

DENMARK

Disclaimer: The national thematic studies were commissioned as background material for the comparative report on *Access to justice in Europe: an overview of challenges and opportunities* by the European Union Agency for Fundamental Rights (FRA). The views expressed in the summaries compiled from the national thematic studies do not necessarily reflect the views or the official position of the FRA. These summaries are made publicly available for information purposes only and do not constitute legal advice or legal opinion. They have not been edited.

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1. National court system

All general proceedings, civil, criminal and administrative; come under the jurisdiction of the courts: the district courts, the high courts and the Supreme Court. By means of appeal a case can generally be tried at two levels, although appeal in minor criminal and civil cases may require a leave to appeal.

City Court judgments can be appealed to the High Courts and judgments which are treated at the High Court or the Maritime and Commercial Court as first instance can be appealed to the Supreme Court. confer section 368 of The Administration of Justice Act. City Court cases concerning a claim, which has an economic value of less than 10.000 DKK, requires approval from the Appeals Permission Board in order to be appealed.

Court cases treated by the high courts as second instance cannot be appealed under normal circumstances. The Appeals Permission Board can however allow cases concerning a matter of principle to be treated in the Supreme Court as third instance, confer section 371.

The time-limit for an appeal to the high court is four weeks and appeal to the Supreme Court is 8 weeks. In civil cases the appellate body is able to treat the entire case. New claims and statements can normally not be brought before an appellate body if the opposing party objects, confer section 383. New arguments and evidence can however be presented before the appellate body.

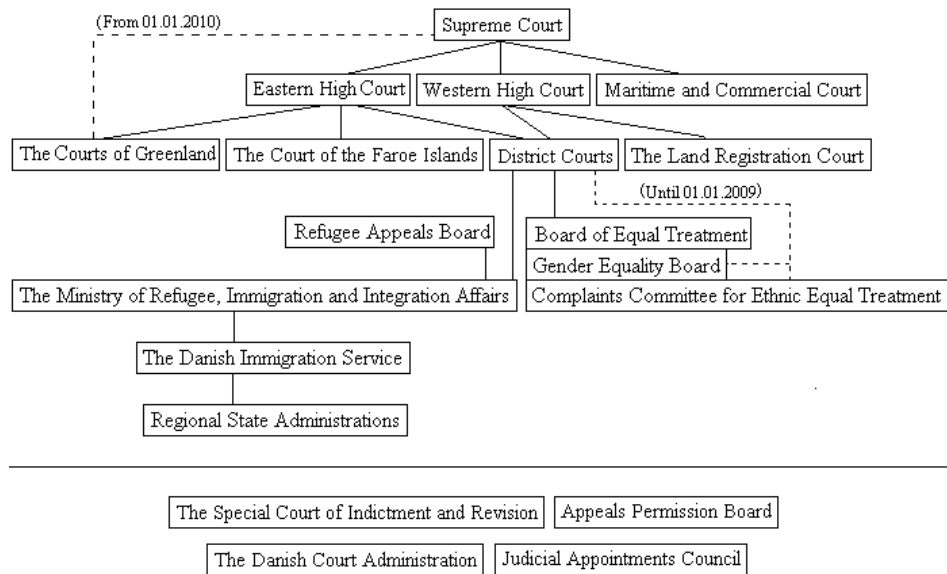
Decisions made by a court can under normal circumstance be appealed to a higher court. Thus decisions made by the city courts can be appealed to the high courts, confer section 389 of The Administration of Justice Act. Furthermore decisions made by the High Courts or the Maritime and Commercial Court in first instance can be appealed to the Supreme Court, if The Supreme Court or the Appeals Permission Board approves it. The Appeals Permission Board can approve appeal of decisions concerning matters of principle character.

Apart from the court system, an individual who alleges to have been subjected to a human rights violation by the administrative authorities has access to various other non-judicial remedies, among others the Parliamentary Ombudsman.

The Danish judicial system is regulated by the Consolidated Act no. 1069 of 06.11.2008 on Administration of Justice.¹

¹ Available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=121708>

Table 1: Danish judicial system



Supreme Court²

The Supreme Court is the final court of appeal in Denmark and is situated in Copenhagen. The court consists of a court president and 15 other Supreme Court judges. The Supreme Court reviews judgments and orders delivered by the High Courts, the Maritime and Commercial Court and the High Court of Greenland. The Supreme Court reviews both civil and criminal cases and is the final court of appeal in probate, bankruptcy, enforcement and land registration cases. In criminal cases, the Supreme Court does not review the question of guilt or innocence, only the question of sentencing. There are no lay judges on the Supreme Court panel. Only in exceptional cases is there a right of third instance appeal to the Supreme Court.

The High Courts³

There are two high courts in Denmark *High Court of Eastern Denmark* and *the High Court of Western Denmark*. The Eastern High Court is situated in Copenhagen and consists of a president and 58 additional High Court judges. The Western High Court is situated in Viborg and consists of a president and 38 additional High Court judges.

² Sections 2-4 of the Administration of Justice Act.

³ Sections 5-8 of the Administration of Justice Act.

The High Courts treat appeals from the district courts and some cases in first instance. Civil and criminal cases are tried by the district courts as first instance. The High Courts also treat interlocutory appeals concerning decisions made by the District Courts. The western High Court treats appeals from the Land Registration Court and the Eastern High Court treats appeals from the court of the Faroe Islands. Normally three High Court judges participate in a case. In jury-cases nine jurors also participate and in some cases three Lay Assessors (court members with no judicial education) participate together with the three High Court judges.

District Courts⁴

Denmark is divided into 24 jurisdictions each with a *District Court*. District courts treat most cases in first instance. In district court cases one judge normally participates. In certain cases, for instance in principal cases, three judges can participate. In jury cases three judges and six jurors participate. In Lay Assessor cases one judge and two Lay Assessors participate.

The land registration Court⁵

The Land Registration Court consists of one president and the court settles disputes arising from registration. Decisions made by the Land Registration Court can be appealed to the Western High Court of Denmark.

Maritime and Commercial Court⁶

The Maritime and Commercial Court hears cases concerning maritime and commercial matters from all over the country. The Court for instance hears cases concerning Intellectual Properties (the Danish Trade Mark Act, the Design Act, the Marketing Practices Act), the Competition Act, cases concerning international trade conditions as well as other commercial matters. The Maritime and Commercial Court treats cases in first instance and judgments made by the court can be appealed to the Supreme Court. The Court is situated in Copenhagen and consists of a president, two vice presidents and two additional judges. Normally one judge and two appointed professional experts participate in cases at the Court.

The Court of the Faroe Islands

⁴ Sections 9-13 of the Administration of Justice Act.

⁵ Section 18 of the Administration of Justice Act.

