

Anti-discrimination Legislation in EU Member States

A comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives

DENMARK

© 2002 by the European Monitoring Centre on Racism and Xenophobia . All rights reserved

Published by the European Monitoring Centre on Racism and Xenophobia
Rahlgasse 3, A-1060 Vienna , Austria

This report has been prepared by the European Monitoring Centre on Racism and Xenophobia (EUMC) using information from its Study to make a comparison of existing national legislation in EU Member States with the Article 13 EC Treaty Council Directives. The information for the EUMC Study was compiled by a group of independent experts, which is part of the project Implementing European Anti-Discrimination Law, a Joint Initiative of the European Roma Rights Center, Interights and the Migration Policy Group.

The views and opinions expressed do not necessarily reflect the views and opinion of the EU Member State which is the subject of this report or the European Commission.

The information in the reports cover a period up to September 2001 and may not contain developments which have taken place since that date.

Reproduction is authorised, except for commercial purposes, provided the source is acknowledged and the attached text accompanies any reproduction: "This report has been prepared by the European Monitoring Centre on Racism and Xenophobia (EUMC) as part of its Study to make a comparison of existing national legislation in EU Member States with the Article 13 Council Directives".

For more Information, Contact:

European Monitoring Centre on Racism and Xenophobia (EUMC)

Tel: +43 (1) 580 30 - 0

Fax: +43 (1) 580 30 - 93

Email: information@eumc.eu.int

Website: <http://eumc.eu.int>

PREFACE

The European Union (EU) is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to all Member States. The right to equality before the law and the protection of all persons from discrimination, together with the respect and promotion of the rights of minorities is essential to the proper functioning of democratic societies. Strategies and activities to combat racism, xenophobia and anti-Semitism form an integral part of the European Union's work on equality, justice and social inclusion.

The Amsterdam Treaty which entered into force in May 1999, introduced a new article 13 into the EC Treaty. The European Commission proposed a package of measures to implement article 13 in November 1999 which led to the adoption in 2000 of a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and a Council Directive establishing a general framework for employment equality and a Council Decision establishing a Community action programme to combat discrimination.

The European Monitoring Centre on Racism and Xenophobia (EUMC) was established by the EU during 1997 as part of the EU's aim to combat racism, xenophobia and anti-Semitism more effectively at a European level. The EUMC has the task to provide the Community and its Member States with objective, reliable and comparable data at the European level on the phenomena of racism, xenophobia and anti-Semitism in order to help them when they take measures or formulate courses of action. It also undertakes studies and examines examples of good practice, formulates conclusions and opinions and publishes an Annual Report.

The EUMC as part of its work in the field of legislation commissioned a study to compare Member States' anti-discrimination legislation and the article 13 directives. Information from the study was used to produce a series of country reports. The reports aim:

- to provide an overview of existing anti-discrimination legislation on the grounds of race or ethnic origin, religion or belief in the Member States and draw a comparison with the anti-discrimination Directives;
- to support the implementation of the directives by the Member States by indicating to each Member State the developments in other Member States (with the view that by providing information on the variety of approaches adopted by Member States to deal with the same issues Member States could benefit from the experience of each other);
- to identify areas which may require further development;
- to support the European Commission in the framework of the Community Action Programme in particular under Strand 1 - Analysis and evaluation, and
- to support wider debate as the issue is of interest to a variety of sectors in society.

The information in this report is therefore not meant to be an assessment of how effective legislation is in practice, but what legislation is in place. The EUMC takes this opportunity to thank Migration Policy Group for its work on this Study and hopes that this publication will be a useful contribution to overcoming discrimination.

Beate Winkler, Director EUMC

FRAMEWORK OF THE STUDY

Joint Project 1999-2000 “Research on national and European legislation combating racism”

In 1999, The European Monitoring Centre on Racism and Xenophobia (EUMC) undertook a joint project with Migration Policy Group on “Research on national and European legislation combating racism”. The period covered in the project was from 1 May 1999 to 31 January 2000. The project carried out a comparative study on existing legislative provisions to combat discrimination on grounds of race or ethnicity and religion and belief and the proposal for a Directive concerning the elimination of racial and religious discrimination (known as Starting Line) and the proposal of the European Commission for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, COM (1999) 566 final, 1999/0253 (CNS).

EUMC Project 2001-2002 “Study on the comparison of the adopted Article 13 Council Directives with existing national legislation in the EU Member States”

By the end of 2000, with the adoption of Council Directives 2000/43/EC (Implementing the principle of equal treatment irrespective of racial or ethnic origin) and 2000/78/EC (Establishing a general framework for equal treatment in employment and occupation), there existed at the European Community level an actual framework for Member States on which to base, adapt or amend national legislation.

Terms of reference of the study

With the change in the legal situation at the European Community level, the EUMC decided to follow up the Joint Project of 1999 by commissioning a new study on legislation. The study would:

- produce a report on the comparison of the adopted Article 13 Council Directives with existing national legislation in the EU Member States. The grounds of discrimination to be examined in the Council Directives for the purposes of the comparative study and report would be limited to racial or ethnic origin and religion or belief; and
- update the country reports from the Joint project with Migration Policy Group (MPG): checking to see how the adopted Council Directives compare with existing legislation in all fifteen Member States; including information on any changes in legislation in the fifteen Member States that have occurred since the drafting of the Joint Project Reports.

Timeline of the study

The EUMC launched a call for tender process in May 2001 and selected Migration Policy Group to undertake the new study.

Information was collected up until September 2001. This enabled the draft reports from the study to be completed in time for submission to the meeting of the Legal Working Group to prepare the implementation of Directives 2000/43 and 2000/78 on non-discrimination into national law which was convened by the European Commission in November 2001. The Legal Working Group had an opportunity to examine the reports and make comments by 7 December 2001. Comments received by the EUMC were then examined and incorporated where relevant and as appropriate.

