Institute of Human Rights, a body with rather comprehensive powers has been set up, including the possibility to contribute to the solution of specific conflicts, and therefore there may be a reason to await the experience from this body before a decision is made on the possible establishment of any additional bodies in this field. These members further state that there might be a risk that the powers of the Institute of Human Rights will coincide in an inexpedient way with the powers granted to a new body, if established. Furthermore, most cases concerning breach of the prohibition of unequal treatment on grounds of racial or ethnic origin, which cannot be settled by mediation, should be settled most expediently by the ordinary courts, which are the central conflict resolution bodies of society and backed by several guarantees of due process as regards independence, impartiality and reliable proceedings. Finally these members point out that such cases may involve evidential problems which should be clarified by statements from the parties or witnesses, and therefore a number of cases cannot be decided by such a board, if established. Finally, at present – when the nature and number of cases that may be triggered by new legislation is not yet known – it may be wise to await the experiences from new legislation on equal treatment irrespective of ethnic origin.

For this reason, two of these eight Committee members (the representatives of the Danish Employers' Confederation and the Council of the Danish Bar and Law Society) find that no administrative board of equal treatment should be set up.

Six members (the representatives of the Ministry of Employment, the Ministry of Integration, the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Education and the Ministry of Economic and Business Affairs) find that the matter of whether to establish an administrative board of equal treatment depends on a more political assessment of the arguments presented against the establishment of such a board, see above, and the arguments presented by seven members in favour of the establishment of such board, see below. Therefore these six members found it most correct not to make any decision on this matter.

Seven of the Committee members (the chairman and the representatives of the National Association of Local Authorities in Denmark, the Board for Ethnic Equality, the Council for Ethnic Minorities, the ELO, the Danish Centre for Human Rights and the Danish Confederation of Trade Unions) find that an administrative board of equal treatment should be set up and empowered to make non-binding decisions in individual cases, including on the eligibility for compensation for non-pecuniary damage, and a more flexible availability of judicial review should also be introduced if a decision of the board on equal treatment is not

complied with. These members emphasise that there is a considerable need to improve the complaints system for persons subjected to unequal treatment, and therefore the objective of the Directive to promote equal treatment of everybody irrespective of racial or ethnic origin is best promoted by the establishment of a simple and free right to complain, which will make it easier for the individual citizen to have his or her complaint reviewed as compared to the judicial way. These members also state that the other Nordic countries and certain other European countries have set up, or are considering the establishment of, a complaints body, and that such a body is also recommended by the European Commission against Racism and Intolerance under the Council of Europe. At the same time a complaints system in matters concerning equal treatment irrespective of ethnic origin corresponding to that existing within the area of gender equality will also be established. Finally the very existence of the board must be deemed to increase the willingness of the defendant to enter into a dialogue with the complainant and thus facilitate the work of the Institute of Human Rights so that as many conflicts as possible will be solved with mutual understanding and respect in accordance with the general objective of the Committee. If no administrative board of equal treatment is set up, these members find that strengthening the possibilities of the Institute of Human Rights to offer financial assistance to a complainant should be considered.

One of these seven members (the representative of the National Association of Local Authorities in Denmark) finds that an administrative board of equal treatment should only be set up if it is not empowered to hear complaints of unequal treatment in the labour market.

Seven members' proposal for the establishment of the Board for Equal Treatment Irrespective of Racial or Ethnic Origin (Nævnet for Etnisk Ligebehandling)

Seven Committee members (the chairman and the representatives of the National Association of Local Authorities in Denmark, the Board for Ethnic Equality, the Council for Ethnic Minorities, the ELO, the Danish Centre for Human Rights and the Danish Confederation of Trade Unions) find, as stated, that a board of equal treatment should be established.