⁶ Sections 14 -17 of the Administration of Justice Act.

The Court of the Faroe Islands is situated at Tórshavn. Its jurisdiction comprises all the islands. The court at Tórshavn hears the same cases as district courts in other regions of Denmark. Appeal lies to the High Court of Eastern Denmark.

The Courts of Greenland⁷

The courts of Greenland are composed of the High Court of Greenland and 18 *magistrates' courts*. Magistrates' court decisions are made by a magistrate and two lay judges, none of whom holds a law degree. The magistrates' courts hear all civil and criminal cases. Under certain circumstances, the High Court of Greenland may take over the hearing of a case if it is found to require special legal insight or other expertise. Appeal against a decision made by a magistrates' court lies to the High Court of Greenland. Major cases are, however, brought directly before the High Court of Greenland. Appeal lies to the High Court of Eastern Denmark.

On 01.01.2010 a new Administration of Justice Act for Greenland enters into force.⁸ The act establishes a new first instance court, The Court of Greenland which will treat complicated first instance cases instead of the magistrates' courts and educate new magistrates. Furthermore the magistrates' courts will be able to refer certain cases to the new court. The High Court of Greenland will solely treat appeal cases in second instance. The judgments of the High Court of Greenland can in some cases be granted leave to appeal at the Danish Supreme Court.

The Special Court of Indictment and Revision⁹

The Special Court of Indictment and Revision deals with disciplinary matters concerning judges or other legal staff employed by the courts, including the courts of the Faroe Islands and Greenland, and the Appeals Permission Board. In addition, the Special Court of Indictment and Revision may reopen criminal cases and disqualify counsel for the defence in criminal cases. The Special Court of Indictment and Revision is composed of five members: a Supreme Court judge, a high court judge, a district court judge, an attorney and a lawyer with scientific expertise. Members of the Court can only be removed by court decision.

Appeals Permission Board¹⁰

⁷ Regulated by *Lov om rettens pleje i Grønland* [Administration of Justice Act for Greenland confer Act no. 99 of 21.03.1984].

⁸ *Retsplejelov for Grønland* [Act no. 305 of 30 April 2008 Administration of Justice Act for Greenland] sections 1-9 and 54-60.

Available in Danish at: <http://www.ft.dk/doc.aspx?/samling/20072/menu/00000002.htm>

⁹ Section 1a of the Administration of Justice Act.

The Appeals Permission Board considers petitions for leave to appeal in civil and criminal cases (second and third instance). Thus the Appeals Permission Board considers petitions for leave to third instance appeal to the Supreme Court. Cases that may have implications for rulings in other cases, or cases of special interest to the public may be granted leave for appeal. Furthermore certain case types require permission by the Appeals Permission Board in order to be brought before a superior court in second instance. The Board also treats complaints concerning refusal to grant free legal aid. In appeal petitions the board consists of five members: a Supreme Court judge (chairperson), a high court judge, a district court judge, an attorney and a lawyer with scientific expertise. Petitions concerning free legal aid are treated by a high court judge, a district court judge and an attorney. Financially and administratively the Appeals Permission Board belongs to the Danish Court Administration. The Board is independent of the public administration. Therefore complaints regarding the decisions of the Board cannot be submitted to the Ministry of Justice or the Parliamentary Ombudsman.

The Danish Court Administration¹¹

The Danish Court Administration is an independent institution which ensures administration of the courts' and the Appeals Permission Board's funds, staff, buildings and IT. The Danish Court Administration is headed by a board of governors and a director. The Danish Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no instructive power and can not change decisions made by the Danish Court Administration. The board of governors is the chief executive and generally liable for the activities of the Danish Court Administration. The director, who is appointed and may be discharged by the board of governors, is in charge of the day-to-day management. The director is not required to hold a law degree. The composition of the Danish Court Administration's board of governors is provided by the Danish Court Administration Act. The board of governors has 11 members, eight of whom are court representatives, one is a lawyer and two have special management and social insights.

Judicial Appointments Council¹²

The Judicial Appointments Council is an independent council, which submits recommendations to the Minister of Justice for all judicial appointments except the post of president of the Supreme Court. In practice, the Minister of Justice always follows the Council's recommendations. The

¹⁰ Sections 22-27 of the Administration of Justice Act.

¹¹ Regulated by *Lov om Domstolsstyrelsen [Act no. 401 of 26.06.1998 on the Danish Court Administration]* Available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=87562>

¹² Sections 43a-44 of the Administration of Justice Act.

Council is composed of a Supreme Court judge (chairman), a high court judge (vice-chairman), a district court judge, an attorney and two representatives of the public. The Minister of Justice appoints the members of the Council based on the recommendations by the Supreme Court, the high courts, the Association of Danish Judges, the General Council of the Danish Bar and Law Society, the National Association of Local Authorities in Denmark and the Danish Adult Education Association.

Judges are appointed by the monarch on the recommendation of the Government (the Minister for Justice). Judges to the lower courts are primarily recruited from the Ministry of Justice and among deputy judges. A limited number of judges are recruited among teachers at the law faculties of the universities and among practising lawyers. The Constitution guarantees judges complete independence of the executive in the exercise of their duties, stating that they shall be guided solely by the law. It is laid down as a general rule that judges cannot be transferred against their wish and can be dismissed only by court judgement. A decision to dismiss a judge is made by the Special Court of Indictment and Revision, consisting of three professional judges; one from the Supreme Court, one from a high court and one from a lower court. Judges in Denmark retire at the age of 70. The remuneration of judges may not be reduced during their continuation in office.

Only professional judges sit in ordinary civil cases. In areas of civil law where a special expertise is considered valuable, the court may be assisted by lay judges with a special background, e.g. regarding child psychology in juvenile cases. Lay judges participate on a wide scale in criminal proceedings, both as jurors in cases regarding serious crimes and as assessors in cases regarding minor criminal offences. Furthermore experts participate in certain civil and criminal cases requiring specific knowledge, e.g. concerning commercial or maritime affairs.

Quasi-judicial administrative bodies

Various administrative organs exist in Denmark dealing with specific legislative areas. Decisions made by administrative organs are regulated by consolidated act no. 1365 of 07.12.2007 Administrative act. In general administrative decisions are not final since they can be brought before the Danish courts, cf. section 63 of the Danish constitution. Administrative procedures are often characterized by being free or more affordable to the parties, faster than court procedures

and able to involve the complainant to a higher degree than the courts. Furthermore the responsibility of collecting evidence and information often lies with the administrative organ.