Format and scope

The format for the study is a list of questions, some optional for the purposes of the EUMC, related directly to the articles of the Council Directives. Optional questions were included in the reports provide information related to gender discrimination and the new Protocol 12 to the European Convention on Human Rights. Optional questions were not essential for the reports (and are therefore not included in every report) as they do not relate directly to the Council Directives, but may provide useful complementary information.

The information provided indicates provisions in the Constitutions, the Criminal law, Civil law and Administrative Law of the relevant EU Member State. Every care has been taken to ensure that the translations of titles of legislation from the original language are as accurate as possible, but they are for information purposes only and should not be regarded as the definitive or official translations by the European Union. The title of the piece of legislation in its original language has been included and should be referred to.

Final Caveat

The reports cover legal aspects as well as institutional mechanisms to promote equal treatment and combat discrimination as outlined by the Council Directives. In all reports there is a description of the legal and institutional situation and an indication of whether their compatibility with the Council Directives should be reviewed, some reports may indicate case law where it exists to complement the information on the legal provision, there is an element of evaluation in the reports, but the main emphasis has been to indicate what provisions exist without necessarily trying to evaluate them. As a result there may be some discrepancy between reality and the situation reflected by the law.

The final decision whether national legislation is compatible with the Council Directives rests with the European Court of Justice.

Introductory remarks¹

Denmark has specific legislative or administrative protection against racial, ethnic and religious discrimination in most fields of life². In addition, Denmark implements international human rights standards on non-discrimination mainly through criminal law.

Racial and religious discrimination in the labour market is covered by the Act on Prohibition against Differential Treatment in the Labour Market (see under Article 1 for a further explanation of the this Act), which is an act based on civil proceedings. Consequently the decision on whether proceedings will take place or not, lies with the victim of discrimination alone and his/her ability to undertake civil court proceedings.

There are a number of different measures on legal aid which exist in order to ensure that civil court proceedings may be initiated where necessary. These include the granting of free legal aid (fri proces). The Ministry of Justice may also provide financial support to individuals in order to cover legal expenses during court proceedings (offentlig retshjælp).

The Ombudsman of the Danish Parliament may according to section 23 of the Ombudsman Act recommend that a complainant be granted free legal aid in connection with any matter falling under his jurisdiction. This recommendation is in practice always followed.

The Danish Bar and Law Society offers free legal aid to individual persons and non-profit organisations (advokatvagten). Members of ethnic minorities who are members of Trade Unions may receive legal and financial support from their Trade Union, though it is acknowledged that unionisation among ethnic minorities may not be very high. It should also be acknowledged that some conflicts relating to employee-rights will often be solved through the system of conciliation and therefore cases on discrimination will be solved before they turn into court-cases.

In addition, it was recently decided to provide legal aid to individuals who lodge complaints to international human rights committees³.

In April 2001 the Ministry of the Interior (now: the Ministry of Integration) appointed a committee which was asked to make a proposal on how to implement the Directive on racial equality into Danish law ("Ligebehandlingsudvalget"). This committee has been

¹ This Report was prepared by the EUMC using information from its study on comparing existing national legislation in EU Member States with the Article 13 Directives (Council Directives 2000/43/EC (Implementing the principle of equal treatment irrespective of racial or ethnic origin) and 2000/78/EC (Establishing a general framework for equal treatment in employment and occupation) undertaken on behalf of the EUMC by a group of experts working jointly for the Migration Policy Group, the European Roma Rights Centre and Interights. It includes information from a previous report by Pia Justesen for the Danish Board for Ethnic Equality which was part of a joint project of the Migration Policy Group and The European Monitoring Centre on Racism and Xenophobia entitled « Research on national and European legislation combating racism ».

² The report also provides information on legislation relating to sex discrimination and gender equality, where appropriate, given the use of such legislation in the development of equal treatment and anti-discrimination legislation in general.

³ Act No. 940 (1999) (*Lov nr. 940 af 20. december 1999 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*)

asked to consider a number of issues, including, of course, to what extent there is a need for new legislation and the establishment of a new body for the promotion of equality.

Finally, given the relationship between the development of legislation concerning gender discrimination and other forms of discrimination, the report has referred to legislation and practice concerning gender discrimination where such information may be useful as examples of the development of legislation on discrimination.

Article 1⁴

Is there any legal framework at national level that puts into effect the principle of equal treatment, or that is designed to combat discrimination on the basis of racial or ethnic origin and/or on the basis of nationality and/or on the basis of religion or belief? If so, what is the nature of this framework?

The *Danish Constitution* of 1849⁵ protects freedom of religion in Section 67, which includes a prohibition of religious discrimination, and Section 70 of the constitution states:

“§ 70. No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons.”

This section implies a principle of equality by which it is prohibited to discriminate on grounds of religion or race. The provision is assumed to apply even though discrimination does not formally occur on grounds of creed or descent, but caused by circumstances that are so closely related to this that the result in actual fact will be very much the same as the former. Furthermore, it is stated in Section 71, paragraph 1 that no Danish citizen can be deprived of personal liberty on grounds of political opinion, faith or descent.⁶

In recent years, a number of Acts in specific areas of life have been adopted in order to abolish discrimination on grounds of racial or ethnic origin. Some of these Acts contain definitions of racial and ethnic discrimination.

Section 266 b of the Danish Criminal Code prohibits dissemination of expressions of racial prejudice. Section 266 b, subsection 1, contains a definition of racial discrimination (see

⁴ Discrimination on the grounds of race and ethnic origin are covered by the Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (henceforth, **Racial Equality Directive**); discrimination on the grounds of religion and belief (but only in employment and occupation) are covered by the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (henceforth, **Employment Equality Directive**); up to Article 5 the provisions of the two Directives correspond in content and numbering; as of Article 5, the contents of articles corresponds, but the numbering differs; the reports follows the numbering of the Racial Equality Directive; the numbers of the corresponding articles on religion and belief in the Employment Equality Directive will be mentioned in a footnote.

⁵With subsequent amendments, the latest in 1953.

⁶The reference to “descent” was inserted into Articles 70 and 71 in 1953 in light of recent historical event.