These members have proposed that an independent panel of legal experts be set up. Such a board to have three members, one of which must be a judge and the other two members graduates in law. In cases concerning unequal treatment in the labour market, the board is to be supplemented by two members who are experts in labour market conditions. The board should be empowered to treat complaints of breaches of the prohibition of direct and indirect unequal treatment, harassment, instruction to treat unequally, and victimisation. The board should be empowered to award compensation for non-pecuniary damage for breach of the prohibition of unequal treatment. Six Committee members (the chairman and the representatives of the Board for Ethnic Equality, the Council for Ethnic Minorities, the ELO, the Danish Centre for Human Rights and the Danish Confederation of Trade Unions) find that the board should also be empowered to hear complaints of breaches of the Act on the Prohibition of Differential Treatment on the Labour Market, as well as complaints from employees of breaches of collective agreements, with provisions on equal treatment corresponding to those of the Act on the Prohibition of Differential Treatment in the Labour Market if the complainant proves that the organisation of workers in question does not intend to commence industrial arbitration proceedings concerning the matter, including award of compensation. This ensures delimitation of the powers of the board similar to the delimitation of the powers of the Gender Equality Board (Ligestillingsnævnet). One member (the representative of the National Association of Local Authorities in Denmark) finds that the board should not have any powers to consider complaints of unequal treatment in the labour market.

All seven members find that the board is to consider cases in writing and that it must therefore refuse cases requiring evidence in the form of statements from the parties and witnesses. Board proceedings are free to the parties to a dispute. The decisions of the board must be final administrative decisions, but either party may bring the case before the courts.

If a decision made by the board is not complied with, the Minister for Refugee, Immigration and Integration Affairs must bring the case before the courts at the request of the complainant and on his or her behalf, according to these seven members. This regime of legal action corresponds to the regime laid down by the Gender Equality Act (lov om ligestilling af kvinder og mænd).

The Ministry of Labour published a Bill No. 40 as of 2003/2004. The first reading of this Bill took place on November 3, 2003 together with an alternative proposal from the Social Democratic opposition party. According to this proposal (Proposal for Bill no. 39) the burden of proof, discriminatory instruction and victimisation should be implemented in order to transpose the directive. However, the proposal from the Social Democratic party also includes the establishment of a Complaints Commission for labour market cases. Due to the fact that the Institute for Human Rights did not have the mandate to receive individual complaints from victims of discrimination in the labour market field, such a proposal was added.

The two proposals (from the government and from the opposition) were then being considered by the Parliament's Committee on labour market issues. The Committee forwarded some questions to the Ministry of Labour, amongst others question 9 (19.11.2003 L 40 bilag 13). According to the answer it is the opinion of the Minister for Labour that the Institute for Human Rights have a mandate to assist victims of racial discrimination in the labour market field. According to this interpretation there is no need for the establishment of a Commission (the proposal from the Social Democratic party), and the Government concludes that article 13 of Directive 2000/43/EU is already fully transposed with the establishment of the Institute for Human rights.

The opposition (the Social Democratic Party) made their own proposal, that a new Board - headed by a Judge – should have the mandate to consider cases of racial discrimination in the labour market field. The Government strongly opposed this proposal, saying amongst other things that there was no need for such a body: It was stated by the Minister in an answer to the Danish Parliament on November 26, 2003 that:

“In my opinion the Institute for Human Right has the mandate to assist victims of unequal treatment in the labour market in order to forward cases, if there is no collective agreement and if the worker is not organised in a trade union. <..> It is not correct, as stated by DRC, that the Government's proposals do not secure the minimum transposition of the Race Directive.”

It is not clear how the Minister has reached the conclusion that the Institute already has this mandate. However, in a letter dated February 6, 2004 the Institute had to refused to assist a victim, because discrimination in the labour market field is not part of their mandate!

In March 2004 the Minister seemed to realize the fact that the Institute did not have this mandate and consequently forwarded a new proposal for the amendment of the Act on the Labour Market Discrimination Act, including a new section 8a and the additional mandate to the Institute for dealing with labour market discrimination due to Race and Ethnicity. This new proposal is supported by the Social Democratic Party and was approved by all the parties in the Danish Parliament in April 2004, apart from the Danish Peoples Party.

