

INTERNATIONAL MIGRATION
PAPERS

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**Protecting migrants and ethnic minorities
from discrimination in employment:
the Danish experience**

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Introduction

Prior to the 1960s, the Danish labour market was agriculture-dominated, and no widespread demand for foreign manpower existed. From the mid-1960s onwards, however, as the rapidly expanding industrial sector ran short of manpower, migrants were warmly welcomed in Denmark, primarily as ‘guest-workers’, often taking up employment in areas that the native population did not find attractive because of low pay or bad working conditions. As in other western European countries, however, with the sudden rise in domestic unemployment due to the oil crisis of the early seventies, the previously welcoming policy towards migrant workers changed. In November 1973, the Danish Government introduced a general ban on immigration, which has since then remained in force, with few exceptions.

The first exception was Nordic nationals, who were permitted to enter, reside and work in Denmark without any prior permission. With Denmark’s entry into the EEC (now the European Union) in 1972, nationals of the other European member states were also rendered capable of freely seeking employment in Denmark. In contrast, nationals from so-called ‘third-countries’ (that is, neither Nordic- nor European Union nationals) were rendered incapable of ever obtaining a permanent residence permit in order to work in Denmark, and even the possibility of obtaining a temporary permit was limited to the so-called ‘rule of specialists’.¹

Predictably, however, most migrants who were welcomed in the sixties chose not to give up their residence privileges as a result of the rising unemployment, mindful of the fact that the general ban on immigration would have prevented them from re-entering Denmark at a future date. Furthermore, in accordance with the rules of family reunification contained in the Danish Aliens Act, a number of these migrants reunified their family in Denmark. At the same time, refugees from the Iran-Iraq War, as well as from other conflict situations began arriving in the country as asylum-seekers. Consequently, the numbers of third-country nationals in Denmark doubled from about 50,000 to more than 100,000 during the 1980s.

Table 1. Origin and population of ethnic minority groups (nationals and non-nationals), 1989²

Country of origin	Numbers	% of total population
Turkey	26,710	0.52
Former Yugoslavia	9,806	0.19
Iran	7,715	0.15
Pakistan	4,800	0.09
Stateless Palestinians	4,800	0.09
Sri Lanka	4,338	0.08
USA	4,101	0.08
Vietnam	3,377	0.07
Other ‘third-country’ Nationals	39,695	0.77
TOTAL	108,550	2.02

¹This rule determines that only third-country nationals who can provide expertise that no member of the Danish workforce can provide in a similar way, are eligible to apply for temporary work and residence permits.

²Table taken from Forbes and Mead 1992, p.30.

Over the same period, from 1970 to 1990, the numbers of EU-nationals residing in Denmark slightly increased from about 24,000 to approximately 27,000. Today, it is estimated that the total number of foreign citizens (Nordic, EU and third country nationals) residing permanently in Denmark is approaching 237,000, comprising five percent of the total Danish population.¹

Mounting and reliable evidence accumulated over recent years has shown that the social and economic situation of these migrants and ethnic minorities in Denmark is, in general, significantly worse than that of the Danish majority population. For one of the most significant indicators of this discrepancy, it suffices to look to the labour market.

Table 2. Unemployment rates by nationality in 1996²

Nationality	Unemployed	Percentage
Pakistani	1,083	45.8
Turkish	6,572	47.6
Total foreign nationals	22,816	28.4
Danish	256,038	9.1

This disproportional rate of unemployment among migrants and ethnic minorities³ has been attributed to several causes, including ‘objective’ barriers such as the lack of recognition of foreign qualifications, migrants having insufficient command of the host language, or lack of appropriate education, with emphasis on administrative failings and migrants’ inadequacies respectively. The role of the societal majority in perpetuating discrimination, as defined in the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), however, has slowly been identified as playing a major role in determining migrants’ and ethnic minorities’ positions in the Danish labour market. In the course of the first phase of this ILO project, it was found, through a series of rigorous *in situ* tests, that migrants and ethnic minorities were the victims of discrimination in as many as one in three of their attempts to access the labour market.⁴

In this light, it was welcomed that on 1 July 1996, the first Danish legislation specifically aimed at countering racial discrimination in the labour market entered into force. The Act on the Prohibition of Discrimination on the Labour Market explicitly prohibited direct and indirect discrimination on grounds of race, colour, religion, political opinion, sexual orientation, national, social or ethnic origin.

Given that Denmark did not have any legislation prohibiting discrimination in the labour market prior to the introduction of the new Act in 1996, it is not surprising that, as yet, no jurisprudence has emerged in relation to discrimination in employment. The first court case is expected to go on

¹Source: Danmarks Statistik (Danish Statistical Information) 1995, p.12.

²Source: Danmarks Statistik. Arbejdsmarked 1996, p. 27, table 7, quoted in Wrench (1997), p.5.

³As Forbes and Mead point out, a number of conclusions can be drawn from these figures, particularly in relation to the discrepancies between visible and non-visible ethnic minorities. ‘The (white) Yugoslavians are disadvantaged with respect to Danes, but enjoy better prospects than any other minority. Colour (and sex) are on this evidence important indicators of success in gaining employment’. Forbes and Mead, p. 31.

⁴Hjarno and Jensen 1997.

trial in August 1998. As a result of the novelty of Danish anti-discrimination legislation, therefore, it is not yet possible to accurately assess the effects of the new law. However, it is possible to undertake an objective analysis of the scope and theoretical applicability of the law, which shall sculpt the primary focus of this report.

This report endeavours to describe the evolution of, and analyse the provisions of the Danish legal framework, through focusing upon a number of questions raised in connection with the introduction of the new Act, as well as the introduction of guidelines for the handling of racial discrimination in relation to the work of public sector Employment Services. A number of empirical examples will be given to illustrate some of the potential problems which ethnic minorities and migrant workers may face when attempting to avail themselves of protection from discrimination or to obtain effective and appropriate remedies when discrimination occurs. It should be borne in mind throughout this report that the new Danish regulations are closely inspired by the various international obligations laid down by international treaties ratified by Denmark, including the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this regard, one aspect of the report shall be the discrepancies between international and Danish law, and it shall be questioned to what extent contemporary Danish legislation fulfils not only the letter, but also the spirit of international anti-discrimination law. The report ends with a series of recommendations gleaned from the foregoing analysis, which it is hoped will provide Danish policy makers and legislators with inspiration when the time comes to reviewing the legal situation in Denmark.

A note on terminology

Given the international scope of the ILO project within which this report is but one component part, it is essential at an early stage to clarify what is meant by central terms used throughout the text. In the course of the ILO project, two terms are commonly used to define the target group which legislation aims to protect, namely ‘migrants’ and ‘ethnic minorities’. The former is defined as individuals working in a country of which he or she is not a national. It is a term broad enough to capture both regular and irregular foreign workers. On the other hand, the term ‘ethnic minority’ in the context of the ILO project, are individuals who, while having his or her origins in another country, have become citizens of the host country either by birth or naturalization. In this sense, then, *nationality* is the crucial distinction between these two groups. A migrant does not hold the nationality of the host state, while an ethnic minority does. The first phase of the ILO research project showed, however, that both migrants and ethnic minorities faced similar levels of discrimination, indicating that it is the perception of, rather than the factual nature of nationality which seems to determine how an individual is treated.

In the Danish context, these terms are used somewhat differently. Of primary importance is the fact that the terms ‘migrant’ and ‘ethnic minority’ are used in Denmark interchangeably, to refer to any individual who is from a *visibly different* ethnic or national group. This is in part due to the new desire to be seen as ‘politically correct’ and to avoid such terms as ‘racial minority’ or ‘guest worker’, which are now considered less acceptable in Danish discourse. The result is, however, that the terms ‘migrant’ and ‘ethnic minority’ as well as ‘refugee’, ‘foreigner’ and even ‘asylum seeker’ are used loosely in both law and in common parlance. Furthermore, the distinction between discrimination on various different grounds such as ‘race’, ethnic or national origin, colour and nationality is rarely clarified in the Danish context, and much of the legal discourse refers to discrimination based on the grounds of ‘race etc.’.

A distinction which is made, however, is between first and second generation migrants. In 1991 a Danish Committee of Experts proposed to define a migrant as 'a person with domicile in Denmark and who was born outside the country, and did not have Danish citizenship by birth'. A second-generation migrant is one who, regardless of their own place of birth or nationality, has parents who fit this definition of migrant.

One group which is distinguished from others in this regard is the German 'national minority', which has, since 1 April 1995, been granted specific cultural rights within the Danish society. This decision by the Danish Parliament granted the German minority the right to speak its own language, start its own schools and newspapers, participate in local Danish elections, and to maintain religious and cultural connections with Germany. These steps were unique in that they apply only to the German minority, and were undertaken in an attempt to guarantee reciprocal treatment for Danes living in Germany. For these reasons, the treatment of this particular group is largely outside the parameters of the subject of this report.

1. The legal framework prior to July 1996

The contemporary framework of Danish anti-discrimination legislation can be presented on various levels, from the obligations Denmark has taken at the international level, to domestic regulations in the area of racial discrimination.

1.1. International legal obligations

Denmark has ratified, without reservation, a number of conventions in the field of discrimination, including the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the International Convention on Education, 1960 (ICE), the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD).