Article 2.4). In order to ensure proper and uniform enforcement notice No. 4/1995 was issued in September 1995 stipulating that the Director of Public Prosecutions must be notified of all information on violations of section 266 b that are refused by the police on the grounds that no offence is assumed to have been committed. The notice further stipulates that all cases in which a charge has been made must be submitted together with a recommendation concerning the question of prosecution. Where prosecution was initiated for threats or violence, the Director of Public Prosecutions requested the Public Prosecutor to consider it an aggravating circumstance that the threats or violence was racially motivated.

The Act on Prohibition against Differential Treatment on Grounds of Race etc.⁷ has 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 inclination. 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.

The Act on Prohibition against Differential Treatment in the Labour Market etc. came into force on 1 July 1996. The Act contains a general prohibition against discrimination in the labour market on the grounds of race, colour, religion, political conviction, sexual orientation or national, social or ethnic origin. The Act has a civil law character and thus depends on private action for its enforcement.

The only other law that exists concerning the issue of protection against racial discrimination is the Act on the treatment of information regarding individuals. In this area the Danish legislation prohibits any record of a person's race or ethnic background, political, religious or philosophical conviction, sexual orientation etc. Section 7 of the Act thus contains a qualified prohibition on recording data about race, religion, ethnic origin etc. Section 28 of the Act on Public Administration states that an administrative service may only transmit data on race, religion and skin colour to another administrative service with the consent of the person concerned etc.⁸

Within the public sector a *general principle of equality* exists. The entire body of Danish administrative law is based on an unwritten general principle of equality before the law. At The principle means that equal cases must be treated equally before the law. According to a generally accepted formula, the importance of the principle depends on whether the criterion on which the differential treatment is based is legally sound and relevant in the light of the decision that is made. Differential treatment on grounds of race therefore runs counter to the very core of this administrative law principle.

Direct discrimination on account of race and ethnicity is prohibited - although not necessarily defined - in most fields of life.

⁷Lovbekendtgørelse nr. 626 af 29. september 1987 om forbud mod forskelsbehandling på grund af race m.v. The Act was originally enacted as Act No. 289 (1971) but was amended by Act No. 626 (1987) to include discrimination on account of sexual orientation.

⁸Act No. 571 (1985) (Lov nr. 571 af 19. December 1985 (Forvaltningsloven))

Article 2.1 and Article 2.2(a) and 2.2(b)

Is there a definition of direct and indirect discrimination in your national legal system? Is there a need to introduce definitions of direct and indirect discrimination, as defined in Article 2.2(a) and 2.2(b) of the Directive, into national legislation?

Are there comparable definitions in national law in relation to gender discrimination?

There is no definition of direct and indirect discrimination in Danish law.

The Act on Prohibition against Differential Treatment in the Labour Market etc.⁹ is the only Act, which according to Section 1(1) explicitly prohibits direct as well as indirect discrimination. There is one provision of the Act that has a penal law character dealing with discriminatory job advertisements. The penal law character means that a person needs to have intent to be found guilty in posing a discriminatory ad. This means that in relation to job advertisements direct discrimination seems to be prohibited, though Section 5 may cover advertisements that are indirectly discriminatory, however no court decisions have been issued on this subject. All other employment issues are covered by civil law provisions prohibiting direct as well as indirect discrimination.

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 legislation on gender equality. Direct discrimination thus takes place when race or religion is explicitly made a criterion for differential treatment. The application of the race or the religion criterion could, if at all, be accepted only due to compelling reasons of necessity. Indirect discrimination is the case when a formally neutral condition has in practice a disproportionate effect on e.g. certain ethnic or religious groups unless this condition is objectively justified by the work performance. Even though the Act is not as detailed as the Directives, the definition of direct and indirect discrimination at the labour market can be interpreted to be in accordance with the Directives.

There are two relevant court cases regarding the content of the prohibition of indirect discrimination. Both cases deal with situations where an applicant for a job is rejected because of the fact that she is wearing a religious headscarf. In both cases the rejection was reasoned by a dress code or a requirement of a specific uniform. Such requirements must be considered as neutral criteria. In the first case the court found that it constituted indirect racial discrimination to turn away a trainee from a department store because she wanted to wear her religious headscarf. The expulsion was regarded as a breach of the Act on Prohibition against Differential Treatment in the Labour Market etc.¹⁰. The other case dealt with a chocolate producing factory. In this case the rejection of a woman wearing religious headscarf was deemed reasonable and in accordance with the law. More than 20% of the workers at the factory had ethnic minority background and the factory argued that there were sanitary and safety reasons for the rejection of this particular headscarf of the woman.

⁹Act No. 459 (1996) (*Lov nr. 459 af 12. juni 1996 om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*)

¹⁰*Ugeskrift for Retsvæsen* 2000.2350 Ø. Danish Law Weekly 2000, page 2350.

The court thus found the requirements of the factory objective and proportionate and in accordance with the Act on Prohibition against Differential Treatment in the Labour Market etc.¹¹.

Section 4 of the Act on Prohibition against Differential Treatment in the Labour Market etc. contains an absolute prohibition on the registration of personal data on the racial or ethnic origin and religion or belief of a job applicant or an employee. This is due to concern about the possible misuse of such information. It should be noted however that statistical information on racial or ethnic origin and religion or belief is one of the many and more effective means to prove indirect discrimination, though it is acknowledged that registration of such information is not a prerequisite to prove indirect discrimination. With regard to the general question on data collection for the purposes of ethnic monitoring, according to Section 7 of the Act on Treatment of Information regarding Individuals it is allowed to register the racial or ethnic origin of a person with that person's consent.¹² The Act on Prohibition against Differential Treatment in the Labour Market etc, however, is a special act dealing with the labour market and it therefore overrules the more general Act on Treatment of Information regarding Individuals.

With regard to racist or religiously discriminatory expressions and discrimination in access to public services and places only direct discrimination is prohibited. The law in these areas consists exclusively of penal law.¹³ Intention therefore has to be proven for the punishment of a discriminator.

With regard to the whole public sector, the unwritten *principle of equality in administrative law* prohibits direct discrimination. There is, however, no independent principle prohibiting indirect racial or religious discrimination.