By the end of 2004 the Institute for Human Rights Complaints Committee has made four statements (decisions) which have been published on the website www.klagekomite.dk Three cases were rejected and one case was, on September 1, 2004, decided in favour of the claimant.

These statements by the Complaints Committee, however, are not binding and those cases may have to go to court anyway.

SPECIALISED BODIES

Other protected grounds

The Labour Market discrimination Act does include an enforcement body for race and ethnicity, however it is not covering the other protected grounds, like sexual orientation, age, religion and belief.

By way of example the Danish National Organisation for Gays and Lesbians has asked the Danish Government to consider such an option⁵⁸. In fact, the lack of this enforcement body was one of the arguments the opposition used when rejecting the Bill. Also organisations for disabled have asked for this, as well as organisations for elderly people.

The new Danish Institute for International Studies and Human Rights, however, only has the task to promote the equal treatment of all persons without discrimination on the grounds of racial or ethnic origin (as required by Directive 2000/43/EC, whilst, in the absence of a similar requirement in the framework directive, the government did not include discrimination on the grounds of sexual orientation).

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The Danish Board for Ethnic Equality (before it was closed) has published information material on Article 13 and the Race Equality Directive.

Further more ENAR Denmark and the Documentation and Advisory Centre on Racial Discrimination has on June 5 2002, held a conference on the directives implementation in Danish Legislation, with a specific focus on the need for a specialised body according to Article 13 (2).

The Committee finds in its report, however, that there is no need to launch any special initiatives in order to satisfy the Directive requirement on dissemination of information, cf. Article 10.

The Committee emphasises in this connection that the intention of establishing the Institute of Human Rights is that the Institute will have a communicative and discussion- inciting

⁵⁸ Se www.lbl.dk. Unfortunately the letters and reports are only available in Danish.

function. In 2004 the published information material and the EU Commissions Truck Tour visited Copenhagen and the second largest Danish city Aarhus in October 2004.

b) 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) and

In December 2001 the Ministry of Employment established a Committee on the transposition of the Framework Directive (the Framework Committee), with the mandate to give advice on the transposition of the Framework Directive into Danish legislation. No members from the above mentioned religious communities were appointed to the Framework Committee. When the Committee ended its work and draft Bills intended to transpose both the Framework Directive and the Race Equality Directive were forwarded to NGOs and other institutions in 2002 in order to give their comments on the transposition, none of the organisations asked were religious communities.

It can be argued that the work of the two Committees established by the Ministry of the Interior and the Ministry of Employment may be considered part of the consultation process in Denmark, as in both Committees the representatives of the Social Partners in Denmark participated in the work. But a great number of relevant NGO's, religious communities etc, were not invited to take part in the process. At the same time, these two Committees stopped a broader discussion in society on the transposition of the Race and the Framework Directive, because all the key actors in the field participated in the Committees, and consequently, did not want to inter-act in public discussions until the end of the work of the Committees. For example, the Danish branch of the European Network against Racism (ENAR) held a public conference on June 5, 2002 on the transposition of the Race Equality Directive, however, non of the key actors participated, because they were all taking part in the work of the Committee, that did not end before September 2002. Consequently, the first possibility of a broader public process was mid-September 2002, when the Equal Treatment Committees more than 300 pages Report no. 1422/2002 was published.

Race Directive Article 12/Framework Directive article 14

Have any measures already been taken in order to encourage dialogue with appropriate non-governmental organisations as requested by Article 12 and 14?

On September 18, the report was forwarded to a number of NGO's and other relevant parties, for their comments, however, it was stated that the Government would present a Bill in the Danish Parliament in October 2002. In other words, if the NGO's would like to make any comments they would have to read and answer within a few weeks.