Within the area of non discrimination the Board of Equal Treatment is the quasi-judicial administrative body dealing with complaints. The Board is composed of three judges who compose the presidency and nine members who have a law degree. Decisions made by the Board are final and binding for both parties. The Board is able to award compensation to victims. Any citizen can file a complaint to the Board of Equal Treatment. Decisions made by the Board of Equal Treatment are binding to the parties and can be brought before the City Courts. If a decision by the Board of Equal Treatment is not followed by a party the Board has an obligation to bring the case before the courts at the other party's request.

The Board deals with complaints related to discrimination based on gender, race, colour, religion or belief, political views, sexual orientation, age, disability or national, social or ethnic origin within the Labour Market. Outside the labour market, the Board deals with complaints related to discrimination based on race, ethnic origin or gender outside the Labour Market. When the Board of Equal Treatment was established the Gender Equality Board and The Complaints Committee for Ethnic Equal Treatment were closed.

The Parliamentary Ombudsman

The Parliamentary Ombudsman handles complaints about the decisions made by the administrative authorities. The Ombudsman can also investigate cases on his own initiative and initiate general investigations of the case-handling of an authority. Citizens may complain to the Ombudsman provided other existing complaints mechanisms have been exhausted. The Ombudsman may on his own initiative investigate cases concerning the application of the provisions of international and regional human rights Conventions. The activities of the Parliamentary Ombudsman are regulated by Act on the Parliamentary Ombudsman (Act No. 473 of June 12, 1996 as amended by Act No. 556 of June 24, 2005). The Ombudsman may inspect any institution and any place of employment within his mandate, including Greenland and the Faroe Islands. The inspections take place where citizens are deprived of their liberty such as prisons, detention centres, psychiatric hospitals, etc. Public buildings are also inspected in order to investigate the accessibility of the buildings and the utility of their conveniences for persons with disabilities.

2. Restrictions regarding access to justice

Effective access to a judicial resolution body means among other things that the citizens need to have a certain level of knowledge about the laws and the legal positions that derive from them as well as knowledge about how to enforce these rights. This means that the citizens should have access to legal aid in some form as well as access to a judicial resolution body.

The courts have often been criticized that the process of trying a case is too expensive, slow and formal, and that this can be a real obstacle for citizens in having effective access to justice.

A reform of the courts has however been carried out over the last years. Easier access to the courts and lower legal costs are some of the advantages of the reform. For instance have the proceedings regarding small cost claims been altered in regard to cases involving claims of no more than 50.000 DKK. This entails that the court helps with a thorough guidance and assistance to parties who are not represented by a lawyer. Furthermore it is possible to have minor claims case tried in an easier way with fewer cost.

Applying for free legal aid is however secondary to legal expenses insurance cf. section 325, subsection 1 in the Administration of Justice Act. If a citizen has such insurance and it covers the concrete case it is not possible to be granted free legal aid to try the case before the courts nor is it possible to get an attorney assigned and the citizen will have to pay court fee. One of the criteria to be covered by the insurance is that the citizen has sought legal advice from an attorney who has taken on the case. To find an attorney who is willing to take the case before he or she has confirmation that the insurance will cover might be a difficult task especially if the citizen is unable to pay for the preliminary meetings etc. It is then for the insurance company to decide whether there are reasonable grounds to try the case and should the insurance company find that there are no such grounds the citizen can then apply for free legal aid. The assessment of the insurance company will however be part of the decision from the Civil Affairs Agency that handles applications on free legal aid but the agency is not bound by it. There is a risk that this can be seen as an obstacle to the accessibility to the courts since the insurance companies have an economic interest in the outcome of the assessment of whether or not there are reasonable grounds to try the case. This might lead to restrictive assessments and consequently to people not being able to have their cases tried by the courts.¹³

¹³ Per Andersen m.fl. (2009) Om rettens tilgængelighed p. 100

3. Length of judicial proceedings

The length of proceedings of non-discrimination cases at the city courts range from five months to one year and 9 months. A large part of cases are settled in 1 year. Cases at the High Courts range from 1 month to 2 years and 10 months. In a large part of the cases the proceeding at the High Courts lasts 1 ½ years. Cases at the Maritime and Commercial Court range from 10 months to 3 years and 1 month. The length of proceedings at the Supreme Court range from 11 months to 2 years and 9 months. A majority of cases at The Supreme Court are settled in 1 ½ -2 years.

For a large part of cases the average length of proceedings are approximately. 1-1 ½ years pr. instance. The European Court of Human Rights (ECtHR) has for instance in the case Hutchison Reid v. The United Kingdom (application no. 50272/99) stated that as a rough rule of thumb in Article 6 § 1 cases proceedings should not last longer than one year per instance. This rule would indicate that some of the Danish cases are not concluded within a reasonable time, but whether the Danish proceedings are excessive in length depends on the circumstances of each case.

None of the Danish cases lasted longer than 7 years in total. The two longest cases lasted in total 6 years and 5 months (U2002.2435/3H) and 6 years and 9 months (U2000.2249H). The first case was treated in three instances and the second case was initiated at the city court but referred to the Maritime and Commercial court and later appealed to the Supreme Court. Furthermore preliminary questions were submitted to the European Court of justice in both cases. The total lengths of the proceedings are in general not considered excessive.

Summing up, the average length of proceedings at each court instance in the discrimination cases is slightly longer than the ECtHR's main rule of one year per instance. In order to conclude that the length of proceedings is excessive more information on whether delays occurred which were attributable to one of the parties is required.

Table 2: Length of proceedings in selected non-discrimination proceedings

Case title	Administrative decision	City court judgment	Eastern or Western high court, or the Maritime and Commercial Court judgment	Supreme court judgment	Preliminary questions submitted to the ECJ	App. total length of proceedings
U.2000.1112H			Eastern High Court (1 year 2 months)	2 year 3 months		3 year 5 months

