'Something is rotten in the State of Denmark'

A critical analysis of the Danish State's compliance with international, regional and national anti-discrimination legislation, and future perspectives on the equal treatment of immigrants in the labour market

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essential role to play in protecting its "new" as well as its 'older' population against discrimination; a responsibility it has only just started to assume.

Introduction

The principle that all human beings have equal rights and should be treated equally is a cornerstone of the notion of human rights and evolves from the idea of the inherent and equal human dignity of every individual (see article 1 of the UDHR). Discrimination has been seen as a problem to basic human rights since the time they were formulated, and has apparently always occurred from the very beginning of mankind. As such the prohibition of discrimination is one of the classical human rights[1]. A study made for the Danish Council of Ethnic Equality (1999) points to the serious consequences of racial discrimination for the individual and the Danish society as a whole. Racial discrimination runs counter to the integration of the immigrants by leading to a polarisation and marginalization of the newcomers[2]. There are serious consequences of ignoring such ongoing discrimination; social tension and a society divided into a majority and a minority group, the latter suffering from social economic marginalization (Togeby & Møller, 1999: 7). Discriminatory practice operates at many different levels of which some are more discrete and direct. Even our language is not neutral with regard to certain groups based on age, sexual orientation, gender and religion, ethnicity and race.

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[1]Which was made explicit in Conventions such as ILO's Forced Labour Convention (ILO 29, 1930), the ILO's Abolition of Forced Labour Convention (ILO 105, 1957) and the UN's Convention on the Supression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1956).

[2] I will in this paper use the terms; immigrants, people originating from third world countries, new arrivals, newcomers etc. to signify the group of people originating from Middle Eastern countries who within the last 30 years have arrived to Denmark. Often the term 'ethnic minority' is used to characterize this group. From a strictly legal point of view this is an incorrect use: the only officially recognized minority in Denmark is the German national minority living in the Southern part of Jutland. Having obtained status of 'minority' implies certain rights; own schools where the classes are taught in the maternal language of the group, own churches etc. In practice, though the immigrants from the Middle Eastern countries are requiring minority rights in spite of not being legally recognized as a minority.

Compared to traditionally large immigration countries such as Australia, Germany and Canada, Denmark has by far the highest rate of unemployment amongst immigrants coming from Non-Western countries (Pedersen, 2002: 6). EUROSTAT's Labour Force Survey from 2002 shows an emploment rate of 42, 9 % among immigrants compared to a 77.2 % among the other population group in Denmark (Tænketankens Fjerde Rapport, 2004: 101). Economically and socially the newcomers are on the whole marginalized in the Danish society. This thesis will concentrate on the racial discrimination; more particularly the one that takes place in the labour market.

A whole range of special international anti-discrimination legislation has been set up in recognition of the problem of discrimination: Denmark has ratified the United Nation's International Convention on the Elimination of all forms of Racial Discrimination (ICERD) of 1971 which entered into force on the 8th of November 1972 with respect to Denmark. Furthermore Denmark has made a declaration under Article 14, to the effect that CERD, the Committee of ICERD is competent to deal with complaints concerning Denmark. Every two years since 1973, Denmark has submitted a report on the legislative, judicial and other measures that have been implemented to give effect to the Convention's provisions (Forbes & Mead, 1992: 31). Denmark had already back in June 1960 ratified the UN specialized agency, the International Labour Organisation's Discrimination (Employment and Occupation) Convention 1958 (No. 111), referred to as ILO 111. Denmark is also obliged as a State Member of the Council of Europe and due to the ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR) dating back to 1953 and ratified by Denmark the very same year. The CoE established ECRI, European Commission against Racism and Intolerance in 1994 in order to gather information about the efforts made by the Member States to comply with their obligations, and make these public in its country-by-country reports. Its aim is to 'combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights'.

In 2000 The Council of the European Union introduced two Directives aimed at combating racism and racial discrimination and promoting the equal treatment in employment and occupation both of which had to be adopted in the legislation of the Member countries by July 2003 (see Council Directive 2000/78/EC & Council Directive 2000/43/EC).