As part of the consultation process, a proposal for amending the Act on the Prohibition of Differential Treatment in the Labour market was forwarded by the Ministry of Employment by the end of September 2002. The proposal included a new prohibition against discrimination in the labour market on the ground of "belief". This proposal was forwarded to a number of organisations for comments, including all of the organisations represented in the Framework Committee that was established by the Ministry in December 2001.

After these organisations only 6-7 other institutions/NGO's etc. were asked to provide comments. None of these organisations were religious communities. Further more, any comments were expected before October 4, 2002, only one week after the reception of the letter inviting the NGO's to give comments. To those organisations that already participated in the Framework Committees work since 2001, this may not be a problem. For the other NGO communities it is a great problem because such a short notice was not enough to provide a full and comprehensive answer. The reason why the process was so fast, was

explained as because the Government was going to present a Bill in the Danish Parliament in October 2002.

In October 2002, however, nothing happened, but in January 2003 the Government forwarded two Bills to Parliament (L no. 152 and L no. 155). The first reading of the Bill took place in the Danish Parliament on February, 2003, followed by the work of the Parliament's standing Committee on Employment and the Committee on Aliens and Integration issues.

In conclusion it would be correct in some way to say that the consultation process has in fact been so sparse, that it was more or less non-existing. No church or other religious community was involved in the work of the Equal Treatment or the Framework Committee. When the Ministries later on asked for external inputs, not a single religious community was invited to give comments. Further more those organisations that were in fact invited to give comment, were not given enough time to respond properly.

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The Equal Treatment Committee finds that, due to the Danish labour market model, it is not necessary to insert a provision in new legislation implementing the Directives which promotes the dialogue between the social partners intended to foster equal treatment, and the conclusion of collective agreements prohibiting unequal treatment, cf. Article 11. Consequently, no new provisions have been included in the Bills presented by the Danish Government in January 2003.

Disability:

The implementation of Council Directive 2000/78/EC of November 27th 2000 establishing a general framework for equal treatment in employment and occupation is being prepared by a commission under the ministry of employment.

This EU directive has unfortunately not yet been implemented for persons with disabilities and elderly persons in Denmark. In 2003 the directive was implemented by an act of Parliament for all groups covered by this directive other than the two earlier mentioned. The organizations of disabled persons have, from the day this directive came into existence, been very eager to have it implemented because it represents a major step forward from a legal point of view, and also it cannot avoid making a great difference in practice. Already on January 12th 2001 a conference was held in Copenhagen about the implementation of the directive. Neither the representatives of government, nor the labour market organizations, seemed very enthusiastic at that time, but stressed unanimously the many complicated problems which should be solved before implementation could take place in a good way compatible with Danish labour market and employment law. This does not mean that Danish law in this area is very complicated or sophisticated. The real issue is that we have a long tradition in Denmark for leaving as much regulation on the labour market as possible to the unions and the organizations of employers. Agreements obtained by collective bargaining by the labour market organizations are therefore the main source of labour market law in Denmark. Statute law in this area is an exception. The Danish government has therefore not passed an implementation bill in Parliament about EU directive no.2000/78/EC as it would have done if it had been a directive about any other subject than labour law. In stead the organizations in the labour market were asked to try to incorporate the rules of the EU directive in their collective agreements.

The Danish Council of Organizations of Disabled People has in March 2002 initiated a dialogue with the implementation commission about the interpretation of the directive. So far the commission has not given any official reply to the many questions which have been raised.

In accordance with Danish labour market tradition the implementation of the Council Directive 200/78/EC has been left with the labour market parties, the unions and the employers' association, to negotiate among themselves to find solutions on which they can agree. These negotiations have now lasted for more than two years, perhaps because the problems are quite complicated, and until now have not been given sufficient priority. Little is known about how these negotiations have been proceeding.