U.2000.2249H			Maritime and Commercial Court (3 years 1 month)	1 year 11 months	1 year 5 months	6 years 9 months
U2000.2350Ø			Eastern High Court (1 year)			
U2001.83H			Eastern High Court (1 year 5 months)	2 years		3 year 5 months
U.2001.192V		City Court of Gråsten (7 months)	Western High Court (1 year 2 months)			1 year 9 months
U.2001.207V		City Court of Herning (1 year)	Western High Court (1 year 5 months)			2 years 5 months
U2001.250Ø		City Court of Odense (1 year 9 months)	Eastern High Court (10 months)			2 year 7 months
U.2001.550H			Maritime and Commercial Court (1 year 5 months)	11 months		2 year 4 months
U.2002.1789H			Western High Court (2 year 10 months)	1 year		3 year 10 months
U.2002.2435/3H		City Court of Århus (10 months)	Western High Court (1 year 3 months)	2 year 9 months	1 year 6 months	6 year 5 months
U2003.603H		City Court of Gråsten (7 months)	Western High Court (1 year 2 months)	2 year 2 months		3 year 11 months
U.2003.2276V		City Court of Horsens (11 months)	Western High Court (11 months)			1 year 10 months
U.2004.1659Ø		City Court of Hvidovre (8 months)	Eastern High Court (1 year 10 months)			2 year 7 months
U2004.2701H		City Court of Kolding (1 year 5 months)	Western High Court (1 year)	2 year 2 months		4 year 7 months
U2005.13V		City Court of Esbjerg (5 months)	Western High Court (1 year)			1 year 5 months
U2005.805V		City Court of Holstebro (6 months)	Western High Court (1 year 4 months)			1 year 10 months
U.2005.1265H		City Court of Frederiksberg (11 months)	Eastern High Court: app. 1 year 4 months	1 year 1 month		3 year 4 months
U.2005.2111H			Eastern High Court (2 year 10 months)	1 year 4 months		4 year 2 months
U.2005.2269V		City Court of Tønder (11 months)	Western High Court (11 months)			1 year 10 months
U.2006.1603Ø			Eastern High Court (1 year 7 months)			1 year 7 months
U.2006.2471V	Gender Equality Board	City Court of Horsens (8 months)	Western High Court (1 year)			1 year 8 months
U2007.602V		City Court of Frederikshavn (6 months)	Western High Court (11 months)			1 year 5 months

Murat Er v. Copenhagen Technical Academy and Copenhagen Polytechnic (27.06.2006)	Complaints Committee for Ethnic Equal Treatment (app. 9,5 months)	City Court of Copenhagen: (8 months)	Eastern High Court (7 months)		2 years 7 months
U2007.923Ø	Gender Equality Board	City Court of Køge (1 year 7 months)	Eastern High Court (1 year 1 months)		2 year 8 months
HK v. Triad Danmark A/S (12.04.2007)			Maritime and Commercial Court (1 year 4 months)		1 year 4 months
U2007.2076H			Eastern High Court (1 year 9 months)	1 year 8 months	3 year 5 months
City Court of Glostrup (17.08.2007) - Business Danmark v. Dansk Industri U2008.342H		City Court of Glostrup (11 months)			11 months
U.2008.844V		City Court of Aalborg (7 months)	Western High Court: app. 1 year 9 months	1 year 9 months	3 year 6 months
U.2008.957H			Western High Court (1 year)		1 year 7 months
U.2008.1028Ø			Maritime and Commercial Court (10 months)	1 year 2 months	2 years
U.2008.1353V			Eastern High Court (1 year 9 months)		1 year 9 months
Yeter Ocal v. Municipality of Brøndby (15.02.2008) (Municipal decision was dated 13.09.2004)	Complaints Committee for Ethnic Equal Treatment (6,5 months)	City Court of Glostrup (1 year and 4 months)			3 years and 5 months
U2008.1370V		City Court of Hjørring (app. 8 months)	Western High Court (11 months)		1 year 7 months
U.2008.1450Ø		City Court of Viborg (9 months)	Western High Court (9 months)		1 year 6 months
U2009.30V		City Court of Copenhagen (1 year)	Eastern High Court (1 year 1 month)		2 year 1 month
U2009.323V		City Court of Horsens (11 months)	Western High Court (9 months)		1 year 8 months
		City Court of Holstebro (9 months)	Western High Court (6 months)		1 year 3 months

City Court of
Kolding – Lisa
Olesen v. Galleri
Avanti Kolding
Aps. (01.12.2008)

Gender
Equality Board

City Court of
Kolding (1 year 8
months)

1 year 8
months

4. Are procedures concluded within a reasonable time?

In general there does not appear to be excessive delays in non-discrimination cases. It is however difficult to discover delays in the case law since the written judgments primarily contain information on the dates of the judgments in the different court instances. The judgments rarely contain information on whether delays have occurred during the procedures and to which party delays might be attributable.

The discrimination cases are generally not particularly complex compared to other Danish court cases. The amount of evidence to be reviewed is not excessive and often consists of some written correspondence, witness examinations and the parties' submissions. Thus the complexity of the cases might not justify a prolonging of the judicial proceedings. The cases generally contain no information on the time taken to execute a court judgment.

5. Does provision exist for speedy resolution of particular cases?

In Danish Court cases it is the presiding judge who leads the judicial proceedings. The presiding judge has the responsibility of removing parts of the proceedings that unnecessarily prolongs the case; confer section 150 of the Consolidated Act no. 1069 of 06.11.2008 (Act on Administration of Justice).

According to section 152a of the administration of Justice Act the court is obligated, at a party's request, to set a date for the main negotiation in the court proceedings, if this is necessary in order to treat the case within a reasonable time, as required by ECHR article 6.

Besides the provisions mentioned above there are no specific provisions allowing speedy resolution in particular court cases.

In the cases concerning non-discrimination there is no indication of the expedited procedures being used. It is therefore not possible to conclude whether such procedures effectively reduce the length of the legal process

6. Is it possible to waive the right of access to a judicial body?

According to section 4 on the Act on Arbitration¹⁴ the courts have no jurisdiction in conflicts which have been decided before the arbitration.

Pursuant to section 6 of the Act, conflicts can be decided by arbitration in so far that the parties are free to dispose of the case (i.e. civil cases) and there is no regulation which decide otherwise.

It follows from section 36, subsection 1 in the Danish Contract's Act¹⁵ that a contract may be modified or set aside, in whole or in part, if it would be unreasonable or at variance with the principles of good faith to enforce it. The same applies to other juristic acts. It follows from subsection 2 that in making a decision under subsection 1 hereof, regard shall be had to the circumstances existing at the time the contract was concluded, the terms of the contract and subsequent circumstances. As such terms that in practice prevent a part from seeking remedies can under certain circumstances be void according to section 36.

Furthermore it follows from Act on Ethnic Equal Treatment section 6, that the provisions of the act may not be derogated from to the detriment of the person who is subject to discrimination on grounds of racial or ethnic origin. Similar provisions are to be found in the Act on prohibition against differential treatment in the Labour Market and the Act on Equality between Men and Women.

7. Access to non-judicial procedures

It is the general experience that victims of discrimination refrain from instituting judicial proceedings single-handedly because of the fact that taking legal action is a costly and time-consuming process. In order to ensure the principles of equality and non-discrimination, it is,

¹⁴ The Act on Arbitration 2005-06-24 No. 553 Lov om voldgift.