In this latter regard, Denmark is one of only a few states to have made the voluntary declaration under Article 14 of the ICERD, recognising the Committee on the Elimination of Racial Discrimination (CERD) as competent to receive individual complaints in cases where provisions of that instrument are alleged to have been violated, and when all domestic remedies have been exhausted. In terms of alleged violations of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), it is possible for employers' and workers' organisations, under Article 24 of the ILO Constitution, to make representations to the Governing Body of the ILO. Member States also have the right, under Article 26 of the ILO Constitution, to file complaints about violation of the provisions of ILO instruments, on the condition that both States have ratified the instrument in question.

At the same time, it should be noted that Denmark has not ratified the ILO Migration for Employment (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the European Convention on the Legal Status of Migrant Workers 1977, nor the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. These instruments have the protection of the rights of migrant workers as their common goal, an obligation which Denmark has never subscribed to at the international level.

It should be pointed out that if migrants are subject to discrimination on grounds of their race, colour, national or ethnic origin, sex, political opinion, religion, national extraction or social origin, they are protected by ILO Convention No. 111 and the ICERD. However, none of the instruments which Denmark has ratified protect non-national workers from discrimination in the

labour market on the grounds of their *nationality*,¹ that is the very characteristic which by definition distinguishes them from the societal majority.

1.2. National Constitutional Law

It is stipulated in the Danish Constitutional Act of 1953, Section 70, that no-one can be deprived of any civil or political rights on the grounds of faith or origin. Furthermore, it is stated in section 71, that no Danish citizen can be deprived of personal liberty, on grounds of political opinion, faith or origin. Section 70 covers everyone within Danish jurisdiction (*'no-one can be deprived'*) and provides protection of the personal liberty of non-Danish citizens on the grounds of faith and origin. However, section 71 only applies to Danish nationals, thus eliminating the possibility that non-nationals can rely upon Constitutional protection in relation to their political opinion.² It is obvious that 'ethnic origin', 'nationality', 'race', 'colour' or other related grounds are not amongst the grounds mentioned in the Constitution and the explicit mention of, in sections 70 and 71, of the grounds 'faith and origin' should be seen in the light of the aftermath of the Second World War.

Apart from these provisions, there are no specific anti-discrimination provisions in the Danish Constitution related to race. A proposed Constitutional amendment made in 1953 demanded a more specific provision to secure the rights and freedom of individuals without discrimination on the bases of race, colour, sex, language, political or other beliefs, national or social origin, financial circumstances, birth or other social position. However, this proposition was rejected by a majority of the members in the Constitutional Amendment Commission. Consequently, the Danish Constitution still does not include a specific race- or sex-discrimination provision.³

One particularity of the Danish legal system worth mentioning at this stage is that the Constitution specifies that the Government has the authority to make international treaties on behalf of the country but in Constitutional practice, a dualistic-principle is followed. In other words, ratified treaties do not automatically form part of Danish legislation, but must first pass through the Danish Parliament. A treaty is ratified by the Government and then made part of domestic law through a special legislative act by the Danish Parliament (Folketinget). The Parliament can choose either to directly incorporate the original text of the treaty into the domestic law or, alternatively, the Parliament can simply state that Danish legislation already fulfils the various obligations of the treaty (the so-called principle of 'conformity of standards'). Thirdly, the Parliament can choose to rewrite parts of the Danish legal texts, if existing Danish legislation is deemed to not meet the

¹The ICERD states in article 1(2) that 'This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens'. The ILO Discrimination (Employment and Occupation) Convention outlaws discrimination on the grounds of 'race, colour, sex, religion, political opinion, national extraction or social origin'. Although nationality was suggested to be included among these grounds in the *travaux préparatoires* to the Convention, this suggestion was rejected. Indeed, the Preamble to the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), states that 'recalling the definition of the term 'discrimination' in the Discrimination (Employment and Occupation) Convention, 1958, does not mandatorily include distinctions on the basis of nationality'.

²Zahle 1989, p. 160.

³Report from the Commission on amendment of the Danish Constitution 1953, pp. 24, 39-40, 77.

requirements of the treaty. This Constitutional practice plays a pivotal role in determining how Denmark incorporates the provisions of international treaties on non-discrimination.

1.3. Criminal legislation against unequal treatment

The first Danish Penal Code provision prohibiting racist speech dates back to 1939, when Section 266(b) of the Penal Code was introduced to protect society from anti-Semitic statements. In 1971 this Penal Code provision was amended and broadened to fulfil the requirements of the ICERD article 4, that all forms of speech and propaganda promoting *racial* hatred or incitement to *racial* discrimination be condemned as criminal acts.

When Denmark came to consider ratification of ICERD, a Commission of Experts was established by the Ministry of Justice. According to the dualistic principle described above, a report from this Expert Commission,⁴ stated that no conformity of standards existed, given that Danish legislation did not provide the necessary protection against racial discrimination as specified by ICERD and the CCPR. Amongst other problems, the Expert Commission pointed out that section 266(b) of the Penal Code (from 1939) only covered Danish citizens, while the ICERD required that law should protect against ‘all acts of violence or incitement to such acts against *any race or group of persons of another colour or ethnic origin*’.² Consequently, the Expert Commission suggested implementing the general principle of non-discrimination, as contained in the first paragraph of article 2 of CCPR and the ICERD, *inter alia*, by amending section 266(b) of the Danish Penal Code and by proposing a special penal bill on the prohibition against discrimination on the grounds of race in the provision of services.

The Danish Parliament approved the suggestions of the Expert Commission not to incorporate the original text of the treaty directly, and rather to rewrite parts of the text into Danish legislation. The Parliament consequently amended the wording of Penal Code section 266(b), so that:

any person who, publicly or with the intent of propagating them to a wider circle, makes statements or any other communication by which a group of persons is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, or creed, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years.³

Subsequently, the Racial Discrimination Act was passed by Parliament, stating, *inter alia*, that: a person commits a punishable offence if, while performing occupational or non-profit activities, he refuses to serve a person on the same conditions as others, due to that persons race, colour, national or ethnic origin, or creed.

The maximum penalty for violation of the provisions of this Act was specified as being a fine, detention or imprisonment for up to six months. The Act also stipulates that a person is guilty of an offence if he or she refuses to admit a person on the same conditions as others to a place, performance, exhibition, gathering, or similar event, which is open to the public.⁴

¹Commission of Experts report, No. 553/1969.

²See ICERD article 4(a), emphasis added.

³In 1987 the provision was amended in order to provide protection on the ground of sexual orientation. Finally, the provision was amended in 1995 in order to make it a special offence to disseminate racist propaganda. (L 46 passed by Parliament on May 9, 1995).

⁴CCPR/C/64/Add. 11, p. 4.

It should be noted that this Act covers refused entry into restaurants and the provision of other services, for example, in the housing market and in the area of education, but does not extend to discrimination in the labour market. At the time it was debated whether it would be necessary to introduce specific legislation to prohibit racial discrimination in the labour market. It was stated that the debate must take into consideration the particular Danish tradition that the social partners in the labour market usually handle such questions through collective bargaining and by reaching collective agreements. At the time (the late sixties), the social partners stated that no racial discrimination existed in the Danish labour market, and on this reasoning, the Commission of Experts did not see the need to suggest any legislation prohibiting racial discrimination in the workplace.¹ The Danish Parliament followed the opinion of the Commission of Experts, and consequently, no legislation prohibiting racial discrimination in the labour market was introduced.²

Despite the fact that the Racial Discrimination Act and amended section 266(b) of the Penal Code have been in force for more than 25 years, related case law is still very sparse. Two major barriers seem to have contributed to this lack of jurisprudence. The first is that many cases of discrimination fail to meet the stringent standard of proof required by penal law in Denmark for a number of reasons, the most significant being that individual victims of discrimination rarely have access to the same quantity and quality of evidence as the defendant. The second problem is that the volition of Public Prosecutors in many cases appears to be somewhat constrained. By way of example, we can look to the fact that since the provisions took force, roughly only one in ten complaints to the police relating to section 266(b) actually ended up in court.³ The exact numbers of complaints and court cases related to the Racial Discrimination Act are unknown, as it is not the practice of the police and Public Prosecutors to keep such records. This lack of follow-up to complaints is a significant problem, given that individuals cannot, in relation to violations of the Penal Code, initiate court proceedings themselves—the decision to follow through a complaint of discrimination rests first with the Danish police, and subsequently with the Public Prosecutors. Coupled with the low number of complaints actually followed through, it is understandable that migrants and ethnic minorities may encounter psychological barriers to approaching the police when they are faced with discrimination.

The only other criminal law which existed concerning the issue of protection against racial discrimination was the legislation on public or private record-keeping. In this area, Danish legislation prohibits any record of a persons' race, religion, colour or sexual orientation, according to Act no. 654 on Public Registration from 20 September 1991, and Act no. 622 on Private Registration from October 2, 1987.⁴ This is a further hindrance to full implementation of anti-discrimination provisions, given that in terms of monitoring the distribution of minority groups throughout the labour force, registration of details on grounds such as sex, nationality and ethnic origin can be vital.

1.4. Civil legislation against unequal treatment

¹Commission of Experts report, No. 553/1969, p. 31.

²Hansen 1993, p. 65-66.

³See Justesen and Hansen, 1997, p. 20.

⁴These Acts have now been combined in Act No. 1093, June 1, 1994.

Prior to 1996, no civil provisions prohibiting discrimination in the labour market were enacted by the Danish parliament. Given this, the chances of success in filing a civil law suit related to discrimination in the labour market were extremely limited. Only one provision, article 26 on the Act on Torts, could be invoked in a case of unfair dismissal.