The organizations of disabled people have held negotiations with many organizations in the labour market as well with the implementation commission, however without much effect on speed or substance. Implementation should however have taken place before December 2nd 2003. The government has therefore asked the EU Commission for an additional implementation period of 1 year and at the same time asked the organizations to end their negotiations before May 1st 2004. The first collective agreement referring to, and incorporating EU directive 2000/78/EC in an agreement, has been adopted in February 2004. During the spring this process has continued throughout the whole labour market.

The ministry of employment has, as promised, held a meeting with the Danish Council of Organizations of Disabled Persons in May this year. The outcome of the labour market negotiations have been meagre. Only a few agreements have included a reference to the directive. The government therefore has to table a bill implementing the directive in Parliament during the next parliamentary session starting in September this year. The ministry has stated that the bill is not going to introduce any new rights not contained in the directive. As the directive is based on minimum standards, the member states are not obliged to set a higher standard, and that is what the Danish government, in spite of the NGO's appeal to do better, intends to stick to.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

Measures to ensure amendment or nullity of discriminatory provisions included in contracts, collective agreements, internal rules of undertakings, rules governing the independent occupations and professions, and rules governing workers' and employers' organisations (art. 16(b) Directive)

According to Article 14(a), Member States shall take the necessary measures to ensure that any laws, regulations and provisions contrary to the principle of equal treatment are abolished. According to the opinion of the Committee, there is no need to insert special provisions to this effect in new legislation.

According to Article 14(b), Member States shall take the necessary measures to ensure that any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared null and void or are amended. The Committee finds that, in order to ensure correct implementation of the Directive in Danish law, a provision corresponding to Article 14(b) should be inserted in new legislation implementing the Directive. The Committee has considered whether a rule should be laid down to stipulate that provisions contrary to the principle of equal treatment are

unlawful, or whether a rule should also be laid down stipulating that such provisions, etc., can be amended. The Committee has concluded that only rules stipulating that such provisions are unlawful should be laid down, which corresponds to the Act on Equal Treatment of Men and Women with regard to Employment and Maternity Leave, etc. (lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselsorlov, m.v.)

The Committee also finds that a provision should be inserted in new legislation implementing the Directive according to which the statute will provide mandatory protection.

There is no constitutional court in Denmark. It is up to the courts to decide whether a law or a provision is in contradiction to the Constitution (*Grundloven*), other acts, or directives from the EU – but it is important to note, that the courts cannot do it on their own initiative. The only way is if a citizen raises a claim against the State.

If a collective agreement were in contradiction with existing acts it would be regarded as null and void. Since Denmark has no Ombudsman to deal with discrimination against homosexuals (as in Sweden), any claim or report would most likely be addressed to the National Organisation for Gays and Lesbians (LBL), which would be informed by employees if they found any discriminating rules in the above mentioned agreements or other internal rules

There are no laws, provisions or written internal rules of public or private employers concerning direct sexual orientation discrimination in employment or occupation. When it comes to non-written internal rules of individual employers, that is, of course, impossible to know with certainty, but at least the National Organisation for Gays and Lesbians has had no such indications in the form of complaints or requests for advice and support from individual victims of discrimination.

9. OVERVIEW

Since World War II elderly people and disabled amongst other groups, have been able to secure a more decent standard of life. General pension scheme and other programmes targeting social weak groups in the Danish society has become an integrated part of the Scandinavian welfare model. It was acknowledged that disadvantaged groups in society should be compensated by the state or local municipality in order to create equal opportunities, however very little focus was on equal rights and non-discrimination. When other groups during the same period have increased the standard of life very much, some of the social weak groups, however, started to lack behind. Consequently, more and more focus is now the right to equal treatment and how to enforce these rights. The transposition of the Labour Market Directive is a major step in the direction of providing legal protection against discrimination due to age and handicap in Denmark.