¹⁵ Bekendtgørelse af lov om aftaler og andre retshandler på formuerettens område [Consolidated Act no. 781 of 26.08.1996, Danish Contracts' Act]

therefore, pivotal that victims of discrimination are provided assistance with getting redress. Indeed, as a specialized equality body within the field of race and ethnicity, the Danish equality body – the Danish Institute for Human Rights (DIHR) - has express mandate to provide assistance to victims of discrimination. During the strategic period DIHR aims at providing assistance to victims of discrimination through:

- Strengthening access to justice on an individual level by assisting victims of discrimination where the Equal Treatment Board cannot provide an effective remedy;
- Strengthening access to justice for employees by establishing/and or cooperating with intern ombudsman complaints mechanism at work places;
- Strengthening the protection against discrimination on a general level by assisting victims of discrimination in principle cases;
- Ensuring that victims of discrimination have access to nationwide assistance;

The DIHR has a horizontal approach to discrimination as well as a broad human rights mandate. It has been given the mandate to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination. The Institute has the mandate to deal with individual complaints on racial discrimination both in and outside the labour market.

On 1 January 2009, a new complaints body - The Board of Equal Treatment – was established with the mandate to handle complaints over differential treatment due to gender, race, skin colour, religion or belief, political opinion, sexual orientation, disability or national, social or ethnic origin. The new complaints body has been established under the National Social Appeals Board and is as thus completely separated from the DIHR. The National Social Appeals Board is a government agency under the Ministry of Welfare. It is an independent administrative authority with judicial powers. Its main tasks are among other to decide complaints as the supreme administrative complaints authority in cases covering the wide area of legislation on social matters and employment.

The Equal Treatment Board can make legally binding decisions and as part hereof award compensation. The Board's decisions are administratively final. Since the Board can enforce its

decisions in court, it must be assumed that it will be highly effective in ensuring that victims of discrimination get compensation.

In relation to the structure of the Equal Treatment Board, the Board is composed of three judges who compose the presidency and nine members who have a law degree. The Board members are all appointed by the Minister for Employment. 3 members are appointed following recommendation by the Ministry for Refugee, Immigration and Integration Affairs. 3 members are appointed following recommendation from the Minister for Gender Equality. 3 members are appointed directly by the Minister for Employment. All members hold expert knowledge on labour market regulations and discrimination.

The Board of Equal Treatment bases its decisions on written information received from the complainant, the defendant (the person/event complained about) and the secretariat. It is not possible to present a complaint to the Board in person. It is possible to request a meeting with the Secretariat.¹⁶

The Equal Treatment Board does not offer mediation. Accordingly, under the current set-up, persons who feel discriminated do not have access to any mediation financed by the state.

A permanent, nationwide system of mediation by the courts was introduced under Danish law in 2008.¹⁷ Mediation by the courts involves a mediator that helps the parties in a civil case - that is brought before the courts - with identifying the core conflict, and then agree on a lasting solution to the dispute. The mediator cannot make any decision in the matter, and the mediation can be discontinued at any time without a solution if one side wants it. If that happens, the civil case will run its normal course before the courts. If the mediator is a judge, he may not preside in the ongoing case.

The purpose of mediation by the courts is according to a memorandum from the Ministry of Justice that through mediation to reach an agreed solution to the conflict, which seen as more satisfactory by both parties than the solution that would be reached by traditional conciliation procedures or ruling. The parties' satisfaction may be a result of the fact that mediation by the courts takes their underlying interests, needs and future, into consideration and that they have a greater influence on the process. The parties' satisfaction may also be due to the fact that mediation entails a faster and cheaper solution to the conflict than they would obtain through

¹⁶ More information is available at: <http://www.ast.dk/artikler/default.asp?page=1013> (01-05-2009)

¹⁷ See chapter 27 in the Administration of Justice Act.

traditional conciliation procedures or ruling.¹⁸ It is important to keep in mind that mediation by court is dependent on the parties' voluntary participation.

The procedures described above are not as such exclusive to other legal remedies but complementary. This means that a person can make use of both judicial bodies as well as non-judicial bodies but that there can be restrictions on in which order one uses them.

8. Legal aid

There are three institutions for public legal aid in Denmark and, in addition the insurance companies are offering legal insurance coverage integrated in the basic family insurances. The public legal aid institutions covers the Cost of lawyers' fees.

The public will grant-in-aid costs of legal assistance for persons whose personal income and capital income does not exceed DKK 248,000, for married couples the amount of DKK 315,000. For each child living at home the limit of amount is increased with DKK 42,000.

The legal aid offered covers 75 pro cent of the lawyer's fee up to a maximum of DKK. 840. If extended legal aid is granted, further costs can be reimbursed covering 50 pro cent of the lawyer's fee limited to a maximum of DKK 1,920 in grant-in-aid.

The lawyers who offer services under this scheme are listed at the offices of the courts, at the social-welfare offices in the communities, the local county authorities, and offices of the lawyer's legal aid, the consumers' organisations and consumers' complaints board as well as at the libraries.

Public legal aid is not offered for lawyers' assistance regarding: professional businesses, arrangements of debts, cases before the public institutions when these institutions provide assistance, trials.

Application for aid in civil actions is tried by the the Civil Affairs Agency of the Ministry of Justice and is granted in view of the expected outcome of the lawsuit. However, granted aid will be paid without regard to the actual findings of the court. The aid is seldom granted in cases regarding business matters.

¹⁸ Memorandum regarding pilot scheme on mediation by the courts, Ministry of Justice 2003.

The lawyers have on a voluntary basis established local offices for aid and assistance in legal matters. In Denmark there are more than 100 offices of the Lawyers' Legal Aid where local practicing lawyers on a *pro bono* basis offer their assistance. The Lawyers' Legal Aid offers help to all who personally seek aid in legal matters and it is permitted to stay anonymous.

Up until the end of 2008 it was possible to file a complaint with the Complaints Committee for Ethnic Equal Treatment.¹⁹ It was the Complaint Committee's task to handle complaints of differential treatment on the basis of race or ethnic origin. Filing complaints to the Complaints Committee was free of charge and the purpose of the Committee was to provide easy access for individuals to complain about unfair treatment on grounds of race or ethnic origin. The Committee could establish whether differential treatment had occurred and if so recommend that the complainant was given free legal aid to take the case to court. However, the Committee could not apply the EU rules regarding burden of proof when reviewing complaints because it was inquisitorial.²⁰ The complainant had to prove that he had been discriminated in order for the Committee to recommend free legal aid. If the complainant however applied directly for free legal aid at the Civil Affairs Agency he would then not have to prove that discrimination had occurred. The agency would instead assess whether he had reasonable grounds to litigate and one of the elements that go into that assessment would be whether it was possible to try the case before an administrative body.²¹ When the Complaints Committee existed it was likely that a complainant then would receive a rejection from the Civil Affairs Agency on the grounds that it was possible to bring the case before the Committee.²² Obtaining free legal aid would then be more difficult due to the fact that the complainant would have to prove discrimination and not only that he had reasonable grounds to litigate.²³ On the other side, one could argue that it is an advantage to have a body that is specialised within a given area to review these cases and then recommend free legal aid if they find that discrimination has occurred instead of having the Civil Affairs Agency who does not hold a special expertise assess the cases.