The sole example of such a case is *C.P. vs. Denmark*. In this case the complainant alleged he had been subjected to discriminatory harassment by pupils at the school where he worked as a caretaker. Irrespective of the complainant's status as a shop steward, the school decided to dismiss him. A Danish court subsequently found that the existing Danish Act of Torts had not been violated, and the complainant could not get any compensation for the dismissal on racial grounds.

The case was subsequently reported by the complainant to the CERD under the declaration Denmark had made under article 14 of the Convention. The CERD, however, rejected the case on formal grounds, as the judgement had not been appealed in Denmark within the specified time frame,¹ that is, that the complainant had failed to exhaust all possible domestic remedies prior to making a representation to CERD. Both the lack of prosecutions under the Act on Torts and the lack of success of this one case can be taken as an illustration of the limited nature of the Danish civil law against labour market discrimination prior to July 1996.

1.5. National labour laws and collective agreements

Although, as we have stated, no specific legislation covering racial discrimination in the labour market existed prior to July 1996, the prominent role of collective bargaining in Danish society in theory meant that some alternative form of protection was available to victims of labour market discrimination.

In Denmark, employers have managerial rights² pursuant to the general agreement between the Danish Employers Confederation (Dansk Arbejdsgiverforening, DA) and the Danish Federation of Trade Unions (LO). The fundamental principle of the 'managerial right' applies without limit to every field, unless there are provisions restricting this right. Restrictions of this kind include the collective agreement's prohibition against arbitrary dismissals—however prohibition against racial discrimination in terms of recruitment and during the period of employment has not explicitly been addressed. Cases of arbitrary dismissals can be invoked in front of Industrial Tribunals, but prior to 1996 there were no specific regulations regarding racial discrimination at the workplace, and no cases dealing with such complaints ever appeared before the tribunal.³

In addition to restrictions by agreement, there are restrictions on the managerial rights provided by statute, such as the Act on Equal Treatment of Men and Women Regarding Employment and Maternity Leave, which forbids employers to discriminate on the ground of sex. To illustrate the applicability of the anti-discrimination legislation in place at this time, it was absolutely legal to discriminate against, for instance, a black woman in connection with recruitment practices, because of her colour, while it would be illegal to discriminate against her because of her sex.

¹Rehof and Hansen 1997; CERD communication 5/1994; *C.P vs. Denmark*.

²The right to make all decisions on how the work is organized, who to hire, and so on.

³Wrench 1996, p 75.

The process of collective bargaining did address the issue of equality of treatment in relation to pay and other benefits during the period of employment, and it was deemed unacceptable to discriminate against anybody on the basis of race or other protected grounds, in the area of collective agreements. However, while this guaranteed freedom from discrimination in collective bargaining on the grounds of race, the protection did not extend to recruitment, i.e. to *access* to employment, precisely the stage of the employment relationship which the ILO *in situ* tests showed that discrimination was a serious and widespread problem.¹

Outside the field of collective agreements, terms of pay and other benefits during the period of employment were and continue to be specified by individual contracts of employment. Here, private employers could still freely attach importance to a person's race in terms of the content of the individual agreement. It goes without saying, that it is precisely in this area—outside the field of collective agreements—that migrants and ethnic minorities are most likely to be in a vulnerable position, and unable to defend themselves against discrimination.

1.6. National administrative law and regulations

When the State acts as an employer, certain restrictions to the managerial right are triggered, by way of the so-called 'principle of legality': thus, public authorities are required to base their decisions concerning public administration, including decisions on recruitment, dismissal and so on, on domestic legislation, Constitutional practice and international instruments to which Denmark is party.

In this regard, public authorities are subject to the general 'maxim of equality', and the 'rule of instruction',² legal norms which, in the Danish context, stipulate that public authorities must refrain from violations of international treaties when decisions are made in relation to employment. Pursuant to the ratification of the ILO Convention No. 111 and the ICERD, public authorities are thus prevented from including criteria such as race, colour, national or ethnic origin when decisions about whether to employ or dismiss a person are to be made. The same rules apply in relation to public authorities providing employment services.

1.6.1. The AF Case

To take a concrete example, the Public Employment Service (Arbejds Formidling, AF) as a public institution, is governed by the rules of public administration and thus is prevented from acting in a discriminatory manner, according to the rules mentioned above.³ On the other hand, however, the AF provides a business service for private employers who, as pointed out above, were formerly legally entitled to attach importance to the ethnic origin of the applicant.

In November 1993, the director of the AF in the Copenhagen Metropolitan area announced to the media that on a regular basis, the AF had to deal with private as well as public employers who

¹Wrench 1996, p 75.

²These norms prohibit unfounded and arbitrary decisions in the public administration. The maxims are not explicitly stated in the Constitution, but are based on basic democratic principles and are in keeping with the spirit of the Constitution.

³Harlang, Nielsen and Rehof 1997 p. 110.

made discriminatory demands when contacting the AF with a view to filling vacancies.¹ This naturally raised the question of whether the AF should refuse to assist such employers, who were, for example, demanding Danish manpower or refusing Turkish workers. The Ministry of Labour was asked to set out clear guidelines for the AF's handling of discriminatory demands made by employers. Furthermore, the Ministry of Labour was asked for its opinion about the absence of restrictions in terms of discrimination by private employers.

The Minister of Labour stated that she was not in a position to provide internal rules for the AF in this field. She stated *inter alia*, that:

....I find it unacceptable that employers make discriminatory demands when contacting the AF. But as the situation stands today, where there is no prohibition against discrimination in the field of employment, neither I nor anybody else can intervene. Actually, I believe that the AF by not referring refugees and immigrants to vacant positions, is using its common sense and by tackling the problem in this way, they avoid the embarrassment for many refugees and immigrants of being rejected by an employer who does not want them.²

This statement was most likely based upon the idea that the role of the AF is to perform a service primarily for employers, as opposed to protecting workers. As, at that time, it was legal for employers to discriminate against migrants or ethnic minorities, the AF, as a service provider, had no legal obligation, and indeed *was not entitled*, to reject discriminatory demands from employers.

The Ministry of Labour did not, however, comment on whether the AF as a public administration, was, in accepting discriminatory demands from employers, violating the special rules binding upon public authorities, as outlined above. The outcome of this example is discussed in more detail below.

1.7. Alternative means of preventing discrimination prior to 1996

1.7.1. Government-led initiatives to combat discrimination

Prior to 1996, in place of using legislation as the primary means of tackling discrimination, the Danish authorities focussed upon initiatives to provide information and education whose stated aim was to prevent discrimination and encourage integration. Supplemented by the provision of vocational training and language courses directed at migrants and ethnic minorities, the initiatives aimed to change the societal majority's perception of these groups.

The Ministry of Labour summarised the strategy when it stated that it was important to eliminate '... attitudinal barriers which may hamper the labour market integration of immigrants and refugees. This means that the work taking place ... is not to propose new regulations—but to work to change

¹Politiken November 25, 1993.

²Letter from the Minister of Labour, See Parliamentary Ombudsman Annual report 1995.

attitudes'.¹ The means of initiating this attitude change consisted primarily of the allocation of public funding for information campaigns to promote understanding, tolerance and openness towards immigrants and refugees in the Danish labour market.² The campaign also initiated discussions with the social partners. These discussions concluded that the social partners had been active in encouraging the improvement of migrants' and ethnic minorities' labour market position,³ a fact which, as pointed out earlier, appears to have contributed to the Government's perception that anti-discrimination legislation was unnecessary.

The official policy subsequently developed towards the promotion of equal opportunities by offering financial support to private employers. By way of illustration, in 1994 the Danish authorities introduced the so-called 'Ice-Breaker Arrangement'. According to the terms of this arrangement, small businesses employing no migrant or ethnic minority workers would be subsidised by the state to recruit workers of migrant origin. The arrangement was considered a success—more than half of the migrants recruited through the Ice-Breaker Arrangement were employed under normal conditions within the company after the period of subsidy ended. For this reason, a broader Agreement was introduced in 1996. Danish businesses in the field of trade, service and production with up to 250 employees could accordingly also be subsidised by the state to employ workers of migrant origin. The subsidy amounted to DKK 11,000 per month and was granted for a period of maximum 6 months for the first recruit hired under the Agreement.⁴

In the public sector a number of initiatives were taken by the Ministries of the Interior and Finance as well as local governments to promote equality in recruitment and staff policy in the public sector, which could contribute to employers' awareness of the vulnerable position and particular needs of migrants and ethnic minorities in Denmark.

Another target area in the public sector was again the Public Employment Service (AF). Amongst its concrete projects in 1995 was the employment of four consultants and a co-ordinator for six months with the AF in the Copenhagen Metropolitan Area. The advertisements for these employment consultants encouraged candidates with non-Danish ethnic backgrounds, and three of the consultants recruited indeed had a non-Danish ethnic background. In 1996 the AF primarily used funds to promote 'visible' measures, in the form of recruitment of a number of employees in the regional services with special expertise in the situation of immigrants on the labour market.

1.7.2. The Parliamentary Ombudsman

Prior to 1996, although there was little by way of a legal anti-discrimination framework in place, victims of racial discrimination in public sector bodies could file complaints with the Danish Parliamentary Ombudsman, who had the power to investigate allegations of discriminatory acts. To illustrate the authority of the Parliamentary Ombudsman in this respect, we may look to the concrete example introduced above, the AF-case.

¹Ministry of Labour 1996, p. 5.

²Wrench 1996, p. 75.

³Ministry of Labour 1996, p. 6.

⁴Ministry of Foreign Affairs 1997, p. 3-4.