Compatibility with the Directives should therefore be reviewed.

Direct and indirect discrimination on account of gender in relation to employment etc. is prohibited according to Section 1(1) of the Act on Equal Treatment of Men and Women¹⁴. The Act on Equality for Women and Men aims at counteracting direct and indirect discrimination on account of gender according to Section 1¹⁵. According to Section 2, subsection 1 of the Act, women and men thus have to be treated equally within the area of public administration as well as within commercial and general undertakings. In relation to gender discrimination, a definition of indirect discrimination and the principle of shared burden of proof have been introduced in the Equal Treatment Act, the Equal Pay Act, the

¹¹ Utrykt afgørelse fra Østre Landsret nr. B-0877-00 af 5. April 2001. Decision by the Eastern High Court of April 5, 2001.

¹² Act No. 429 (2000) (*Lov nr. 429 af 31. maj 2000 om behandling af personoplysninger*)

¹³ Section 266b of the Criminal Code, (*Straffelovens § 266b*), Act on Prohibition against Differential Treatment on Grounds of Race etc. (*Lov om forbud mod forskelsbehandling på grund af race m.v.*)

¹⁴ Act No. 908 (2000) (*Lovbekendtgørelse nr. 908 af 27. September 2000 af lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselsorlov mv.*)

¹⁵ Act No. 388 (2000) (*Lov nr. 388 af 30. Maj 2000 om ligestilling af kvinder og mænd*)

Childminding Act, the Gender Equality Act and the Act of Occupational Pension Schemes¹⁶.

Article 2.3

Is unlawful harassment an identifiable concept in national law? Is there a definition of harassment in the national law that corresponds to that in the Directive? Is it necessary to introduce such a definition into national legislation?

Are there comparable definitions in national law in relation to gender discrimination?

There is no direct prohibition of harassment on account of race, ethnic origin or religion in Danish legislation, though Section 2 of the Act on Prohibition of Differential Treatment in the Labour Market etc. *inter alia* prohibits the employer from discriminating in regard to 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, ethnic origin or religion. There is no case law on the issue. Harassment may also be covered by the provisions on harassment (section 265 of the Criminal Code), race discrimination (section 266b) or libel (section 267).

Compatibility with the directive should be reviewed.

Section 4 of the Act on Equal Treatment of Men and Women obliges the employer to treat men and women equally with regard to working conditions. This section prohibits sexual harassment in the labour market and in a number of court cases compensation has been granted. The Act on Equality for Women and Men aims at counteracting sexual harassment within the area of public administration as well as within commercial and general undertakings. According to Section 2, subsection 3 of this Act, compensation may be granted for sexual harassment. In the evaluation of whether to award such damages, it must be considered, whether a state of dependence has existed between the one exposed to the harassment and the one committing the harassment.

Article 2.4

Is it unlawful under national law to give instruction to discriminate on the grounds of racial or ethnic origin or religion and belief? Is it deemed to be discrimination? Is there a need to introduce a similar principle in national law?

Section 266b of the Criminal Code¹⁷:

“(1) Any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, colour, national

¹⁶Act No 440 (June 7, 2001).

¹⁷Act No. 886 (1992) was amended in 1995 by a subsection 2 (Act No. 309 (1995)) (*Lovbekendtgørelse nr. 886 af 30. oktober 1992, som ændret ved Lov nr. 309 af 17. maj 1995*)

or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years.”

(2) When handing down the punishment, it is to be considered as an aggravating circumstance that the statement is in the nature of propaganda.”

Incitement or pressure to racial discriminatory speech is criminalised according to either subsection 2 on propaganda or according to the provisions on assistance or attempt to discrimination 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. When inserting subsection 2, the prosecution was also urged to make charges without awaiting a complaint.

There seems to be only one court case on Section 266b, subsection 2. The case 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 court¹⁸, which was upheld by the High Court and the Supreme Court¹⁹.

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 assistance or attempt to discrimination 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.

Compatibility with the directive should be reviewed.

Article 3.1²⁰

Does the definition of ‘racial and ethnic discrimination’ and ‘discrimination on the grounds of religion and belief’ apply to all the fields of application listed in Article 3, both in the private and the public sectors?

- a) Discrimination in access to employment, to self-employment, occupation and professional activity is prohibited according to Section 2 of the Act on Prohibition against Differential Treatment in the Labour Market etc.

¹⁸Utrykt afgørelse fra Københavns Byret nr. 851-98 af 23. marts 1998. Decision by the Court of Copenhagen from March 23. 1998.

¹⁹UFR 2000. 2234 H. Danish Law Weekly 2000, page 2234.

²⁰Article 3.1 of the Employment Equality Directive does not include the fields e) social protection, including social security and health care f) social advantages g) education h) access to goods and services, including housing, so the prohibition on religious discrimination of the Directive does not apply to these fields.

Discrimination in the exercise of a professional activity whether salaried or self-employed is prohibited according to Section 3, subsection 3 of the Act on Prohibition against Differential Treatment in the Labour Market etc. This provision states that the prohibition of differential treatment applies to anybody laying down rules or making decisions on the access to participate in independent business or trade.

- b) Discrimination in vocational guidance and training is generally prohibited according to Act on Prohibition against Differential Treatment on Grounds of Race etc. and in relation to public guidance and training it is furthermore prohibited according to the Principle of Equality in Administrative Law.
- c) Discrimination in employment and working conditions, including dismissals and pay is prohibited according to Section 2 of the Act on Prohibition against Differential Treatment in the Labour Market etc.
- d) Discrimination in membership of and involvement in an organisation of workers or employers. There is no legal provision prohibiting organisations of workers or employers to discriminate on account of race, ethnic origin or religion when they admit members. Neither is there any legislation against discrimination with regard to rights and duties of members of such organisations.

The right to association in Denmark is primarily developed through case law. According to case law employees have a positive legal claim of being admitted to a relevant association, organisation or union since membership generally is of importance for the employment. This does not exclude the organisation from making various requirements for membership, e.g. educational requirements. However, any requirement always has to be objective. A requirement relating to race, ethnic origin or religion is undoubtedly against this legal principle developed through case law.