¹⁹ The Danish Institute for Human Rights was in 2003 by Parliament given the mandate to review complaints regarding differential treatment due to race or ethnic origin in order to implement article 13 of Directive 2000/43/EC of 19 June 2000 implementing the principle of equal treatment irrespective of racial or ethnic origin. On this ground the institute established the Complaints Committee for Ethnic Equal Treatment in the summer of 2003. In May 2008 Parliament passed an act that established that a new complaints board, The Board of Equal Treatment. As a result the Complaints Committee for Ethnic Equal Treatment was closed at the end of 2008.

²⁰ Preparatory work to the act on ethnic equal treatment, Till. A 3853.

²¹ The Act on Administration of Justice section 328, subsection 1 and subsection 2 (5)

²² Rejection of free legal aid should not be given on this ground if the case is not suitable to be brought before an administrative body or if such procedure is seen as futile.

²³ This point of view is mainly interesting if the complainant is seeking some form of financial compensation or wishes to file a complaint with an international body that requires exhaustion of national remedies.

Applying for free legal aid is secondary to legal expenses insurance cf. section 325, subsection 1 in the Administration of Justice Act. If a citizen has such insurance and it covers the concrete case it is not possible to be granted free legal aid to try the case before the courts nor is it possible to get an attorney assigned and the citizen will have to pay court fee. One of the criteria to be covered by the insurance is that the citizen has sought legal advice from an attorney who has taken on the case. To find an attorney who is willing to take the case before he or she has confirmation that the insurance will cover might be a difficult task especially if the citizen is unable to pay for the preliminary meetings etc. It is then for the insurance company to decide whether there are reasonable grounds to try the case and should the insurance company find that there are no such grounds the citizen can then apply for free legal aid. The assessment of the insurance company will however be part of the decision from the Civil Affairs Agency that handles applications on free legal aid but the agency is not bound by it. There is a risk that this can be seen as an obstacle to the accessibility to the courts since the insurance companies have an economic interest in the outcome of the assessment of whether or not there are reasonable grounds to try the case. This might lead to restrictive assessments and consequently to people not being able to have their cases tried by the courts.²⁴

Under Danish procedural rules, NGO's combating discrimination do not have an express authorisation to represent victims of discrimination in court.

According to established case law, associations may also be allowed to serve a similar function as that of a process agent for its members in the sense that the association files a suit in its own name on behalf of its member, it represents the member in court, i.e., it is not a party itself, and it is responsible for covering the costs of the case.²⁵ Where this is the case, the association does not have to be represented by a certified lawyer.

Further, it follows from the general procedural rules that a non-party may intervene in support of a party, if the non-party has a "legal interest" in intervening.²⁶ A non-party is considered to have the required legal interest to intervene when intervention is found to be reasonable and well-founded. It is left to the court's discretion whether this is the case. The intervention does not require the consent of the parties. The non-party does not get status as a party to the case, i.e., the

²⁴ Per Andersen m.fl. (2009) Om rettens tilgængelighed p. 100

²⁵ Referred to as "mandatar". See examples from case law in Betænkning 1468 Reform af den civile retspleje IV – Gruppesøgsmål m.v. pp. 66.69.

²⁶ The Danish Administration of Justice Act section 252(1).

non-party cannot submit its own claims, but may, at the discretion of the court, make statements and adduce evidence in support of a party.

In 2007, it became possible under the general procedural rules to file class action suits.²⁷ A group representative is appointed by the court and shall either be: i) a member of the group, ii) an association or organization for whom the subject matter of the case falls under the framework of its objectives, or iii) a public body with express statutory authorisation to act as group representative.²⁸ In the explanatory notes to the rules on class actions, consumer organisations and business organisations are mentioned as examples of associations that may serve as group representatives in areas covered by their objectives.²⁹ It is also a requirement that the group representative is capable of handling the interests of the members of the group.³⁰ According to the explanatory notes to the statutory provisions on class actions, this means that the group representative must have a non-profitable or economic interest in the outcome in the case so that the group representative is sufficiently motivated to handle the interest of the group members. Further, the group representative must have adequate financial means to carry out the case, and the group representative and the group members must not have conflicting interests.³¹

It is difficult to determine whether an NGO would be allowed to represent a complainant in court under the general procedural rules. On the other hand, it seems fair to assume that an NGO would be allowed to intervene in support of a complainant in practice. Further, it must be assumed that an NGO combating discrimination would be able to file class action suits on behalf of complainants.

In general, it must be considered important that NGO's can assist victims of discrimination with taking cases to court. This was especially seen before the establishment of the Danish Complaints Committee for Ethnic Treatment, since complainants otherwise would have to take their cases to court by themselves. Because of the fact that taking a case to court is an expensive and time-consuming process, this was rarely seen in practice. Even with the establishment of the Complainants Committee it was still important with assistance from NGO's, as there were some cases that the Complaints Committee could not take on. This was especially the situation in word-

²⁷ See chapter 23 a in the Danish Administration of Justice Act.

²⁸ The Danish Administration of Justice Act section 254 c(1). For example, the Danish Consumer Ombudsman may serve as group representative, cf. the Danish Marketing Practices Act section 28(2).

²⁹ Betænkning 1468/2005 Reform af den civile retspleje IV – Gruppesøgsmål m.v. p. 285.

³⁰ The Danish Administration of Justice Act section 254 c(3) of

³¹ *Forslag til lov om ændring af retsplejeloven og forskellige andre love [Bill changing the Danish Administration of Justice Act]* (LFF2006-2007.1.41) p. 12.

against-word cases because of the fact that the Complaints Committee could not take oral testimonies.

Under the new scheme with the Equal Treatment Board, the fact that the Board handles and investigates complaints about discrimination and can take cases to court on behalf of complainants where it has found that discrimination has taken places ensures that victims of discrimination are provided with some assistance. However, as it was the case with the former Complaints Committee, the Board cannot take oral testimonies. It must, therefore, be assumed that there will be some cases where the Board cannot assist victims of discrimination with getting redress. It would be expedient if NGOs could assist in such cases. The Board need the consent of the victim to take the case to court.

Notably, as specialised equality body, the DIHR plans to assist victims of discrimination where the Equal Treatment Board cannot. Further, the Institute plans to take principle cases to court, either by itself or in cooperation with the Board, in order to clarify the law where needed and to generally strengthen the protection against discrimination by establishing precedents. So far assisting victims through case-handling has been perceived to be the best solution, but by the Government's decision to transfer the case handling mandate to the Board of Equal Treatment, DIHR plans to develop a new strategy assist victims. This is however not specified in legislation.