Hence for many years Denmark has been obliged, under international and regional law to combat race discrimination in all of its forms. In order to fulfil its obligations due to the ratifications of the different Conventions, Denmark has developed national anti-discrimination laws. Until recently it belonged in the realm of criminal law, the Section 266 (b) of the Criminal Code on racist speech dating back to 1971 and the subsection b from 1995 and the Act on the Prohibition against Differential Treatment on Grounds of Race etc. adopted in September 1987. Lately the Act on Prohibition of Differential Treatment in the Labour Market was adopted as civil law in 1996. The very few cases brought up under the different Conventions and national laws, and an ongoing high unemployment rate among the immigrant population suggests that the protection against racial discrimination suffers from weaknesses in the legislation in some areas such as the labour market as well as a lack of enforcement of existing legislation.

The main objective of this paper is to consider whether the Danish state lives up to its international, regional and national obligations. The obvious answer is that it does not. There is a gap between 'law in books' and 'law in practice'. Ratified conventions, declarations and plans of action are a real first step towards the elimination of racism and discrimination, but unless they are effectively implemented and fully applied in practice, their impact is very small. Another point to be made is that the law as such is a powerful tool but that legislation on discrimination alone is not able to combat objective forms of discrimination.

Anti-discrimination laws have to be backed up by different kinds of projects which work over time aimed at changing the rigid common sense and values of the employers and the population at large forging a policy of 'multi-culturalism' and tolerance[3].

Even though the main focus of this paper is on legal protection from discrimination it is important to mention that as a trained Social Anthropologist my approach to the subject will not be a traditional legal one; I will also focus on the definitions of racism and racial discrimination and the aspects of multi-culturalism and tolerance.

I will initate the paper by giving an introduction to the situation of immigrants in Denmark and the political situation. Hereafter I will present different definitions of the phenomena of discrimination and racism as not all forms of racial discrimination is based on the perception of race. In chapter 3 I will present the international and regional legislation on anti-discrimination, initiating this section with a brief introduction to the relationship between national and international law. In chapter 4 I will highlight the most important Danish legislation on anti-discrimination. In chapter 5 I will consider the conformity of the Danish State with its international, regional and national obligations by evaluating the legal and measures taken by Denmark. As a continuation I will in chapter 6 present the non-legal measures taken by the Danish Government and elaborat on the aspects of multi-culturalism and tolerance. In 'Concluding remarks' I will sum up the conclusions and observations made throughout the paper.

I will primarily work with law texts, commentaries and reports from the different organisations in question, that is; the United Nations, its specialized agency, the International Labour Organisation, the Council of Europe, the European Union and the Danish Ministry on Integration and the Danish NGO, the Documentation

3 Another argument, which I will not explore in this paper though, is that of the importance of engaging the civil society: NGOs, grass-root movements, the schools, university, immigrant societies etc in campaigns and other kind of activities against racism. I will however not work with this aspect even though it is an essential part of racial discrimination and should be part and parcel of solving the racial discrimination and progessing the full participation of immigrants in all spheres of the Danish society.

and Advisory Center on Racial Discrimination (DACoRD) and the Danish Institute for International Studies and Human Rights.

Chapter 2: the problem of racism and racial discrimination in a Danish context

The purpose of the following subchapter is to reach a better understanding of racism and the different kinds and levels of racial discrimination. According to my point of view it is essential to know the mechanisms and nature of discrimination in order to be able to unmasque and combat it. The argument that I want to pursue and will elaborate upon later on is that because (racial) discrimination is such a complex phenomena, the methods to combat it should be equally complex.

Towards a definition of racial discrimination and racism

It is important to make a distinction between racism and racial discrimination: racism does not automatically lead to racial discrimination. Racial discrimination is in most cases based on rather more 'innocent' phenomenas such as ignorance, prejudices and stereophopic images of the ethnic minorities. Only in cases where racist attitudes are made public may they lead to racial discrimination. In the same way racial discrimination is not always a result of racism: Indirect and structural racial discrimination are examples of non-racist discrimination (Justensen, 2003a: 16). The purpose of this paper is not to discuss racism as such, but it is important to have in mind that it can be and in some cases is closely related to racial discrimination. Therefore it is important to identify and unmask these phenomena in order to try change the mode of action. Even though racial discrimination is not always based on racism it works in the very same way; namely by excluding or restricting the immigrants' opportunities to enjoy a full participation in the Danish society and by making them feel discriminated against. A prejudice about racial discrimination is that it is always a conscious act; in reality more indirect than direct forms of racial discrimination exist. And namely because (racist) prejudices exist in so many forms and at various levels in society they are often difficult to adress and must be adressed in different ways. Racial discrimination operates at different levels: personal, inter-personal, cultural and institutional. People can be discriminated against on

different and multiple grounds. As emphasized by Robin Allen from the Discrimination Law Association during the European Conference on the Implementation of the Anti-discrimination Directives into National Law in Copenhagen the 14th and 15th of November 2002;

> 'The discrimination we face today is of a new complexity. One form of discrimination is often connected with other forms of discrimination' (EU Conference Report, 2002: 5).