In January 1995, the Documentation and Advisory Centre on Racial Discrimination (DRC), a non-governmental organisation located in Copenhagen, lodged a complaint with the Parliamentary Ombudsman because the Minister of Labour had not intervened in the Public Employment Services' (AF) handling of cases concerning discrimination against migrants and ethnic minorities. In the DRC's opinion, the Minister of Labour should have drawn up codes of conduct or given instructions to the staff at AF centres, specifying the obligation not to tolerate discrimination from prospective employers.

After receiving the complaint, the Danish Parliamentary Ombudsman stated that:

In my opinion it would be consistent with the current prohibition against racial discrimination and Denmark's international obligations if such a code (or set of instructions) is prepared in which 1) the legal issues are explained and 2) duties are imposed on staff of the AF centres to refer workers, as far as possible, to jobs irrespective of any discriminatory demands from the employers.¹

Given the significant changes which had occurred in Danish society since 1969, it was the opinion of the Parliamentary Ombudsman, that the reasons why the Commission of Experts in 1969 did not suggest anti-discrimination legislation in the field of the labour market, were no longer valid. Finally he stated that:

If the organisations on the labour market [the social partners] do not fully control the situation anymore, as maintained by the DRC, there are reasons to consider whether the international obligations the Danish state has accepted within this area, instead ought to be fulfilled through legislation.²

In response to the Parliamentary Ombudsman, the Minister of Labour wrote:

It is the position of the Ministry that the AF, for several reasons, is obliged to discontinue co-operation with an employer making discriminatory demands in the concrete situation of job provision. Firstly, it follows from the Racial Discrimination Act and Denmark's international obligations that the AF cannot legally assist in discrimination. Secondly, the practice of the AF centres appears to be doubtful from what we have seen from the concrete cases published in the press. Thirdly, on the basis of unemployment figures it can be assumed that it is more difficult for ethnic minorities to find a job. Fourthly, it is the policy of this government to work against ethnic discrimination.

Therefore, the Ministry of Labour finds that instructions concerning the way in which AF staff must handle problems regarding ethnic discrimination in connection with the process of job provision ought to be drawn up as soon as possible. There is no authority in Danish law to forbid private employers to discriminate in cases of recruitment on the basis of race, ethnic origin and so on. The Ministry of Labour is aware that the present state of the law is inadequate. Therefore, during autumn the Ministry of Labour will announce a Bill prohibiting discrimination on the labour market. It is our intention to formulate the Bill in such a way that the Danish law comply with the international obligations the Danish state has accepted by ratifying the ILO Convention No. 111 and the ICERD.³

On the basis of this letter, a circular containing instructions for the AF staff members handling of cases of discrimination, was published by the National Labour Market Authority in November 1995. This circular laid down guidelines for job-placement activities in relation to unemployed persons belonging to an ethnic minority or migrant group, in connection with the handling of job offers in the public employment service.⁴

¹The Parliamentary Ombudsman Annual Report 1995, p. 46-56.

²The Parliamentary Ombudsman, Annual Report 1995, p. 46-56.

³Op cit.

⁴Ministry of Labour, Report to the Danish Parliament 1995.

The circular clarified some aspects of the scope of the term ‘discrimination’ in the Danish context. Three situations were mentioned as constituting practices which were considered unacceptable:

- (i) direct discrimination: when an employer asks the AF directly for Danish manpower, or stipulates that he or she does not want manpower of a certain race, colour, religion, political opinion, or national, social or ethnic origin.
- (ii) indirect discrimination: when an employer’s recruitment strategy has the effect of excluding migrants and ethnic minorities from applying or from being recruited by asking for qualifications which are irrelevant to the position, such as a sound knowledge of Danish, attendance at a Danish school, or Danish citizenship.
- (iii) discrimination by the AF itself: when the AF or its staff reject candidates in accordance with either of the two scenarios mentioned above.

The guidelines encouraged the AF and employers to engage in dialogue to identify key problems and remove discriminatory barriers, but specified that if this proved impossible, AF staff members were instructed to refuse discriminatory demands. As a result, employers persisting in discrimination would have to find workers through their own means rather than through the AF.

Although the AF-circular took effect in November 1995, when private employers were still not forbidden from discriminating against migrants and ethnic minorities, through its introduction, staff of the AF were given a basis by which they could refuse to cooperate with discriminatory employers. Thus far, no research has been done as to how widely the provisions of the circular have been applied by the AF, or what effect this had upon changing employers’ practices.

The evolution of the AF circular illustrates that although the Parliamentary Ombudsman had, legally, a limited mandate (the Ombudsman’s decisions are non-binding), the statements and recommendations from the Ombudsman do provide an impact, in that they encouraged the limitation of discrimination occurring in public sector bodies.

1.8. Assessment of the previous legal framework

Clearly, Danish state legislation on the Constitutional, criminal and civil levels was largely inadequate in terms of providing ethnic minorities and migrants with the possibility of seeking any kind of redress in connection with the discrimination to which, as has been proven through the ILO project, they are exposed. The inaccessibility of the limited Penal Code provisions did not extend protection to the majority of victims of discrimination, while the Constitutional provisions were, even in theory, so limited that they could be of no use to non-nationals. Furthermore, despite the special obligations resting upon the shoulders of public authorities as described above, there were indications that discrimination was practised not only by private employers, but also by public employers.¹ In other words, administrative law, as illustrated by the AF case above, did provide some recourse to victims of discrimination in the public sector, although in practice it was rarely relied upon. The complete lack of any civil legislation in the field of racial discrimination in the labour market meant that victims of such discrimination were obliged to turn to alternative means of defending their rights.

¹Politiken, November 25, 1993.

As mentioned above, the system of collective agreements in theory formed an alternative, non-legal means of protecting workers against unequal pay during the period of employment. However, over the last 25 years, equal pay has been a legal right principally for those working in areas of the labour market covered by collective agreements. The predominant problem for migrants and ethnic minorities, of course, has been that, to an excessively large extent, they have been kept apart from, or at the periphery of, the mainstream Danish labour market, as shown by Table 2 above.

The activities of the Parliamentary Ombudsman, while encouraging (in cases such as the AF-case in bringing the issue of discrimination to the public eye), are limited to the public sector, and no similar institutions existed in connection to the private sector, again, where we might expect to find migrants and ethnic minorities to be in the most vulnerable situations.¹

In conclusion, therefore, the legal anti-discrimination framework to protect non-nationals and ethnic minorities from labour-market discrimination prior to 1996 was extremely weak. The alternative means of protection promulgated by the Government and the social partners, while obtaining some positive results, left huge gaps in protection, often in the very areas where workers were most susceptible to discrimination, namely in the field of recruitment and other areas outside the scope of collective agreements, and in the private sector.

2. The Introduction of the Act on the Prohibition of Discrimination in the Labour Market, July 1996

In 1995, the Minister of Labour announced her intention to propose a bill prohibiting discrimination in the labour market. In a letter dated September 4 of that year, this proposal was submitted in the form of a Bill on the Prohibition against Discrimination in the Labour Market.

The proposal suggested the prohibition of direct and indirect discrimination on the grounds of race, colour, religion, political opinion, or national, social or ethnic origin. It also stated, *inter alia*, that discrimination must not be practised in connection with recruitment, transfer or promotion, or as regards terms of pay and employment. Regarding the question of equal pay for work of equal value, the burden of proving that wage differentials were not based on discrimination, would lie with the defendant. In other cases (such as recruitment and dismissal) the proposal retained the standard distribution of the burden of proof, that is, falling upon the complainant. The proposal deemed collective agreements applicable if, *and only if*, they provided at least the same level of protection as the legislation. Finally, it was stated that employers would still not be permitted to

¹The Board for Ethnic Equality consequently established a group of experts in order to draft a report entitled 'Possibilities of securing better access to file complaints for ethnic minorities'. On the background of the suggestions in this report, as well as the previous report "Race and equal treatment" a majority of the members in the Board for Ethnic Minorities recommended the establishment of an independent secretariat within the Board. The head of this secretariat, who would have to satisfy the criteria for becoming a judge, would be capable of handling concrete complaints. In the course of handling complaints, the secretariat would be enabled to undertake mediation, conciliation, or initiate further proceedings with a view to taking the complaint to court. No decision was taken on this issue until the Act on the Board for Ethnic Equality was passed in June 1997, when the Danish Parliament did not heed the recommendation of the Board. Consequently, competence of the Board is limited to the provision of non-binding advisory statements on principal matters concerning ethnic equality. The Board can receive concrete complaints about discriminatory acts by private or public institutions or individuals, however, it cannot investigate the claims or make binding decisions in such cases.

inquire about employees' ethnic origin or any other of the prohibited grounds, and that discrimination could not be made in connection with job advertisements.¹

2.1. Consultation on the Bill on the Prohibition of Discrimination on the Labour Market²

The letter which contained the proposed bill was addressed to a number of public authorities, trade unions and employers' organisations, as well as non-governmental organisations, asking for their feedback on the proposal. From the statements submitted by the consulted organisations it appeared that the proposal was received, on the whole, positively by most institutions and organisations, although it did become clear that the employers' associations in particular resisted any increased statutory regulation in this area.