The NGO the Documentation and Advisory Centre on Racial Discrimination (DRC) is the only NGO that assists victims of discrimination on grounds of racial or ethnic origin with taking cases to court.³² DRC does this by applying the state for free legal aid in court. Free legal aid in court is only granted where the claimant is considered to have a "reasonable case" and where she or he cannot pay the costs of the case her- or himself without "suffering severe privation".³³

Where DRC succeeds in getting free legal aid, the case is handed over to a lawyer who then represents the claimant in court.

Persons who feel that they have been discriminated can also go to a legal aid organisation for assistance. However, in general, legal aid organisations only provide oral advice – they do not take cases to court.

³² A couple of other organisations, such as "Counselling for foreigners" (Rådgivning for Udlændige) and SOS mod Racisme, also gives counselling in cases concerning discrimination based on grounds of racial or ethnic origin. However, to the knowledge of the Institute for Human Rights, these organisations do not take cases to court.

³³ In 2007, the income base had to be 256,000 kroner or below (approximately 34,370 euro), cf. the Danish Administration of Justice Act section 330(1)(ii), cf. Executive Order on Free Legal Aid.

In order to ensure a more nationwide assistance to victims of discrimination, the Danish Institute for Human Rights has plans to initiate a cooperation with municipalities, legal aid organisations and relevant NGO's, where the Institute will provide courses on how these entities may give guidance in regard to anti-discrimination law and means of redress.

9. Forms of satisfaction available to a vindicated party

The Danish non-discrimination legislation contains provisions on compensation to vindicated parties.

A person who has been subject to differential treatment can be awarded compensation for non-economic damages, confer section 7 in the Act on Prohibition against Differential treatment in the Labour Market, section 9 in Act on Ethnic Equal Treatment, section 2 and 3 of the Act on Equal Pay for Men and Women and section 15 in Act on Equal Treatment for Men and Women as regards Access to Employment etc.

According to section 16 in Act on Equal Treatment for Men and Women as regards Access to Employment etc. and section 3 in the Act on Equal Pay for Men and Women a dismissal which violates the acts can be rejected by the courts unless this is deemed especially inappropriate. If the dismissal is not rejected the employee will instead be entitled to a compensation for unjust dismissal, the size of which will vary depending on the length of the employment period and the specific facts of the case.

An employee who is subject to wage-discrimination based on gender can claim the wage difference from the employer, confer section 2 of the Act on Equal Pay for Men and Women.

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

A person who is responsible for an unlawful violation of another persons freedom, honour or person is liable to pay compensation, confer section 26 of the Damage Liability Act.

Violations of Act on Equal Treatment for Men and Women as regards Access to Employment etc., is furthermore punishable by fine, confer section 19 of the act.

The Gender Equality Board was able to award compensation and reject dismissals. The Board of Equal Treatment has now been granted to the same competences, but covers all discrimination grounds.³⁴

In mediation cases at the courts compensation can be agreed upon by the parties.

10. Adequacy of compensation

In relation to compensation to victims of discrimination the level of compensation must be considered somewhat inadequate (on race and ethnicity) even if it is in accordance of Danish legal tradition to generally award relatively low level of compensation. Compensation in relation to dismissal of pregnant woman is perceived to be adequate.

The Danish courts consider the facts of the case when measuring the compensation to be awarded. Often the courts simply refer to the circumstances of the case thus making it difficult to establish exactly which facts that affect the size of the compensation. In many of the cases concerning Act on Equal Treatment for Men and Women as regards Access to Employment etc. and Act on Prohibition against Differential treatment in the Labour Market the length of the employment period is taken into account and the compensation is measured as a number of months pay. The focus of the Danish courts when measuring the compensation is often to restore damage sustained. Especially in cases concerning dismissals of pregnant women the compensations awarded may however have a deterrent effect since the compensation often amounts to more than DKK 200.000 or 9 months pay. The highest awarded compensation in the selected cases was a case concerning dismissal during maternity leave and the compensation amounted to 298.044 DKK which was equal to 1 year of salary. Compensations this size do presumably have a deterrent effect.

On the other hand the compensation is relatively modest, and has a limited deterrent effect, in cases with a short employment period or where the claimant has been refused employment in

³⁴ Confer Section 19 of the Act on equality between men and women and section 2 of the Act on the Board of Equal Treatment

advance,, where the compensation amounted to 25.000 DKK. The lowest awarded compensation was in two cases, where the compensation awarded amounted to 10.000 DKK. The deterrent effect of this compensation is probably limited.

In one case concerning equal pay for men and women the compensation was equal to the wage difference between a female complainant and the other male employees. The deterrent effect of this compensation which amounted to DKK 88.891,25 (approximately 12.000 €) might be questioned since the compensation awarded was no higher than the amount of money the employer would have had to pay in order to avoid differential treatment. The case was brought to court by the Gender Equality Board on behalf of the claimant and the compensation was equal to their initial claim.

An average size of compensation in the selected cases amounts to approximately 110.000 DKK equal to 6 months of pay which presumably contains some degree of deterrent effect.

From the selected case law there is no indication that Danish courts use punitive damages when measuring compensation.

Table 3: Level of compensation in selected cases concerning discrimination

Act on Equal Treatment for Men and Women as regards Access to Employment etc.

Case	Result	Compensation
U.2000.1112H	No violation	
U.2000.2249H	Dismissal due to a long period of sick leave following child birth was in violation of section 9.	86.301,15 DKK. = 39 weeks pay with reference to the wrongful dismissal and the length of the employment period was taken into consideration.
U.2001.192V	Violation of section 4.	58.500,00 DKK = 3 months pay with reference to the very brief period of employment and the fact that the plaintiff was not pregnant at the time of her dismissal.
U2001.250Ø	Dismissal of pregnant woman, in violation of section 9.	132.000 DKK = 6 months pay, with reference to the length of the employment, which was 5 years.
U.2001.550H	Dismissal was not based the plaintiffs request for paternity leave. No violation.	
U.2002.2435/3H	Dismissal of pregnant woman was in violation of section 9.	87.000 DKK = 6 months pay, with reference to the length of the employment period of 3 months.
U2003.603H	Dismissal of woman who tried to become pregnant through artificial insemination was in violation of section 9.	122.000 = 6 months pay, with reference to the length of the employment period and the circumstances of the case.