With regard to rights and duties of the members there is a similar legal principle stating that such organisations must treat members in an equal and objective way. According to this legal principle it would not be legal for a union to, for example, establish A and B membership for respectively “Danes” and “foreigners”.

Compatibility with the directive should, however, be reviewed.

e)²¹ Discrimination in social protection, including social security and healthcare; and f) social advantages is generally prohibited according to Act on Prohibition against Differential Treatment on Grounds of Race etc. and the Principle of Equality in Administrative Law.

²¹The text regarding 3.1 e) to f) does not apply to religion, since Directive 2000/78/EC does not cover these fields of application

Furthermore, the two Danish Acts on Health Insurance and Hospital Services states that everybody with an address in Denmark has a right to receive medical treatment²².

g) Discrimination in education is generally prohibited according to Act on Prohibition against Differential Treatment on Grounds of Race etc. and the Principle of Equality in Administrative Law.

h) Discrimination in access to goods and services, including housing is generally prohibited according to Act on Prohibition against Differential Treatment on Grounds of Race etc.

Article 3.2

To what extent, if any, does national legislation go beyond the Directive in prohibiting discrimination on the ground of nationality?

Everybody living in Denmark is protected against racial and religious discrimination according to existing law. Furthermore, Danish law has generally rested on a basic assumption of equality in law between everybody living in Denmark with a permanent residence permit. This assumption includes the equal treatment of Danish citizens and foreign citizens with permanent residence permits. The right to work, the right to receive social benefits, the right to housing etc. have, as a main rule, been the same for aliens and for Danes.

This constitutes a legal situation that goes beyond Article 3.2 of the Directives.

Article 4

Do exemptions relating to genuine and determining occupational requirements exist at national level? Is it necessary to restrict any exemptions to those defined in Article 4?

Section 6, subsections 1 and 2 of the Act on prohibition against differential treatment in the Labour Market contains two exceptions to the prohibition of discrimination though the Act must be applied in accordance with the principle of proportionality.

According to the exemptions in Section 6, subsection 1, the Act does not apply to employers whose establishments have as an aim the promoting of a certain political or religious point of view like political parties and churches. The only restriction is that the exception may not be inconsistent with EU law.

Article 4 of the Racial Equality Directive requires that the exemption has a legitimate purpose and that it is proportional. Article 4.2 of the Employment Equality Directive with regard to churches and other public or private organisations requires that "... a person's religion or belief constitute a genuine, legitimate and justified occupational requirement,

²²Act No. 509 (1998), section 1. (Lovbekendtgørelse nr. 509 af 1. juli 1998 af lov om offentlig sygesikring § 1.) Lovbekendtgørelse nr. 687 af 16. august 1995 af lov om sygehusvæsenet (sygehusloven), § 5. Act No. 687, section 5.

having regard to the organisation's ethos..." ... and that the difference of treatment does not justify discrimination on another ground.

Compatibility with the directives should be reviewed.

Private employers may take special measures for ethnic minorities through Section 6, subsection 2. According to this provision it is possible to be exempt from the anti-discrimination rules if it is of decisive importance for the performance of the work that the employees have, for instance, a particular ethnic origin. It is a condition in such cases that 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. If a private employer, however, needs an employee with a specific ethnic or religious background for the particular job in question, the employer has to apply for the granting of an exemption by the relevant ministry. To set out in a job advertisement that ethnic or other minorities will be preferred in competition with equally qualified ethnic Danes thus requires the granting of an exemption by the Ministry of Labour.

Article 5²³

Are there any specific measures that aim to ensure or promote full equality or to compensate for disadvantages linked with racial or ethnic origin and religion or belief? Is the government considering adopting such measures?

There is no general provision for special or positive measures in Danish law. Two narrow exemptions are found in the Act on Prohibition against 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 was dealt with in the above part on Article 4 allowing employers to be exempt from the anti-discrimination rules in relation to particular jobs.

The second exemption in Section 9, subsection 2 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. Section 9.2 only applies to public initiatives by virtue of law or public measures with a legal basis and cannot be used by public employers as such. Thus, public and private employers have the same legal conditions.

This right to take special measures therefore 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

²³Article 7 in the Employment Equality Directive.

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 “ice-breaker scheme” is a special measure according to section 9, subsection 2 of the Act on prohibition against Differential Treatment in the Labour Market etc. It was introduced on 1st April 1998 as a follow-up to the previous icebreaker scheme. Under this scheme financial support was granted to enterprises wishing to recruit highly qualified young persons with a different ethnic background than Danish. In 1999, the scheme was extended to cover persons receiving cash benefits. Furthermore, entry into this scheme has been made easier, in that the unemployment requirements have been reduced to two months. The scheme has been guaranteed financing throughout 2001, which means that the total number of icebreaker courses from the introduction of the scheme to the end of 2001 may reach 300.

To support the possibilities of combining work and Danish lessons, the Appropriation Act 2000 introduced funds for grants for job-related Danish lessons to ethnic minorities at government workplaces. From these funds government institutions may apply for grants of DKK 10,000 per employee to cover such expenses related to bilingual employees.

To improve the recruitment basis among ethnic minorities, the Ministry of Finance in August 2000 issued a circular requiring all government job advertisements to include a clause stating that all interested parties, irrespective of age, gender, race, religion or ethnic background, are encouraged to apply for the job in question.

Article 6²⁴

Are there any measures that protect the principle of equal treatment at national level that go beyond the minimum requirements of the Directive?

There seem to be no measures going beyond the Directives.

Article 7.1²⁵

Are legal procedures available for the enforcement of the obligations under the Directive for those who consider themselves wronged?

No special rules apply for the investigation and adjudication of complaints of racial and religious discrimination. No specific or targeted information seems to be available on procedures and remedies for victims of racial and religious discrimination. There are no available conciliation procedures except for the voluntary conciliation used by the private

²⁴Article 8 in the Employment Equality Directive.