The employers' associations unanimously concluded that the proposed Bill went beyond Denmark's obligations as laid down in the international instruments signed by Denmark. The Danish Employers' Confederation (Dansk Arbejdsgiverforening, DA) stated that the ILO Convention No. 111 and the ICERD primarily relate to Denmark's obligation to frame and pursue a *policy* in this field. This, however, was not considered by the DA to be equivalent to an obligation to *legislate* in the field. In addition, the DA stated that legislation was an inappropriate means of combatting ethnic discrimination, claiming that questions of attitude could not be altered through the regulation of behaviour.³ The alternative strategy which the DA proposed was to initiate wider awareness raising campaigns. Finally, the DA drew attention to a number of aspects of the proposal it considered to be vague, in relation to, for example, the exemption clauses and determination of compensation. The limited reversal of the burden of proof was considered excessive, and the proposal appeared to deal only with employers, while mutual relations between colleagues had gone unregulated.

The Confederation of Agricultural Employers Association (Sammenslutningen Af Landbrugets Arbejdsgiverforeninger, SALA) stated its fear that the proposal might be considered a reason for preferential treatment of foreigners, and thus would merely serve to increase the public's hostility towards migrants and ethnic minorities. The DA supported this statement, claiming that Swedish experience with such legislation had shown indications of just such polarisation of the Swedish society as a result. Finally, the DA and SALA claimed that the proposal did not take into account the protection offered to migrants and ethnic minorities by collective agreements, and that these in themselves, as opposed to legislation, constituted appropriate and sufficient means of action.

Comments submitted to the Ministry of Labour by trade unions and non-governmental organisations were, predictably, somewhat more supportive of statutory regulations in the field of racial discrimination in the labour market. Even further, it was claimed that the proposed Bill was not extensive enough to effectively prevent and punish discrimination. In particular, objections were made to the prohibition of preferential treatment in favour of under-represented groups and the prohibition of registration of ethnicity, which, as mentioned earlier, implied that ethnic monitoring for the evaluation of positive staff policies was also forbidden. Clarification of forms of permissible evidence, compensation and sanctions in connection with violation of the law were

¹Ministry of Labour 1996, p. 72.

²Ministry of Labour February 1996.

³This argument, incidentally, runs counter to findings of modern psychology, that behavioural change is a necessary precursor to attitude change. For an overview, see Wrench and Taylor 1993, pp. 12-13.

also deemed lacking. Finally, it was claimed that the proposal lacked any explicit reference to the protection of persons making use of the new legislation, and who may be the subject of retaliation by the defendant. The creation of an independent board with the power to receive and deal with cases of discrimination in the labour market was also deemed to be missing from the proposal.

Trade unions and NGOs also took issue with the employers' claim that Denmark's international obligations did not necessitate the prohibition of racial discrimination by statute, although simultaneously it was pointed out that prohibitions were by their very nature negative, and what was really required was also a series of broader and more positively framed social initiatives.

The variety of comments submitted in response to the proposal, touching on almost every aspect of the Bill, can be seen as indicative of the debate which it had stimulated in the social arena. The subsequent submission of the Bill to Parliament, however, showed that the Ministry failed to take into account many of the suggestions for improvement which had been made.

2.2. Bill No. 181: the Prohibition of Discrimination in the Labour Market

On 17 January 1996 the Ministry of Labour submitted the Bill on the Prohibition of Discrimination in the Labour Market¹ to the first reading in the Danish Parliament. The explanatory notes² to the Bill, stated the rationale behind it stemmed from the provisions of the ILO Convention No. 111 and the ICERD, and for this reason, the grounds upon which discrimination was to be prohibited would mirror those mentioned in these instruments. In addition to these grounds, the Bill also included a ban on discrimination on the grounds of sexual orientation.³

The explanatory notes also provided concrete examples of indirect discrimination as outlawed by section 1.1. of the Bill. By way of illustration, it was stated that indirect discrimination occurs if an employer requires extensive knowledge of Danish language or rejects an applicant on the grounds that they speak with a non-Danish accent, for positions in which these characteristics are not essential. Similarly, requesting particular clothing requirements to the detriment of particular groups were mentioned. It was, however, also mentioned that within some trades, it might be justified to require perfect knowledge of Danish, for example, teaching, and some businesses may have legitimate dress regulation, such as those in relation to safety and health. The compatibility between these exceptions (known in other countries as bona fide occupational qualifications, or genuine occupational requirements) and those permitted under EC law was clarified in the explanatory notes.⁴

¹Ministry of Labour February 1996.

²These notes are annexed to the Bill, and provide the Ministry of Labour's interpretation of the scope of the new legislation.

³In Section 1.1. of the Bill, 'discrimination' is defined as 'any direct or indirect discrimination on the basis of race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin'. See Ministry of Labour, February 1996.

⁴If it is of decisive importance in connection with the exercise of certain types of occupational activities or training activities that the person concerned is of a particular race, political opinion, sexual orientation, national, social or ethnic origin or has a particular colour or belong to a particular religion, the appropriate Minister may, after having obtained the opinion of the Minister of Labour, make exceptions to the provisions laid down in sections 2 to 5. However, this shall not apply, if it is in conflict with European Community law.', section 6.2 of the Bill. See Ministry of Labour, February 1996.

The explanatory notes also make clearer the extent to which the Bill does not obstruct the implementation of measures which aim of improving the labour market position of the various groups covered by the Bill.¹

Compared to the original proposal, the question of responsibility for discriminatory job advertisements was changed, so a fine could be imposed upon employers violating this provision.² Concerning the question of the assessment of damages it appeared from the explanatory notes that the courts would decide whether damages are to be awarded and, first and foremost, would consider the gravity of the violation. Any compensation would have to cover non-economic sufferings and at the same time it would be possible to seek damages according to the general law of compensation.

Despite the number of comments submitted by the social partners in relation to the distribution of the burden of proof, the wording of section 2 of the Bill did not change from the original proposal. The result was that only in cases of alleged unequal pay was it incumbent upon the employer to prove that the work carried out by the migrant worker was not of the same value as the higher paid work carried out by other employees.³ In all other situations concerning discrimination in relation to recruitment, dismissal, transfer, promotion, or working conditions, the burden of proof continued to lie with the employee. In this connection the Ministry of Labour stated in the explanatory notes that:

if an employer, over a long period of time, consistently omits to employ persons of a certain ethnic origin, despite the fact that qualified persons from the current group have applied for jobs, this will be considered as circumstantial evidence that the employer is exercising discrimination in contravention of the Bill. In situations where no such circumstantial evidence is available, it may often be difficult for the employee to prove that the employers' selection of another applicant reflects discrimination within the meaning of this Bill. Therefore, as far as possible, the employee ought to obtain evidence in situations where he thinks that he is exposed to discrimination in contravention of this Bill.⁴

The explanatory notes to the Bill described the social and legal environment which had stimulated the drafting of a new law. It was stated that in Denmark it had become an issue of high priority to combat growing tendencies towards discrimination on the basis of, *inter alia*, race and ethnic origin. In this connection the disproportional rate of unemployment and length of period of unemployment between migrants and nationals was cited as evidence for this problem. It was also stated that the Bill was also initiated because it was considered that Denmark had not fully implemented the international obligations it had accepted by ratifying the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the ICERD. A detailed account of

¹This Act shall be without prejudice to measures being introduced by virtue of other legislation, by virtue of provisions having their legal basis in other legislation or otherwise by means of public initiatives, with a view to promoting employment opportunities for persons of a particular race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin.' (section 9.2.). See Ministry of Labour, February 1996.

²Advertisements may not indicate that a person of a particular race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin is sought or preferred. Nor must it be indicated that a person with the characteristics mentioned in the first clause of this section is not wanted.' (section 5). 'Failure to comply with section 5 shall be punishable by a fine', (section 8.1.). See Ministry of Labour, February 1996.

³In the case of pay discrimination it is incumbent upon the employer to prove that the work concerned is not of the same value.', (section 2.4.). See Ministry of Labour, February 1996.

⁴Ministry of Labour 1996, p. 6.

these obligations was given in the text of the explanatory notes, focussing upon Denmark's obligation to pursue by all suited means, such as legislation, a policy aiming at the abolition of discrimination.

Although the wording of the Bill had been tightened and clarified at several points, in comparison with the original proposal submitted to the social partners, it still contained vague points. These vagaries were reflected in the subsequent parliamentary reading of the Bill.

2.3. Parliamentary reading of the Bill No. 181 on January 26, 1996

The discussion outlined above between the social partners as summarised above was mirrored in the Danish Parliament's first reading of the Bill in January 1996.¹ Although all political parties appeared to agree on the general goal of providing equal opportunities in the labour market, the first reading of the Bill revealed that the right-wing opposition was against legislation, on the grounds that it was deemed unnecessary and would do more harm than good. On the one hand, some speakers reasoned that as discrimination on the Danish labour market was a real problem, it was necessary to prohibit discrimination by statute. Others believed that the relatively higher rate of unemployment among migrants and non-nationals could be explained entirely by their lack of education or language qualifications, and that, therefore, a ban on discrimination in the labour market would have no effect on improving the labour market position of these groups.

The parties also disagreed as to whether Denmark had undertaken an obligation at the international level to prohibit discrimination. When one speaker noted it was necessary that Denmark fulfilled these obligations as other countries already did, another speaker immediately referred to the Ministry of Labour's report of May 1995 where it was debated whether a direct obligation to legislate actually existed.² The uncertainty over the obligations of international law extended to a discussion on the scope of international legal provisions, and it was pointed out that according to Denmark's undertakings, a legal prohibition of discrimination on the grounds of citizenship was unwarranted. To summarise, it became clear that there was a great deal of confusion as to whether and to what extent international obligations were relevant to the initiation of the proposed Bill. On this occasion, the Minister for Labour took the opportunity to rephrase the issue in terms of the social partners' lack of initiative in the area of labour market discrimination, resulting in a gap in practice which necessitated the implementation of appropriate legal measures.³

The conflicting notions on the basis of legislating at all against discrimination on the labour market, were also reflected in the discussion whether legislation was a suitable means of achieving the goal of equality of treatment. It was generally agreed that it was important to change the attitude of employers and employees, in order that they accept the equality of ethnic minorities, migrants and Danes across the labour market. From the onset of the debate however, it was claimed that legislation in itself would create confrontation and polarisation on the labour market, which would prejudice the possibility of achieving equality on the labour market, due to negative reactions from the majority of the population. The counter argument ran that by legislating in this area, a signal could be sent to the majority of the population as to the nature and extent of

¹The full text of the hearing is published in the Ministry of Labour 1996, p. 22-43.