It is important to note that discrimination does not have to be intentional to be recognized as unfair by the law and the public policy makers. There are four key concepts in the analysis of discrimination in the labour market: 1) direct discrimination, 2) indirect discrimination, 3) positive discrimination and finally 4) positive action (Forbes & Mead, 1992: 1).
The definitions outlined in ECRI in its 'General Policy Recommendation No. 7, are of great use[4]. The report states that 'direct racial discrimination':

> "Shall mean any differential treatment based on ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable relationship or proportionality between the means employed and the aim sought to be realised" (ECRI, General Policy Recommendations No. 7,2002: 5).

Whereas 'indirect racial discrimination' is defined as:

> "cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour,

[4] The defintions of direct and indirect discrimination draw inspiration from those contained in the European Union Council's Directives 2000/43/CE and 2000/78/CE.

language, religion, nationality or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised (ibid:5).

DACoRD, the Danish Centre for Documentation and Consultance on Racial Discrimination[5] further differentiates the phenomena of racial discrimination: 1) 'direct isolated discrimination' which implies a single person's behaviour motivated on grounds of racism. 2a) 'Small group discrimination' implying smaller groups' racist behaviour not grounded particularly in political reasons and not necessarily in racial theories neither. As a common target the small groups attack any member of a small (ethnic) group. 2b) 'Organized discrimination based on political motives'. In this case we are dealing with a group whose racist behaviour is highly conscient and with clear political statements. Often this group has network and cooperates with similar groups. 3) 'Indirect isolated discrimination' signifies a single person's actions towards ethnic groups which are not based on conscient racist motives but rather on stereotypic grounds. 4) 'Direct structural discrimination' implies the different institutions and state authorities' discrimination of ethnic groups in their functions, area of housing etc. in order to comply with e.g. certain quotas of foreign inhabitants. They are therefore not motivated on grounds of racist theories. 5) 'Indirect structural discrimination' implies the discrimination by institutions in the shape of criterias, procedures and requirements which appear neutral, but ends up discriminating against the ethnic groups. Anyway, this type of discrimination is about barriers in the structures and traditions of the institutions. For instance the way of recruiting staff via networks which is often the case in Denmark (see websight: www.drcenter.dk). Distinguishing the different kinds of discrimination is very useful for a better understanding of the multi-layered phenomena and the nature of it; it is not

[5] The Danish name for the NGO is 'Dokumentations- og rådgivningscenteret om racediskrimination' (DRC).

always about racist ideas but also about traditions within the recruitment, and this is the essential knowledge when it comes to solving the problems.

Brief history of immigration in Denmark and a survey of the state of racial discrimination

Denmark has always been influenced by other cultures, which is illustrated in the architecture, the industry, politics and so forth. The first really big immigration wave was in the 1950's from Germanic and Slavic countries, but it was a less visible one than the present one. Up until the 1960's Denmark was one of the most ethnically homogenous countries in the world (Togeby & Møller, 1999: 9).
It was not until the 1960's with the economic growth that larger groups of working force, the so-called 'guestworkers' (implying they would return to their country of origin, which many also did) were brought to the country mainly originating from third world countries, primarily Turkey, Former Yugoslavia and Pakistan. From 1967 to 1970 it was relatively easy to enter the country. To get a work permit the employer only had to prove that he was not able to get a Danish employee and that the immigrant employer was to be appointed on a group contract basis. In 1970, however, a full stop for immigration was made, which has lasted up until today only permitting family reunions and refugees (Bada, Skifte & Tinor-Centi, 1996: 8). The biggest refugee groups that came to Denmark before 1970 were from Hungary and Poland. In the 1970's it was the Chileans and Vietnamese, and in the beginning of 1980's the immigrants were primarily from the Middle Eastern countries (ibid: 9). If one looks at unemployment amongst refugees who, generally speaking, have a much better educational background from their home countries and, have also received much more intensive instruction in Danish than other immigrants, unemployment is just as high as it is for other immigrant workers (Forbes & Mead, 1998: 31). Meredit Wilkie shows in her study of racial discrimination of immigrants in Denmark that this type of discrimination is quite direct by referring to the open practice amongst Danish employers of preferring Danish employees, regardless of ability (Wilkie, 1990: 55). Various reports show that both private and public employers are reluctant to hire people of a different