²⁵Article 9.1 in the Employment Equality Directive

organisation named Documentation and Advisory Centre on Racial Discrimination as well as the Board for Ethnic Minorities.

Discrimination by the public administration is subject to control of the Danish Parliamentary Ombudsman. An individual may complain to the Ombudsman. The Ombudsman is authorised to publicly criticise the administration of an authority or to criticise specific decisions. The Ombudsman is authorised to make recommendations, but he cannot make any legally binding decisions.²⁶

If an individual finds that an administrative decision violates the *Act on Prohibition against Differential Treatment on Grounds of Race etc.* he or she can institute a declaratory action against the administrative authority concerned claiming that the administrative decision be held invalid. One example that could be mentioned in this respect was the administration of an approval scheme under the housing legislation by a local authority. This practice was declared unlawful by judgement of 22 January 1991 of the Eastern High Court in the Ishøj case. The High Court stated that the housing legislation should be seen in connection with the *Act on Prohibition against Differential Treatment on Grounds of Race etc.*

As regards discrimination committed by private parties, the individual resident who thinks that he or she has been subjected to racial or religious discrimination has several choices which are outlined below. The Consumer Ombudsman may criticise marketing which can be considered as incorrect, misleading, or improper according to section 2 of the Marketing Act.²⁷ This includes marketing by a public establishment. Racist marketing is not directly mentioned in the Act but may be referred to under Section 2. The Consumer Ombudsman is not authorised to make legally binding decisions. However, according to Section 19, subsection 1 the Ombudsman may initiate legal court proceedings against a firm or establishment for breaking the Marketing Act.

Furthermore, the individual may approach the police who then decide whether the case should be brought before the courts. This possibility exists in the following areas of life: dissemination of racist or religiously discriminatory expressions, discrimination with regard to supply of public services, discrimination in the access to establishment and events open to the public and discriminatory job advertisements. The *Act on Prohibition against Differential Treatment on Grounds of Race etc.*, *Section 266b of the Criminal Code and Section 8 of the Act on Prohibition against Differential Treatment in the Labour Market etc.* are all penal law provisions subject to public prosecution. The police may initiate prosecution. Private individuals can only make a complaint concerning a violation with the police, but cannot themselves bring a criminal case before the courts. In these areas, therefore, the individual depends on the action of the police. This means that an individual cannot start civil proceedings against e.g. a discotheque because of the fact that he or she was refused access owing to the colour of his or her skin.

²⁶The Parliamentary Ombudsman Annual Report 1995, pp. 46-56 in the AF case.

²⁷Act No. 699 (2000) (*Lovbekendtgørelse nr. 699 af 17. juli 2000 af lov om markedsføring*)

In case of discrimination 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*.²⁸ See Article 15 on sanctions.

Discrimination on the labour market is prohibited by the *Act on Prohibition against Differential Treatment in the Labour Market etc.* Unlike the above-mentioned legislation, this Act has a character of civil law. An individual can thus bring a civil action before the courts against another private party. Before this Act came into force, the only provision, which could be invoked in case of e.g. unfair dismissal, was Section 26 of the *Acts on Torts*.

Sanctions for racist or religiously discriminatory speech or behaviour by public officials:

If an individual person feels offended on racial or religious grounds by an official, the individual will most likely complain to the Parliamentary Ombudsman. The Ombudsman does not have the power to criticise an individual official but only to raise criticism of the public authority.²⁹ The Ombudsman does not have any instructive or disciplinary authority. He cannot, for example, change a decision, impose penalties or compensation etc.. Disciplinary dismissal may, however, be the outcome of a subsequent civil servant case (tjenestemandssag) if the complaint constitutes a criminal offence or if it otherwise constitutes gross negligence (non-fulfilment).³⁰

For complaints about the police, special rules in the *Administration of Justice Act* apply.³¹ The regional Public Prosecutors deal with complaints about the conduct of the police and they also deal with criminal cases against police personnel. In addition a special police complaints board follows and reaches conclusions on the cases.

Compatibility with the directive should be reviewed.

Article 7.2³²

Is it possible for national associations or other legal entities to engage in legal proceedings for the enforcement of rights under the Directive?

²⁸Erstatningsansvarsloven § 26. Act on Torts section 26.

²⁹Act No. 473 (1996) on the Parliamentary Ombudsman, Section 22 (*Lov nr. 473 af 12 juni 1996 om Folketingets Ombudsmand (Ombudsmandsloven)*, § 22)

³⁰For tjenestemandsansatte følger dette af Tjenestemandsløven § 20, stk. 1. For overenskomstsatte gælder det samme normalt ifølge kollektive overenskomster. For civil servants this follows from section 20(1) of the Act on Civil Servant. For appointed on a group contract basis, the same thing normally follows from collective agreements.

³¹ Chapter 93b, 93c and 93d of the Administration of Justice Act (*Retsplejeloven kapitel 93b, 93c og 93d*)

³²Article 9.2 in the Employment Equality Directive

Organisations cannot directly institute or support legal actions against racial or religious discrimination. There is a requirement of “legal interest” to take legal actions. Only an organisation that has been given the power of attorney from the offended person may start legal proceedings and may be considered as a party to the case. This goes for civil as well as criminal proceedings.

Everybody can complain to the police about racial or religious discrimination in defiance of the different penal provisions. A human rights organisation complaining about e.g. dissemination of racist statements is not, however, to be considered as a party to the case. This means that the organisation is not necessarily allowed to appeal a refusal by the police to start investigations. The superior prosecution authority, the District Public Prosecutor, may consider such appeals or complaints from an organisation. However, there is no obligation on the District Public Prosecutor to do so. According to Section 101 of the *Administration of Justice Act*, a decision by the Public Prosecutor to discontinue investigations can be appealed to the District Public Prosecutor. This access to appeal is only a right for the parties to the case.

As mentioned above, unions also have the possibility to take cases to court on behalf of their members.

Article 7.3³³

What time limits apply to the bringing of an action?