²See Ministry of Labour 1995.

³Ministry of Labour 1996, p. 42-43.

behaviour which is unacceptable, and that this political signal would initiate a gradual change in attitudes.

The question of the burden of proof again gave rise to several speeches during the debate. The Minister of Labour established that reversal of the burden of proof was only to be triggered in situations where an employee was alleged to have been dismissed or treated unequally in relation to unequal pay. It was established that in all other situations covered by the Bill, the burden of proof would lie with the complainant.¹ One spokesman pointed out that this feature of the law may result in no action being brought before the courts for fear that the burden of proof would be too high to guarantee any chances of winning a case.

Finally, the issue of positive action took up a great part of the debate, and there were several remarks on the exceptions clause (section 6 and section 9 of the Bill) on the implication that the principle of equal treatment could be derogated from under special circumstances. In this regard, the Social Democratic spokesman stressed that it must be possible to say:

‘we want a policeman or two’, or ‘we want an employee in our social assistance branch’ of a certain ethnic origin. It can be a reasoned argument for solving the [low labour market position] problem of the groups just mentioned. A reasoned argument of this kind could, for example, be that it is important in order to inspire confidence that the employee is of the same ethnic origin [as the client].²

In other words, the Social Democrats were claiming that in certain cases, factors such as ethnic origin, race, colour and so on, may be relevant to the job in question, when resulting in a favourable outcome for under-represented groups. This point of view was met with several critical responses from opponents of the Bill, and the spokesman from the opposition party stated that ‘we would [thus] be providing a statutory basis for affirmative action and under no circumstances, would we [the Fremskridtspartiet] wish to take part in it.’³ Other parties subsequently disagreed with this interpretation of the Bill, emphasising that the Bill did not imply special quotas for ethnic minorities, nor would it require less favourable treatment for Danish citizens.

2.4. Parliamentary Report of 24 April 1996 to the Minister of Labour

Following the initial reading of the Bill, the Parliament’s Labour Market Committee reported to the Minister of Labour, giving an overview of the debate and asking for clarification on a number of issues. The response to these questions was annexed to the subsequently adopted Act upon the initiation of two left-wing party representatives. Some points of interest to understanding the scope of the law merit attention.

Among other things, the Minister stressed that the grounds covered in the Bill reflected those given in the ICERD and ILO Convention No. 111, and that no other grounds, including age, would be considered. This has primary importance given that neither of these instruments, as mentioned earlier, cover discrimination against individuals on the grounds of their nationality, and thus does not protect migrant workers *per se* from discrimination.

Regarding the question of the burden of proof in connection with discrimination during the recruitment process, the Minister rejected the proposal that the burden be reversed and fall upon the defendant. In the Minister’s opinion, reversing the burden of proof in this manner would result

¹Ministry of Labour 1996, p. 38.

²Op cit., p. 25.

³Op cit., p. 27.

in a situation similar to affirmative action. If the burden of proof was upon the employer in all cases, she stated, employers would never dare to refuse applicants from migrant or ethnic minority groups.

The Minister also stated that the Ministry of Labour would have the authority to provide statements concerning the interpretation of the new Act. The final decision upon interpretation however, would fall to the courts. As discussed below, this is one means by which several vagaries in the law may be removed.

On the question of whether or not an independent law enforcement body ought to be established, the Minister replied that this had been considered, but it was thought that should such a body be instituted, its mandate would have to extend beyond merely the labour market. She also pointed to the work which had already been undertaken by a number of non-governmental organisations.

Members of three opposition parties questioned whether or not an employer favouring Danish citizens to foreigners, from the point of view that this was necessary for social solidarity, would be acting in contravention of the Act. The Minister responded by stating that the aim of the Bill was:

to implement ICERD on the labour market and it is therefore drawn up in conformity with ICERD. This implies that a Danish employer in principle may prefer a Danish citizen to a foreign one. However, it is also here a precondition that the differential treatment does not take place regarding the criteria mentioned in section 1 of the Act. In practice, a requirement of citizenship will often amount to indirect discrimination in contradiction to the Act. I therefore cannot guarantee that employers consistently will be able to prefer Danish citizens to foreigners.¹

Thus, migrants may be protected from nationality discrimination, despite the fact that this is not among the grounds mentioned in the Act. However, despite the encouraging interpretation given by the Minister, the manner in which this is interpreted in practice will only be made clear when a body of jurisprudence on the subject is established.

The Minister made a number of comments on the relationship between Denmark's international commitments and the obligation to legislate against discrimination. She emphasised that legislation was an imperative part of ensuring that the provisions of the international instruments were effectively applied in practice. In particular, she stated, this applies to the obligation to implement a non-discrimination policy as well as the obligation to ensure protection for individuals against discrimination and to provide remedies against discriminatory acts.

... if legislation is, therefore, considered necessary to ensure effective implementation of the international obligations concerning the labour market, Denmark is committed under international law to implement such a policy. The Ministry of Labour has informed the Ministry of Justice of the following: 'the Ministry of Labour accepts that for a number of years the opinion in Denmark has been that legislating against discrimination was unnecessary, as it was assumed that the two sides of industry would conclude agreements on their own about the issue. The Ministry of Labour has noted, however, that thus far no such agreements have been concluded. This means that a person who believes his or her rights, pursuant to the two relevant conventions, have been violated, does not seem to have any legal basis on which to bring an action. As the problems concerning discrimination have become more acute in recent years, the Ministry of Labour has found that a law-making initiative should not be postponed. The Ombudsman seems to agree'.

The questions posed to the Ministry of Labour, as well as the discussion which ensued during the reading of the Bill, reflects the controversy which the legislation had aroused. Upon the third

¹Parliamentary question No. S1916, April 10, 1996.

Parliamentary reading of the Bill, only one vote, that of the Faeroe Islands, finally separated those that advocated the enactment of the Bill from those which did not. On this slim margin, the Bill on the Prohibition of Discrimination in the Labour Market was passed on 24 May 1996, and took effect as law on 1 July 1996 in the form of Act No. 459 on the Prohibition of Discrimination in the Labour Market.

2.5. Assessment of the legal framework after Act No. 459 came into effect

As mentioned in the introduction to this paper, it would be premature as yet to draw conclusions as to the effectiveness in practice of the new Act, given that such a short time has passed since its enactment. However, with the preparation of the AF circular regarding job provision discussed above, and with the passing of the Act on the Prohibition of Discrimination in the Labour Market, it appears that the Danish Government did intend to send a clear signal to the perpetrators of discrimination that such conduct was no longer acceptable and would be punishable by law. However, it has been convincingly argued that although legislation does send this ‘signal’, a much broader social campaign of information provision and education is required to give full force to the law. In other words, you can take the horse to the water, but you can’t make it drink, no matter how professional, and goal-oriented legislation on the subject is.

The initiation of the new law came at a time when it was beginning to be deemed ‘politically incorrect’ to express obviously discriminatory attitudes towards visible minorities. Although it was still legal to discriminate in employment, consideration for bad publicity and politically-minded consumers had gone some way to encouraging employers to abandon at least directly discriminatory practices. The result was not, however, a reduction in the amount of discrimination occurring, but rather a camouflaging of discrimination, transforming the discrimination to a more covert and less easily identifiable phenomenon.

An immediate and positive effect of the Act seems to be the authorities’ changed attitude towards the problem of discrimination. In the past, attention was notably drawn to the fact that newly arrived migrants are often lacking in language qualifications and technical skills, which has been perceived as an explanation for their continued marginal role on the Danish labour market. It appears, as stated earlier, that this argument has contributed towards the marked reluctance on the part of the Danish population to recognise discrimination as a contributory cause. The enactment of the new Act shows that this attitude appears to be changing.

Another positive development is that following statutory intervention, the social partners could no longer have any doubts that their earlier performance in coping with the problems of discrimination, namely through collective agreements and negotiation, was deemed inadequate by Parliament and society in general. This can give rise to hope that the social partners will be inspired to play a greater role in the future in this regard.¹

3. Jurisprudence subsequent to July 1996

¹For more details on the steps which can be taken by employers and workers’ organisations in this regard, see the Manual on Achieving Equality for Migrant and Ethnic Minority Workers, ILO, Geneva, forthcoming.

Thus far, no court cases have been heard, and no decisions taken relating to employment discrimination since the introduction of the Act on the Prohibition of Discrimination in the Labour Market. However, a number of allegations have been made public which appear to fall within the parameters of the Act. These serve to shed light on the ways in which the new law may be used, and what its limitations may be in practice.