ethnic background. Interviews with 1.000 refugees and immigrants in Denmark conducted in 2001 showed that around a third of those interviewed experience discrimination (Justensen, 2003: 4). In an investigation made by Southern University Center in Denmark in 1997 it was proved that it was three times less likely that young people of an immigrant background would be invited for job interviews than their fellow Danes. Cases of indirect discrimination are highly problematic in that the 'evidence' is based on highly subjective judgements making it so hard to prove. And as we will see in the chapter on Danish the anti-discrimination legislation, until recently it was required that the victim of discrimination should provide the proofs.

In an AMID[6] working paper Peder J. Pedersen gives his points of views to the difficulties of integrating the immigrants in the labour market. In general, the longer time the new arrivals have been in Denmark and the more daily contact they have with Danish people, the higher is their chance of getting a job (Pedersen, 2002: 17). But in spite of many years in Denmark only 46 % of the second generation and immigrants from the age of 25 to 64 have obtained jobs, as compared to the rest of the Danish population where 79 % are employed (Tænketanken, 2004-04-05: 2). Pedersen also points to the changing structure of jobs - self-regulating working groups based on an advanced level of communication requiring a high level of language skills - as an obstacle for outsiders to enter the Danish labour market (Pedersen, 2002: 15). Another important aspect is the lack of economic benefits from working, compared to receiving subsidence from the Danish state as newcomers in general do not easily get high income jobs and have a very limited salary advancement in the jobs they are able to get (ibid. 28). Yet another barrier to integration is the fact that most jobs descriptions and conditions of employment conform to the typical educational background of Danish applicants. Immigrants who were educated in other countries are unable to convince employers of their professional expertise.

[6] The abbrevations, AMID, stand for: Akademiet for Migrationsstudier i Danmark. The paper was made in the elaboration of an evaluation of the research done in the area of integration in Denmark for the Ministry of Integration.

The root of the problems resides in the practices and norms on the labour market, making the Danish employers choose the applicants based on a biased conception of educational background and context (ECRI, 2001:18, para. 44.). Another serious obstacle for people from outside, and for a large part of the Danish society is the fact that 70 % of vacancies are never advertised, which points to the importance of being part of a network (Thomsen & Moes, 2002: 40). Insufficient educational background is also regarded as one of the main obstacles for the integration in the labour market. According to an analysis made by Mathiessen and Mogensen in 2000, 79 % of the people of immigrant background between 16 to 70 of age have only finished secondary school. This is by far a greater number compared to the rest of the Danish population (in Pedersen 2002: 18). Of serious concern is that the second generation of immigrants does not seem to study in the same degree as their fellow Danes (ibid: 15). In general though, the children of the newcomers are much better integrated than their parents. They do however still run counter to discriminatory practice which has nothing to do with lack of language or educational skills. In general people originating from third world countries are more likely to be discriminated against; the specific country of origin seems to be of less importance although some groups do tend to have greater difficulties in gaining access into the labour market, for instance the Somalis (ibid: 20).

Summarizing, one can conclude that there exists a racial discrimination which is based on pure racism, but also prejudice; lack of knowledge of the new arrivals' qualities, and a certain traditionalism within the labour market. But also that the high unemployment rate has more reasonable reasons, such as the diverging educational standards and language skills of the immigrants; the low incitement to work because of the Danish Welfare System and the isolation from the network that helps to employ the majority of the Danish working force. The problem of integration is a highly complex and multi-facetted challenge and should as such be met with different strategies and at different levels of society.