There are no specific rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 8³⁴

Does the principle of the reversal or easing of the burden of proof in cases of racial and religious discrimination exist in national law?

Are there comparable provisions in national law in relation to gender discrimination?

The principal rule for civil court cases is a simple assessment of evidence that means that the initial burden of proof would lie with the complainant. This is also the situation for civil cases on racial or religious discrimination. The person feeling offended has to prove that the other part did something wrong. In cases of indirect discrimination it is often very difficult to prove that indirect discrimination has taken place.

The only exception to the rule of simple assessment of evidence is in case of wage differentiation. According to Section 2, subsection 4 of the Act on Prohibition against

³³Article 9.3 in the Employment Equality Directive

³⁴Article 10 in the Employment Equality Directive

Differential Treatment in the Labour Market etc. in cases of wage differentiation, it is the employer who has to prove that the work in question does not have the same value. Thus it is only in the area of equal salary that a reverse or more precisely a shared burden of proof is the rule.

A similar exemption rule applies for wage differentiation on account of gender.³⁵ Furthermore, in case of dismissal during pregnancy, maternity leave or adoption, it is also the employer who has to prove that the reason given for the dismissal does not, in reality, have anything to do with any of these matters.³⁶

The principle of shared burden of proof have been introduced in the Equal Treatment Act, the Equal Pay Act, the Childminding Act, the Gender Equality Act and the Act of Occupational Pension Schemes (see Act No 440 June 7 2001).

Compatibility with the directives should be reviewed.

Article 9³⁷

Is the Directive's definition of victimisation to be found in national law?

Are there comparable definitions in national law in relation to gender discrimination?

Victimisation on account of race or religion in the workplace as well as in all other areas is 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.*

Compatibility with the directives should be reviewed.

Article 10³⁸

Which steps are necessary to ensure sufficient public awareness of existing laws? What arrangements currently exist to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

³⁵Act No. 909 (2000), Section 6(2) (*Lovbekendtgørelse nr. 909 af 27. September 2000 af lov om lige løn til mænd og kvinder, § 6, stk. 2*)

³⁶Act No. 908 (2000), Section 16(4) (*Lovbekendtgørelse nr. 908 af 27. September 2000 af lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselsorlov mv, § 16, stk. 4*)

³⁷Article 11 in the Employment Equality Directive

³⁸Article 12 in the Employment Equality Directive, which has the following phrase in addition to Article 10 "for example at the workplace"

Does the government need to act to ensure that by means of information and training, and where necessary by effective sanctions, all officials and other representatives of the public authorities at every level abstain from any racially or religiously discriminatory speech or behaviour in the exercise of their functions?

The Board for Ethnic Equality issues a number of publications on subjects related to the fight against racial discrimination and advancement of ethnic equality. The Board also arranges seminars and conferences on relevant issues of ethnic equality.

One of the outcomes of the 1997 European Year against Racism was the creation of a yearly baton conference. The Board for Ethnic Equality now has the overall responsibility of the baton. The baton represents the idea that the work against racial discrimination will only succeed if many individuals, groups, organisations and firms catch a baton and make concrete efforts against discrimination from their own position. Since 1998 large yearly conferences have been held to inspire concrete actions. In 2000, the Danish National Commissioner of Police, for example, received the baton, which involved an obligation to make special efforts to attract young people of an ethnic minority background to the police.

Furthermore, public subsidies are granted to a number of activities aimed at providing information on the situation of ethnic minorities.

Several NGOs like the Documentation and Advisory Centre on Racial Discrimination make a valuable effort to increase the knowledge and public awareness of problems of racial discrimination and of measures to combat racial discrimination.

Some of the social partners have also campaigned against racial discrimination at the workplace through brochures and conferences.

The Ministry of the Interior set aside DKK 6 million for activities in 2000 and 2001 in connection with Denmark's preparations for the UN World Conference on racism, racial discrimination, xenophobia and related intolerance.

The Danish government has undertaken several initiatives with regard to public officials:

The public employment service is not allowed to discriminate and must not meet unreasonable, including discriminatory requirements, from employers. These rules have been laid down in a circular about placement activities in relation to ethnic minorities.³⁹ The circular gives examples of direct and indirect discrimination and it clearly states that the public employment service cannot offer its services to employers who discriminate. This circular forms part of the basic training programme for employees in the public employment service. In the autumn 2000, special education/training measures were introduced in relation to the Public Employment Service staff, with a view to upgrading the qualifications of the employees within the field of integration of refugees and immigrants.

³⁹AF-cirkular No. 6/98 and AK-cirkular No. 5/98 (*Arbejdsmarkedsstyrelsens AF-cirkulære nr. 6/98 og AK-cirkulære nr. 5/98 af 29. oktober 1998*)

During the last couples of years, employees with the police and the Public Prosecutor have increasingly been educated and trained in human rights, cultural sociology (relation between the police and ethnic minorities) and psychology including general psychology, socialisation, subcultures and marginalisation. The ICERD-convention and its individual provisions are included generally in the basic and further training at the Danish Police Academy on international human rights and in connection with lessons on Section 266 b of the Criminal Code.

Moreover, together with the Copenhagen Police and the Documentation and Advisory Centre on Racial Discrimination, among others, the Police Academy has been participating in an EU-subsidised project: "Police Training for Multicultural Society", the object of which is to develop training methods and networks for the promotion of understanding and co-operation between the police and ethnic minorities, and also to prepare inter-communication training programmes for all employees.

Primary education:

The Danish education system builds on a basis of equality. In the preamble of the Folk school Act which is the basis of all education and training in the folk school, it says in section 1, subsection 3: "The folk school has to make the pupils familiar with Danish culture and contribute to their understanding of other cultures and the interplay between nature and man. The school prepares the pupils for joint influence, joint responsibility, rights and duties in a society with freedom and democracy." According to Section 5, the regulation requires that within the subject of social studies, the class deal with issues of culture including relations with ethnic groups, racism and human rights.

Article 11⁴⁰

Are there any measures to promote the social dialogue on the issues of the Directive at national level?