Legal protection against sex discrimination has been in force for many years, and it was discussed whether similar legislation on discrimination due to race, religion or other grounds should be enacted. In response the social partners in the labour market rejected in the 70ties such legislation with the argument that Denmark has a tradition for collective agreements in the labour market instead of legislation. According to this so-called Danish model the social partners would make agreements prohibiting racial or religious discrimination if this was going to be a problem in the labour market. As no such collective agreements were enacted, victims of discrimination due to race, ethnicity, sexual orientation, and religion were not protected until 1996, when legislation was finally enacted in these fields. With the transposition of the Race Equality Directive the 1996 Act has been changed in some areas. When it comes to the enforcement however it still seems to be the perception, that's this is

responsibility of the social partners. Firstly, the Danish Government denied the new specialised body according to article 13, the mandate to receive complaints in the labour market field. Secondly, the new body has a very limited mandate to make nonbinding statements.

Finally, it should be noticed that even though the mandate of the new body is very limited, the situation is however better with respect to race and ethnicity, than with respect to those grounds covered by the Labour Market Directive, which have no specific complaints mechanism. This places the social partners in a key role, when it comes to the enforcement in these areas. The role of enforcing minorities rights is quite new to the social partners in Denmark (woman is not a minority), and the possible results are expected with great interest

10. COORDINATION AT NATIONAL LEVEL

With respect to the Race Equality Directive, the Ministry for Integration is responsible for dealing with or coordinating issues regarding anti-discrimination, however the Ministry for Foreign affairs is responsible for the Danish Article 13 Body.

When it comes to the Framework Directive other Ministries are also responsible, for example, the Ministry for Labour and the Ministry for Social affairs is especially responsible for aged and handicapped. There is no central authority responsible for the coordination for all grounds.

Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Denmark

Date: January 2005

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope).	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
Act No. 960 (2004) <i>Straffeloven 266 b</i> (The Danish Penal Code, section 266 b) www.retsinfo.dk	1939	Race, colour, national or ethnic origin, religion and sexual orientation	Criminal law	Hate speech in public life	Direct discrimination
Act No. 626 (1987) <i>Lov om forbud mod forskelsbehandling på grund af race m.v.</i> (Act on the prohibition against race discrimination), www.retsinfo.dk	1971	Race, colour, national or ethnic origin, religion and sexual orientation	Criminal law	Access to goods and services, housing, education, social service etc.	Direct discrimination
Act No. 31 (2005) <i>Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.vt</i> (Act on prohibition against discrimination in respect of employment and occupation)	1996	Race, colour, national, social or ethnic origin, religion, belief, age, disability, sexual orientation and political opinion	Civil law	Labour market (public and private employment)	Direct and indirect discrimination
Act No. 374 (2003) <i>Lov om etnisk ligestilling</i> (Act on the prohibition against unequal	2003	Race and ethnic origin	Civil law	Access to goods and services, housing,	Direct and indirect discrimination

treatment due to race and ethnicity) www.retsinfo.dk				education, social service	
Act No. 411 (2002) Lov om institut for internationale studier og menneskerettigheder (Act on the institute for international studies and human rights) www.retsinfo.dk	June 2002	Race and ethnic origin	Civil law	Access to goods and services, housing, education, social service and labour market	Creation of a specialised body

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Denmark

Date: May 2005

Instrument	Signed (yes/no)	Ratified (yes/no)	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)	yes	yes	no	yes	Yes (incorporated)
Protocol 12, ECHR	no	no	–	no	no
Revised European Social Charter				Ratified collective complaints protocol?	
International Covenant on Civil and Political Rights	yes	yes	no	yes	Yes (but not incorporated and thus weak compared to

					ECHR)
International Convention on Economic, Social and Cultural Rights	yes	yes	no	no	Yes (but not incorporated and thus weak compared to ECHR)
Convention on the Elimination of All Forms of Racial Discrimination	yes	yes	no	yes	Yes (but not incorporated and thus weak compared to ECHR)
Convention on the Elimination of Discrimination Against Women	yes	yes	no	yes	Yes (but not incorporated and thus weak compared to ECHR)
ILO Convention No. 111 on Discrimination	yes	yes	no		