The former head of DACoRD, Eric Tinor-Centi points out that the main task and challenge to integration is to define what it means to be Danish. It is about challenging the static understanding; the concept of 'danishness' that excludes the immigrants. It is important to look at danishness as an ongoing process; changeable and continously redefining itself, opposed to or parallel to the development of the EU, the immigration and people of different cultures. The definition of danishness takes place in a struggle over power of the elites. The challenge is not to redefine Danishness but to make the definition broader and more inclusive based on ethnical multiplicity as well as shared values (Tinor-Centi, 2000: 39). One of the major problems in dealing with racial discrimination is that it is denied and ignored that it takes place; there is little if any constructive discussion in the media or amongst the politicians. This very failure from the Governments' side to recognize racial discrimination in the Danish society has been and still is highly critical: during the examination of the 13th periodic report by the Commission of CERD the Danish Delegation headed by a representative from the Foreign Ministry explained namely the lack of cases of discrimination in the Danish courts by stating that:

> "In Denmark we do not have tradition for using legislation against discrimination in that we believe that legislation cannot change the people's minds" (cited in Justensen, 2003: 3).

The composition of the current Danish Government has a great to do with the reluctance to engage full-fledgely in combating racial discrimination and racism (ibid: 37).

The Danish Government's approach to the immigrant problem

The current Danish Liberal/Conservative Government came into power in November 2001. It is depending on the support of the Danish People's Party, DPP. During 2003 five members of the Party have been sentenced for violation of section 266b of the Danish Criminal Code which covers hate speech (see

chapter 4 on Danish legislation). In this connection the Danish Supreme Court stated that it was not unjustifiable to label the leader of DPP as holding racist views. The very same Party demanded that the Board for Ethnic Equality, which was monitoring the Danish anti-discriminationn legislation, and the DACoRD which assisted individual victims of racial and religious discrimination as well as the other bodies working in this field such as the Danish Institute for Human Rights and the Danish Centre for Migration and Ethnic Studies be abolished. The Board for Ethnic Equality was closed within months of the New Government. By the shift of government the Ministry of Interior which had funded DACoRD drastically decreased its grant to the NGO. The Danish Institute for Human Rights was closed but later reestablished as the Centre for Human Rights, handling the old affairs of the Board of Ethnic Equality. As Pia Justensen notes, Denmark has for years cared about its international reputation. The Danish state has invested large sums in the UN system as well as in projects in third world countries. For these reasons among others Denmark has been looked upon as a tolerant and humane, international and outward-looking country (see Justensen 2003). The Danish government does acknowledge the problem of racism within its territory but deems it impossible to eliminate as stated by the Minister for Refugee, Immigration and Integration Affairs in the 'Action Plan to Promote Equal Treatment and Diversity and Combat Racism':

> "Surveys show that discrimination on the grounds of race, ethnic origin or belief is a genuine problem in modern-day Denmark, although it is hard to uncover the full extent of the problem. Nontheless, we have to acknowledge that no society is ever totally free of racism" (The Danish Government, Action Plan, 2003:1).

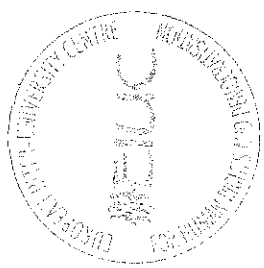
In the very same report, however, the Government stresses that comparisons made over time show that the Danes have become less racist. The report also comments on the very nature of discrimination, namely that it is highly subjective:

> "Perceived discrimination is subjective, and the extent of such discrimination is therefore not necessarily equal to the number of incidents that are objective examples of illegitimate or illegal discrimination against ethnic minorities" (ibid: 5).

The Government acknowledges that knowledge about the extent of discrimination and racism is limited as well as the number of racist acts. The Government has been very reluctant to acknowledge the importance of anti-discrimination legislation in the fight against racism and racial discrimination. In the chapter 3 of the same Action Plan the Government stresses that it can only provide a framework for a more tolerant society and that the responsibility for racism and racial discrimination is shared with the population:

> "Basic government requirements or legislation to secure general human rights are not enough to promote equal treatment, diversity and tolerance. It is crucial for the public to take an active part in creating an inclusive society with room for everyone and tolerance and respect for diversity" (ibid: 8).

In the Government's follow-up report on the Durban Conference, 'The Government's Vision and Strategies for Improved Integration', published in 2003, a number of strategies were set up within three main areas, of which the labour market is one. But Denmark does not live up to its international obligation of eliminating all forms of racial discrimination. The steady unemployment rate amongst the immigrant population is a clear symptom and proof of the prevalent existence of racial discrimination in the Danish society.



Chapter 3: Protection against discrimination: applicable international standards

Before I introduce the different Conventions Denmark has ratified, it is important to clarify the relationship between national and international law in order to understand the impact or lack of enforcement the latter has in the laws and practice covering (racial) discrimination in the labour market.