3.1. Cases concerning dismissal

3.1.1. Adult Vocational Training Centre Case

This case, the first legal action appearing under the new Act, was brought to court in April 1997. The case is scheduled to be heard in August 1998. The case concerns the state-funded Adult Vocational Training Centres (AMU Centres), which, in the Danish legal context are considered under the same provisions as those providing paid employment. During one training session a participant was subjected to harassment from other participants following his praying in the corridors of the Centre. Consequently, the AMU Centre expelled him from the course, claiming that his public praying was disturbing other participants. His attempts to rejoin the course were blocked by the AMU, which stated that participants must obey the rule that praying in public was forbidden in the AMU Centres. The AMU stated, however, that he was welcome to rejoin the course if he undertook to pray in the toilets, with the door locked. At this point, the man initiated legal action, which, as the AMU Centres fall under the auspices of the Ministry of Labour, consisted of a case being brought against the AMU Centres and the Ministry of Labour jointly.

It is unclear at this stage what the outcome of the court case will be.

3.1.2. Head-dress case

A second case, which was not able to be heard under the provisions of the Act due to the fact that the incident took place prior to the commencement of the Act, but which serves as a useful case study, concerns a doctor from Iraq.¹ Despite being a qualified doctor in Iraq, upon her arrival in Denmark she was not permitted immediately to practice. In August 1995 she undertook unpaid work at a Danish provincial hospital. After a short period of time, she was asked to refrain from wearing her headscarf within the hospital confines. Following her contravention of this request, she was dismissed as a volunteer from the hospital in November 1995. The director of the hospital stated in his letter of dismissal that:

None of the Muslim doctors employed at the hospital are allowed to wear scarves, due to practical as well as hygienic reasons. Female doctors wearing scarves are not accepted by patients or employees, as the garment in question differs from the hospital's normal uniform.²

The doctor filed a complaint against the hospital with the Hospital Council in the County of Storstrom. In its ruling, the Council claimed that the decision, based upon practical, hygienic and ethical considerations did not constitute a discriminatory action. Following this, the Documentation and Advisory Centre on Racial Discrimination (DRC) requested the Ministry of Labour's interpretation on a number of questions, including the legality of making a dress code with specific reference to 'Muslim doctors', and the special circumstances pertaining to the hospital's status in the public sector. The Minister of Labour responded by agreeing that if Muslim doctors are the

¹DRC-Newsletter No. 1, 1997.

²DRC-Newsletter No. 1, 1997.

only individuals to find their attire constrained by the dress code, while others are permitted to wear whatever they like, that this would constitute indirect discrimination, in violation of the Act on the Prohibition of Discrimination in the Labour Market, which has been enacted in the meantime. A general dress code, however, based upon hygienic or practical considerations applying to all employees would not constitute a violation of the Act.

After receiving the answer from the Minister of Labour, the DRC asked the Minister of the Interior and the Minister of Health to take action against the hospital which dismissed the doctor. Both ministers, however, refused to take any action. The case was subsequently referred to the Office of the Prime Minister who referred the case back to the Ministry of Labour, and on September 22, 1997, the Ministry stated on behalf of the Ministries of the Interior, Health and Labour, that the prohibition on wearing head-dress in hospitals was based on hygienic reasons, and therefore that the hospital's decision to dismiss the doctor was justified.

While this case clarified the legitimate exceptions to the dress code regulation, namely that employers may specify particular dress codes on the grounds of safety or health, the problem with this case is that the original ruling appears to have been based upon negative attitudes prevailing among patients and workers in the hospital. The director's reference to the head-dress being considered 'unacceptable' to patients and co-workers shows that perhaps there was more to the original decision than mere safety and health reasons. However, as the case did not reach the court room, it is unclear how it would have ended.

3.2. Cases concerning discriminatory rejections of job applicants

Similarly, in relation to recruitment, it is unclear as yet how the provisions of the Act will be interpreted by judges and to what extent victims of discrimination will be able to depend upon them. The main problem appears to be the difficulties complainants will face in relation to providing proof of discrimination in connection to recruitment. Section 4 of the Act prohibits registration of the ethnic composition of the existing workforce, as well as the origin of applicants for vacant positions, thus rendering it impossible for alleged victims to rely upon statistical evidence to prove a consistent practice of discrimination.

3.2.1. The Ankestyrelse Case

This case concerns an applicant who was rejected for a job in the public sector (Den Sociale Ankestyrelse). The applicant, suspecting discrimination to have occurred, then sent a letter asking for the ethnic composition of the workforce in that particular public body. In March 1997 he received a letter stating that such confidential information was not available. After a second attempt, he was informed that it would be a violation of Section 4 of the new Act to record information on the ethnic origin of applicants or staff members.

This example shows that under the new law, victims of discrimination are not rendered capable of collecting statistical information to back up a case of discrimination, as specified in the explanatory notes to the Bill. It should be recalled that these notes state that if an employer, over a long period of time, consistently omits to employ persons of a certain ethnic group, despite the fact that qualified persons from the group in question apply for work, this may constitute evidence of discrimination. As it is impossible to either ask for or record figures on the ethnic composition of the workforce and applicants, it is impossible to learn whether qualified persons from ethnic groups have applied and, secondly, whether or not qualified persons were hired.

3.2.2. The Bus Case

An alternative method of providing evidence may be for the complainant to make reference to inappropriate questions posed during the preliminary application procedure or job interview. By way of example, questions, irrelevant to the position, about one's religion and sexual orientation might be considered important evidence of negative differential treatment. One concrete case, however, illustrates that posing such questions, nevertheless, may be considered appropriate by the authorities, and thus their status as proof in a court case is brought into question. This case concerns a job interview with the bus company 'Bus Denmark', during which the applicant was asked whether he was a Muslim. The applicant felt offended by the question, and later considered that this may have contributed to his failure to obtain the position in question. The DRC asked the public employment service, which was present during the job-interview, why this question was asked. The employment service answered that it was well known that many Muslims became ill and tired during Ramadan, and for reasons of traffic security, the question had to be posed. The complaint was then taken to the Ministry of Labour to ask for an interpretation of this in relation to section 4 of the Act. The Ministry answered that the company could not ask this kind of question without applying to the Ministry in advance for an exception according to section 6 of the Act.¹ The bus company has been informed that it can apply for such exception. It is not yet known whether such permission will be granted, should the company apply.

The outcome of this application will be indicative in that it will determine the limits in which employers must frame their behaviour for an action to be considered legal. The process of applying for an exemption is positive, in that it implies that only under exceptional circumstances will such questions be deemed permissible, and the verdict of the application will hopefully show that in many cases the posing of such questions will be considered illegitimate.

3.2.3. The JPO-case

Another test case which contributed towards determining the strengths and weaknesses of the law is the case where the Ministry of Foreign Affairs rejected a job application from a Spanish citizen, who had been permanently living in Denmark. She had lived in Denmark for many years, and had followed a Danish education. Her application for the position as a Junior Professional Officer (JPO) was rejected by the Ministry on the grounds that only Danish citizens were eligible for the posts. DRC filed a complaint against the Ministry stating that this rejection constituted a violation of the Act as well as of article 48 of the European Treaty. The Ministry of Foreign Affairs answered that following an analysis of the provisions, it was in agreement with the DRC's interpretation, and that the Ministry would be happy to receive a new application from this applicant in the future.²

While this case was useful in clarifying the limits of reservation of posts for Danish nationals, it also reflects the lack of any suitable compensatory mechanism for victims of such discriminatory rejections; the individual was left with no material compensation.

3.2.4. The Taxi-case

¹DRC-Newsletter, No. 2, 1997.

²DRC-Newsletter, No. 3, 1997.

A recent example of nationality discrimination was the case which came to light in January 1998, when the new Act on Taxi Driving entered into force. This new Act stipulates, *inter alia*, that taxi company owners must hold either Danish, Nordic or European Union nationality.

On the same day, however, an administrative instruction from the Ministry of Traffic entered into force, stipulating also that taxi *drivers* in Denmark must hold either Danish, Nordic or European Union nationality. By way of justification for this instruction, the Ministry of Traffic claimed that this was required by the Act on Taxi Driving, and that similar requirements already existed in other Danish legislation, such as that relating to bus driving.

Some Members of Parliament, however, claimed that the Act on Taxi Driving did not give the Ministry of Traffic the right to include the requirement for Danish nationality for taxi drivers (only for the owners) and asked the Ministry of Justice for further clarification. In response, on 13 January 1998, the Ministry of Justice concluded that the Act on Taxi Driving did not give statutory authority to the Ministry of Traffic's requirement in relation to taxi drivers. Consequently, the Ministry of Traffic decided to change the instruction, so that there is no requirement today for taxi drivers to hold Danish nationality.

The same Members of Parliament also asked for a list of all Danish Acts including similar requirements. The ensuing examination showed that similar requirements existed in areas falling within the jurisdiction of the Ministries of Housing, Commerce, Defence, Justice, Health, Traffic, Economy and Food, Agriculture and Fishing. While no action has yet been taken on the findings of this examination, it is expected that this may lead to changes in many of these Acts, thus narrowing the realm of occupations and activities in which Danish nationality can be considered a genuine qualification required for the job.

Finally, however, it must be noted that the Act on Taxi Driving was not changed. This means that taxi company owners must hold Danish, Nordic or European Union nationality. Consequently, a group of taxi company owners have now filed law suits against the Ministry of Traffic. In July 1998 a Canadian and a Pakistani citizen filed complaints at the High Court, claiming that the Act on Taxi Driving violates the Danish Constitution, and certain international Conventions. It is expected that another taxi company owner, holding Turkish nationality, will file a similar complaint very soon. In this connection, the Minister for Traffic has stated that the Act may be changed, but no decision has thus far been taken.