Much of the Danish labour market, in both the public and private sector, is governed by collective agreements negotiated between employers and unions. Various unions have, at the national level, recognised the importance of combating discrimination and promoting equal opportunity and diversity within the workplace and developed action plans towards this end.

In the state sector an agreement on equal treatment has been concluded between employers and employees. It is an additional agreement of 30th June 1997 to the existing co-operation agreement. Under the provisions of this agreement, management and employee representatives on the co-operation committees must work together to ensure that no discrimination takes place at the individual workplace and at the same time ensure an open dialogue, information and guidance on prevailing rules in this field.

⁴⁰Article 13 in the Employment Equality Directive

At the municipal level such agreements are still relatively rare, but the municipality of Copenhagen is in the process of formulating values of the municipality: to create a good working place, equal dignity and basic behaviour excluding discrimination.

Some social partners in the private labour market have also made agreements on equal treatment and non-discrimination.

Article 12⁴¹

Are there any measures to promote the dialogue with non-governmental organisations at national level?

The entry into force of the Integration Act on 1st January 1999 made it possible to establish municipal integration councils, if more than 50 persons jointly so request. The integration councils may give advisory opinions to the general integration efforts of the local authority and in the introduction programmes offered by the local authority pursuant to the Integration Act. The opinions are made public. Members of the integration council are appointed by the local authority from amongst persons with ties to the labour market parties and boards of school governors. etc. In January 2001, 34 integration councils have so far been established.

The Council of Ethnic Minorities consists of members associated with the local integration work. The Council advises the Minister of the Interior in issues concerning refugees and immigrants.

The Danish government has previously provided financial support to non-governmental organisations working within the area of anti-discrimination and integration policy. This support includes inter alia financial support to ethnic minority organisations, but also within the area of cultural policy financial support is provided to organisations in order to promote dialogue.

Article 13⁴²

Is there a specialised body to promote equal treatment, irrespective of race or ethnic origin at national level? If so, what are its powers and duties? Is such a body effective?

If not, would the government need to act in order to give this body such specific powers? What would be the procedure?

As of now, there is no appropriate body in Denmark to investigate and conclude on individual complaints of racial discrimination. The Board for Ethnic Equality was set up in 1993. In the summer of 1997, the Danish parliament passed a new Act on the Board for

⁴¹Article 14 in the Employment Equality Directive

⁴²There is **no** article in the Employment Equality Directive corresponding with Article 13 of the Racial Equality Directive on specialised bodies

Ethnic Equality strengthening the position of the Board.⁴³ The effect of the amendment was that the Board now has a statutory right to make general statements on differential treatment because of race and ethnic origin. The Board also has a greater and more independent secretariat. The Board, however, cannot deal with individual cases of complaint. It may only issue recommendations and give opinions on general issues of racial discrimination.

The Racial Equality Directive requires that one of the competencies of the body designated to promote equal treatment is to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination.

Compatibility with the directive should therefore be reviewed.

Article 14⁴⁴

Is action needed to ensure that national law guaranteeing equal treatment between individuals, irrespective of racial or ethnic origin and religion or belief, takes priority over other laws, regulations or administrative provisions?

Do national legislative or administrative procedures provide for declaring null and void those provisions in agreements, contracts or rules that relate to professional activity, workers and employers that are contrary to the principle of equal treatment?

Provisions in collective agreements between workers and employers that are contrary to the principle of equal treatment in the labour market would be in contradiction to the *Act on Prohibition of Differential Treatment in the Labour Market etc.* Section 1(2) of this Act provides that the Act can only be replaced by a collective agreement if the collective agreement contains at least a similar protection against differential treatment.

Individual discriminatory contracts violate the general prohibition of discrimination in the labour market under Section 2 of the *Act on Prohibition of Differential Treatment in the Labour Market etc.*

To ensure compatibility with the directive legislation, regulations and administrative provisions should be reviewed.

Article 15⁴⁵

Is there a need for further effective and proportionate sanctions, penalties and remedies?

Do equivalent provisions already exist on the national level in other areas?

⁴³Act No. 408 (1997) (*Lov nr. 408 (1997) om Nævnet for Etnisk Ligestilling*)

⁴⁴Article 16 in the Employment Equality Directive

⁴⁵Article 17 in the Employment Equality Directive

There is a general need for more effective, proportional and dissuasive penalties for violations of the prohibition of racial and religious discrimination. In court cases generally, a racist motive is not regarded as an aggravating factor.

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.⁴⁶

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 at 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.

If a charge is brought for violation of the *Act on Prohibition against Differential Treatment on Grounds of Race etc.*, *Section 266b of the Criminal Code* and *Section 8 of the Act on Prohibition against Differential Treatment in the Labour Market etc.*, the injured party may, if relevant, claim compensation for pecuniary and non-pecuniary damage during the trial of the criminal case. Such a claim may be considered by the court concurrently with the criminal case. However, it is possible for the court to separate the claim for compensation for an individual hearing in a civil action. If the criminal case is closed before the trial, the injured party still has the possibility of bringing a civil action claiming compensation.

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*.⁴⁷

Compatibility with the directive should be reviewed.

⁴⁶1) 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.

⁴⁷Act on Torts section 26 (*Erstatningsansvarsloven* § 26)

Article 16⁴⁸

What action (if any) has already been taken in order to comply with the Directive?

A Committee for Equality has been established to propose how to implement the Directives. The terms of reference have been drawn up by the Ministry of the Interior in a letter of April 9, 2001.

The Committee will be consisting of representatives from the Ministry of Labour, Ministry of Housing, Ministry of Trade, Ministry of the Interior, Ministry of Justice, Ministry of Social Affairs, Ministry of Education, the Nation-wide organisation for Ethnic Minorities, the Board for Ethnic Equality, the Council for Ethnic Minorities, the Danish Centre for Human Rights, the General Council of the Bar, the National Association of Local Authorities in Denmark and the Danish Trades Union Congress as well as the Danish Employers' Confederation. The Committee has until 1st August 2002 to complete its work.

⁴⁸Article 18 in the Employment Equality Directive