The status of international and EU law in Danish legislation

All Danish authorities, including the parliament, the courts and the administrative authorities, have an obligation to ensure compliance with human rights principles and norms set forth in the Constitution and the international instruments ratified by Denmark (Zahle, 1997: 44). Questions regarding human rights obligations of the administrative authorities are always subject to the review of the Danish courts. The courts hold the authority to review decisions and regulations made by the administrative authorities (UN Core Docu. Denmark: 9). According to Danish constitutional law possible conflicts between the two legal systems are to be decided on the basis of one of the three unwritten rules: 1) 'the rule of interpretation': interpretation of a domestic provision should be as compliant with international law as possible, 2) 'the rule of presumption' prescribes that in the event of divergence between a recent law and a treaty the conflict should be solved by applying domestic law in conformity with the treaty. 3) 'Rule of instruction' dictates that the executive should exercise its discretionary power in such a way that administrative acts conform to international obligations (Zahle, 1996: 268). The law Professor Henrik Zahle argues that the situation in Denmark should be considered as a situation of practical monism, indicating that international law constitutes a source of law even as part of domestic law, and that national courts may apply international law without explicit authority in cases where the domestic Law does not provide certainty (Zahle, 1997: 45). But as Zahle stresses; international human right's law does not take precedence over other sources of law (ibid: 46). The Council Directives of the European Union are another important source of law. They have a higher status in the Danish

legislation; even in cases where they have not been adopted, they can be directly aplied in the Danish courts, every Danish citizen is entitled to claim the rights of the Directives (Justensen, 2003: 117). In other words there exists a hierarchy and unclearness of law within the Danish legislation and practice as we will see later.

The United Nations: The International Convention on the Elimination of all forms of Racial Discrimination

The United Nation's Convention on the Elimination of All Forms of Racial Discrimination from 1965 (entered into force in 1969) provides the clearest and strongest international initiative to combat racism and racial discrimination. When ICERD was drawn up there was and unfortunately still is tendencies in many countries as well as in Denmark, to regard problems of racism and racial discrimination as an evil prevailing in other societies. Today the situation is different. The Commitee of ICERD has made it clear to its States Parties that no country can rightly claim that it does not have problems related to racism and racial discrimination within its own borders (Van Boven in Hastrup & Ulrich, 2002: 166). ICERD initiates by defining in Article 1 the problem of racial discrimination:

> "Racial discrimination [...] remains a stumbling block to the full realization of human rights. In spite of progress in some areas, distinctions, exclusions, restrictions and preferences based on race, colour, descent, national or ethnic origin continues to create and embitter conflict, and cause suffering and the loss of life" (see OHCHR, CERD, Fact sheet NO. 12).

The Convention operates with the following definition of racial discrimination:

> "Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal

footing, of human rights and fundamental freedoms on the political, economic, social, cultural or any other field of public life" (Art. 1, para. 1).

The principle of equality of the Race Convention consists of two rights: the right to non-discrimination and the right to special measures (Justensen: 2002: 10). In Article 2 (1)(d) states are obliged to 'prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organization'. This has been regarded as 'the most important and most far reaching of all substantive provisions'. It entails an obligation to prohibit racial discrimination by law, to secure effective protection against violations of such legal prohibitions as well as effective remedies. The Convention does not only function at the vertical level between governments and their peoples, but also at the horizontal level, namely between private parties: discriminatory acts in the private labour market etc.

The Race Convention has been ratified by 165 states. It entails three different levels of obligation: 1) obligation to respect: the states are prohibited against acting in contravention of recognized rights and fundamental freedoms; in other words it is about the state obligation to 'non-act'. 2) Obligation to protect requiring that states protect individuals from violations of their rights. It also obliges the state to actively combat racial discrimination by individuals in society. This obligation is still a highly controversial one since it touches upon the private sphere of individuals and it has not been determined in full consensus how far this obligation should go. 3) Obligation to fulfill: this obligation demands that the state provides for the most effective realization of the guaranteed rights through adequate legal, administrative, judicial or factual measures. Article 5 of ICERD requires State Parties to take steps to prohibit and eliminate racial discrimination and guarantee this right to everyone.