3.3. Cases concerning discriminatory job advertisements

While cases concerning discrimination in connection with recruitment and dismissal are dealt with under civil law, prohibition against discriminatory job advertisements is dealt with under the Criminal Code, according to sections 5 and 8 of the new Act. As stated earlier, it has become rarer in recent years to see examples of outright and direct discriminatory advertising, however, indirect discrimination can be seen to occur systematically in job advertisements, especially in connection with semi- or unskilled jobs. For example, it is quite common to require that an applicant for a job in a canteen or a kitchen speaks perfect Danish. Similarly, it is not unusual to require of applicants for cleaning jobs or jobs at factories or warehouses for example, to speak, read and write Danish as a native.

In this regard, the DRC informed the police about several job advertisements in which the requirement of knowledge of Danish did not appear to be justified by the terms of reference of the

job. The police, however, have, following investigation into each case, thus far decided not to bring these allegations to the attention of the Public Prosecutor. As a result, no legal action has yet been brought to court. When judgements are made on such cases in the future, they will show to what extent the provisions of the new Act can be interpreted to prohibit indirect discrimination.

3.4. Cases concerning positive action

A number of complaints which have surfaced since the implementation of the new Act potentially show the controversial nature of measures to enhance the labour market position of ethnic minorities and migrant workers, and the extent to which the law may actually prevent initiatives in this field.

To take one concrete example, an advertisement from 14 December 1996 encouraged members of the ethnic minorities to apply for a particular job.¹ In the same advertisement it was also explicitly stated that, in the case of two or more applicants holding the same qualifications, the applicant with a minority background would be preferred as the employer needed a 'multi-ethnic competence' in the organisation. On 19 December 1996 the employer received a letter from the Minister of Labour, which stated that the advertisement was a violation of section 5 of the Act on the Prohibition of Discrimination in the Labour Market. The employer answered that the Act was introduced in order to fulfil the requirements of ILO No. 111 and ICERD, thus, it was a surprise that such positive measures would violate the Act. The case ended with the Ministry of Labour granting a formal dispensation to the employer and giving its approval that in this case the minority background of the applicants was of decisive importance to the performance of the job.

To take a second example, the local Council in the municipality of Randers, decided to make a statement of intent that the labour force of the municipality should represent more accurately the ethnic composition of the city, and that 1% of the workers recruited should belong to ethnic minority groups. It was stated that it was a precondition for recruitment that the applicant was in the possession of the necessary qualifications. On 30 May 1997, the Ministry of Labour informed the local Council that the new Act does not permit such preferential treatment of ethnic minorities and for this reason the municipality was asked to abolish the statement of intent. The Council was, consequently, not allowed to publish job-advertisements encouraging ethnic minority groups to seek employment with the municipality, following the Ministry of Labour's interpretation. Such advertisements are prohibited, unless both Danes and ethnic minority groups are encouraged to apply. This case is interesting in that it shows that the subtle distinction between encouraging minority groups to apply for positions and actively recruiting minority groups through a process of preferential treatment has not been reflected in the interpretation of the Danish law.

¹DRC-Newsletter No. 1, 1997.

Conclusions

The fact that discrimination has been increasingly recognised as a social and legal problem which Danish legislators and policy makers must address was made clear through the evolution of the debate in Danish society. The drafting and adoption of the Act on the Prohibition of Discrimination in the Labour Market sent a clear signal to employers, co-workers, recruiters and public authorities that discrimination against individuals or groups on the grounds of their race, colour, ethnic origin and associated grounds was no longer acceptable practice in the Danish labour market.

Given the recent entry of anti-discrimination law onto the Danish stage, however, it is difficult as yet to precise the benefits and drawbacks of the law in practice. A number of queries raised during the drafting process have yet to be addressed. As cases are brought to court and rulings are made, the extent to which the Act will be interpreted will become clear. For example, issues such as the scope of the term 'indirect discrimination' and the nature and applicability of 'bona fide occupational qualifications' have yet to be clarified. Similarly, the distinctions between the concepts of nationality quotas, positive encouragement and preferential treatment will hopefully, through a process of test cases, be more clearly determined.

However, a number of *a priori* weaknesses were found to exist in the law which are unlikely to be resolved by even the most generous of judicial interpretations. Prominent among these is the explicit ban upon registration of ethnic origin, denying alleged victims of discrimination the opportunity to provide statistical evidence of consistent and widespread discrimination, and, perhaps more damagingly, preventing employers who are concerned with eradicating discrimination from monitoring the effect of any positive initiatives which they might undertake. The distribution of the burden of proof is another issue which hinders the law from being entirely effective from the starting point and which has been recognised by many commentators as a major factor in discouraging victims of discrimination from initiating court proceedings. And, finally, the absence of nationality as an explicitly prohibited ground of discrimination means that migrants suffering from discrimination against them as non-nationals will have to rely upon generous interpretation of the scope of the law by the courts.

Furthermore, a number of critical issues remain unaddressed by the law, such as the phenomenon of racial harassment between workers and the protection of victims of discrimination using the redress mechanism in place from being victimised. Institutionally, a number of improvements could be made to enable genuine victims of discrimination to pursue their complaints more effectively, including the establishment of an effective and independent enforcement agency with wide-ranging powers specified in law to monitor and encourage compliance with the law. Supportive measures such as contract compliance schemes, which have met with success in other countries to further encourage compliance with the law, may provide the additional strengthening required.

Finally, a number of advances by the Danish Government in terms of broadening its commitment to eradicating discrimination would have the effect of strengthening the protection of migrant and ethnic minority workers, not merely symbolically, but also in terms of providing recourse mechanisms to victims of illegal discrimination. Such advances would primarily include the

inclusion of a non-discrimination provision in the Danish Constitution, and the ratification of the relevant international instruments aimed at protecting migrants and ethnic minorities from discrimination in the labour market and in other aspects of social life, namely the ILO Migration for Employment (Revised) Convention, 1949 (No. 97); the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

In conclusion, while the introduction of the Act on the Prohibition of Discrimination in the Labour Market is a long-awaited and warmly welcomed initiative, and while the discussion relating to the means of increasing the protection of workers from discrimination is a healthy and pertinent one, there are a number of issues which remain unclear, weak, or missing from Danish legislation in this field. It is hoped that as cases are brought to court, the provisions of the law will be tested to their limits, and the weaknesses and loopholes in the law will be repealed and tightened accordingly to provide as close as possible water-tight protection for migrant and ethnic minority workers in Denmark.

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APPENDIX

Translation

Ministry of Labour
February 1996

**Bill on prohibition against discrimination in respect of
employment and occupation, etc.**

Part 1
Scope of the Act

1.- (1) For the purpose of this Act the term “discrimination” means any direct or indirect discrimination on the basis of race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin.

(2) This Act shall not be applicable to the extent that similar protection against discrimination follows from a collective agreement.

Part 2
Prohibition against discrimination

2.- (1) Any employer may not discriminate employees or applicants for vacancies in connection with recruitment, dismissal, transfer, promotion or with regard to pay and working conditions.

(2) Discrimination as regards pay conditions takes place in the case of failure to give equal pay for equal work or work of the same value.

(3) An employee whose pay is lower than that of other employees in violation of subsection (1) above shall be entitled to the difference.

(4) In the case of pay discrimination it is incumbent upon the employer to prove that the work concerned is not of the same value.

3.- (1) An employer may not discriminate employees as regards access to vocational guidance, vocational training, continued training and retraining.

(2) The prohibition against discrimination also applies to any person engaged in vocational guidance and vocational training activities as mentioned in subsection (1) above and any person engaged in placement activities.

(3) The prohibition against discrimination also applies to any person laying down rules on and making decisions concerning the access to take up a profession.

4. An employer may not in connection with recruitment or employment of an employee request, collect, obtain or make use of information concerning the race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin of the employee.

5. Advertisements may not indicate that a person of a particular race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin is sought or preferred. Nor must it be indicated that a person with the characteristics mentioned in the first clause of this section is not wanted.

Part 3

Exceptions

6. - (1) Sections 2 to 5 shall not apply to an employer whose enterprise has the express object of promoting a particular political or religious opinion, unless this is in conflict with European Community law.

(2) If it is of decisive importance in connection with the exercise of certain types of occupational activities or training activities that the person concerned is of a particular race, political opinion, sexual orientation, national, social or ethnic origin or has a particular colour or belongs to a particular religion, the appropriate Minister may, after having obtained the opinion of the Minister of Labour, make exceptions to the provisions laid down in sections 2 to 5. However, this shall not apply, *if it is in conflict with European Community law*.

Part 4

Compensation, etc.

7. Persons whose rights have been violated by failure to comply with sections 2 o 4 may be awarded compensation.

8. - (1) Failure to comply with section 5 shall be punishable by a fine.

(2) If the violation is committed by a company, an association, an independent institution, a fund or similar body, the fine may be imposed upon the legal person as such. If the violation is committed by the state, a municipal/county authority or an association of local authorities falling under section 60 of the Act on Local Government, the fine may be imposed upon the state, the municipal/county authority or the association of local authorities as such.

Part 5

Commencement and relation to other legislation, etc.

9.- (1) Section 4 shall not apply to the extent that other provisions are applicable under special legislation.

(2) This Act shall be without prejudice to measures being introduced by virtue of other legislation, by virtue of provisions having their legal basis in other legislation or otherwise by means of public initiatives, with a view to promoting employment opportunities for persons of a particular race, colour, religion, political opinion, sexual orientation or national, social or ethnic origin.

10. This Act shall come into operation on 1 July 1996.

11. This Act shall not extend to the Faroe Islands and Greenland.