U.2003.2276V	Differential treatment of pregnant woman was in violation of section 4.	10.000 with reference to the significance of the differential treatment.
U.2004.1659Ø	Not proven that dismissal was not caused by request for paternity leave. Violation of section 9.	168.600 DKK = 6 months pay
U2004.2701H	Dismissal of pregnant woman in violation of section 9.	77.593,76 DKK = 26 weeks pay with reference to the brief period of employment.
U2005.13V	Dismissal of pregnant woman was a violation of section 9.	203.999,40 DKK = 9 months pay
U2005.805V	Dismissal during a maternity leave was in violation of section 9.	298.044 DKK = 1 years pay, with reference to the length of the employment period, which was almost 10 years.
U.2005.2269V	Dismissal following a request for paternity leave in violation of section 9.	91.390 DKK = 6 months pay, with reference to the brief employment period and the prospect of being dismissed at the beginning of the winter season.
U.2006.1603Ø	Dismissal following a paternity leave violated section 9.	180.000 = 6 months pay, based on the brief employment period.
U2007.602V	Transfer of an employee during maternity leave to a lesser position constituted a violation.	196.080 DKK = 12 months pay
U2007.923Ø	Dismissal of woman on sick leave after an involuntary abortion was in violation of section 9.	80.000 DKK = 6 months pay
U2007.2076H	Denial of part time paternity leave was in violation of section 9.	No compensation awarded since the plaintiff quit his job on his own.
U.2008.844V	Dismissal of pregnant woman was in violation of section 9.	125.850 = 6 months pay
U.2008.957H	Refusal in advance to hire a female constituted a violation.	25.000 DKK
U2008.1370V	Dismissal of pregnant woman was not a violation of the act.	
U2009.30V	Dismissal of pregnant woman was in violation of section 9.	114.000 DKK = 6 months pay with reference to the length of the employment period.
U2009.323V	Dismissal of male employee whose girlfriend received fertility treatment was in violation of section 9.	203.038,87 DKK = 9 months pay with reference to the length of the employment period and the facts of the case.
Retten i Kolding – Lisa Olesen mod Galleri Avanti Kolding Aps.	Dismissal of pregnant woman was in violation of section 9.	230.000 DKK which was the plaintiffs claim. The defendant didn't object to the size of the compensation.
Retten i Glostrup – Business Danmark mod Dansk Industri	Dismissal of pregnant woman was in violation of section 9.	250.000 DKK which was claimed by the plaintiff.

Act on Prohibition against Differential treatment in the Labour Market

Case	Result	Compensation
U2000.2350Ø	Violation of section 7	10.000DKK The Western High Court referred to the circumstances of the case, when measuring the compensation.
U2001.83H	No violation	

U.2001.207V	Dismissal in violation of section 2	75.000 DKK The size of the compensation was based on the facts of the case and the length of the employment period.
U.2005.1265H	Not a violation to prohibit employees to wear headwear including Muslim headscarves.	
Sø- og Handelsretten, HK mod Triad Danmark A/S	Dismissal of employee because of his lacking Danish skills was no a violation.	
U.2008.1028Ø	Refusal to permanently employ a Muslim woman was in violation of section 2.	25.000 DKK based on the brief employment period, the fact that the position was a temporary job.
U.2008.1353V	Employer who uttered degrading and humiliating remarks towards a homosexual employee violated section 2.	100.000 DKK with reference on the one hand to the coarseness of the employers behaviour and on the other hand the limited consequences of the remarks.
U.2008.1450Ø	Dismissal of visually impaired employee not a violation of the act.	

Act on Equal Pay for Men and Women

Case	Result	Compensation
U.2006.2471V	Price difference between a female and 3 male employees was in violation of section 1.	88.891,25 DKK = the wage difference

Act on Ethnic Equal Treatment

Case	Result	Compensation
Østre Landsret, Murat Er mod Københavns tekniske skole	No violation of the Act on Ethnic Equal Treatment in case concerning practical training.	
Retten i Glostrup, Yeter Ocal mod Brøndby Kommune	Violation of the act to demand of a woman to attend a Danish course before job training.	15.000 with reference to the rather minor violation.

European Convention of Human Rights

Case	Result	Compensation
U.2002.1789H	Requirement of Danish citizenship when applying for permission for occupational conveyance of passengers not a violation of article 14 and protocol 1 art. 1.	
U2008.342H	Not a violation of ECHR article 14 and 9 to require registration of child birth at the Danish State Church or to levy taxes used to finance some of the non-religious administrative tasks carried out by the State Church.	

Administrative law

Case	Result	Compensation
U.2005.2111H	No violation of the principle of equality in the Administrative law.	

11. Rules relating to the payment of legal costs

Generally the losing party pays the legal costs, confer section 312 of The Administration of Justice Act. However the Court can in special circumstances relieve the losing party from paying the legal costs, confer section 312, subsection 2. If a case is rejected by the Court the plaintiff is considered the losing party, when it comes to the payment of legal costs, confer subsection 4.

According to section 316 of the Administration of Justice Act legal costs covers expenses that are necessary in order to conduct a case properly. Expenses for legal aid are compensated with a suitable amount and other expenses are covered in full. A party who has recklessly caused wasted court meetings, unnecessary delays, irrelevant production of evidence or other unnecessary procedural steps can be imposed compensation for the costs of this, even though the party wins the case, confer section 318.

Administrative procedures, at for instance the Gender Equality Board or the Board of Equal Treatment, are generally free of charge. Thus there are no legal costs.

In mediations at the courts each party pays their own expenses, confer section 278 of the Administration of justice Act. The mediation process itself is however free of charge.

12. Rules on burden of proof

Pursuant to section 7 of the Act on ethnic equal treatment where a person who considers himself wronged presents facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the other party to prove that there has been no breach of the principle of equal treatment.

Statistics have only been used in cases on gender discrimination, but not yet led to a conviction in cases on discrimination on other grounds. There has been no debate or evolution surrounding their use and admission in court. Certain restrictions on data collection stem from legislation on personal data protection. Thus, Danish law³⁵ does not permit the collection of data on race or ethnicity, religion or belief and sexual orientation. Concerning data on ethnicity, data collated on

³⁵ Act on Personal Data Act on Statistics Denmark, Lovbekendtgørelse nr. 1189. af 21. december 1992, and Act on Personal Data,

country or region of birth of immigrants and their descendants may be used to indicate or prove patterns of discrimination in the labour market, in education and in geographical areas, e.g. neighbourhoods.

A tool to collect data on the ethnic composition of staff and show the progression in recruitment has been developed by the Ministry of Employment in cooperation with Danish Institute for Human Rights. It is based on data retrieved via the so called 'CPR number' – a personal number consisting of birth-date and a four digit code – that allows for the collection of data by Statistics Denmark³⁶ on country of birth, parents' country of birth and citizenship. In case such data may reveal personal data of identifiable persons, it is ensured that information is provided in a format that protects individual data protection, e.g. by showing benchmark numbers for a sector or a group of entities.

³⁶ *Statistics Denmark* was founded in 1850 and is an independent and autonomous institution which produces statistics on Denmark. Statistics Denmark is the central statistical authority in Denmark.