CERD was the first body created by the United Nations to monitor and review actions by states to fulfill their obligations (see OHCHR, CERD, Fact sheet NO. 12). Denmark has recognized the Race Committee's competence to take individual complaints and Danish citizens have acess to bring their complaints

before the Committee. According to Article 6 the Danish State is obliged to effective protect its citizens against discriminatory (racist) actions, and to provide the courts and other institutions necessary to prevent and deal with these cases. However, the Danish Courts have only dealt with four cases of racial discrimination since its fourteenth report (ibid: Article 6 (93)).

Special measures of the Race Convention

The other side of the principle of equality consists of the right to special measures. Article 1(4) and Article 2(2) of the Race Convention deal with the issue of special measures. Article 2(2) indirectly proscribes a right to real equality by forcing states to take special measures necessary in order to protect and secure the further development of specific racial groups. At the same time the Article 2(2) recognizes that mere legislation is not sufficient. In Article 1(4) the special measures are defined. The special measures are laid forth in Article 2(2) as one of the primary obligations of State Parties. In general individuals must not only be formally but effectively protected against racial discrimination.

United Nation's specialized agencies: the ILO: Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The ILO Convention No. 111 is the most important convention on discrimination of the ILO. It was adopted in 1958, entered into force in 1960 and was ratified the very same year by Denmark. The ILO 111 requires States to take measures to promote not only equality of treatment but also equality of *opportunity*. Indirect forms of discrimination,

Its Article 1(9)(a) defines discrimination in the same wording as ICERD, however it includes as unwarranted grounds of distinction sex, religion, political opinion and social origin:

> "Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

Article 1(2) states that:

> "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination".

The duties to be imposed on the state are as follows as put forth in Article 2, the central provision of ILO 111:

> "Each member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropiate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any distinction in respect thereof".

Article 3 goes on to define in more detail the obligations on states, which include an obligation to 'enact such legislation [...] as may be calculated to secure the acceptance and observance of this policy'. What is always questioned is whether the ILO 111 only covers direct discrimination or also indirect discrimination, but among the international lawyers there seem to exist a consensus that it does cover both (Forbes & Mead, 1992: 7). The Convention applies equally to the public and private employment spheres; the labour market and educational institutions.

The principal requirement of the ILO 111 is that there must be a national policy of equality of opportunity and treatment in employment. It must be clearly stated and rigorously applied. Furthermore the ILO Committee of Experts notes that it is not sufficient a mere prohibition of discrimination; in order to ensure the implementation of equality of opportunity the content of the national policy should:

"draw its inspiration from the principle the Convention: it is essential that it should be designed to promote equality of opportunity by elminating all distinctions, exclusions or preferences in law and in practice: that it should cover the different grounds of discrimination expressly referred to (in the Convention) and lastly, that it should provide for the implementation of the principle of equality of opportunity in all fields of employment and occupation" (ibid: 172-173).

Equality of opportunity, as required by the ILO 111, is to be achieved primarily by carefully-designed affirmative action programs. The ILO's Committee of Experts elaborated upon the Application of Conventions stating that:

"Many (racial minorities) live in extreme poverty, often in urban ghettos, and possess few assets or competitive skills. For them, the essential aim of affirmative action programmes is to provide preferential treatment in education and training programmes, or in systems of recruitment and promotion for salaried positions. Special measures thus aim to overcome this initial disadvantage and to enable these racial minorities essentially to compete on an equal footing with other members of national society. Measures thus seek to train and help the disadvantaged persons adapt to the available employment opportunities, rather than adapting employment and training opportunities to the particular characteristics of the person concerned" (ibid: 31).

Council of Europe: the European Convention for the Protection of Human Rights and Fundamental Rights and Freedoms

The ECHR has been described as the most succesful and effective international instrument in the field of protection of human rights and as such a very powerful weapon in the fight against racial discrimination. Its Article 14 contains a prohibition against discrimination. It reads as follows:

> "The enjoyment of the rights and freedom set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social oigin, association with a national minority, property, birth or other status".

The Article 14 apparantly provides protection from a wide range of discriminatory acts. However, it does not grant an independent right to be free from racial discrimination. Article 14 only grants an accessory right not to be discriminated against in relation to the rights and freedoms guaranteed by other articles of the Convention. As another crucial aspect the ECHR does not grant the right to employment and consequently there is no guarantee that employment must be secured without discrimination. The additional Protocol No. 12 to the ECHR contains a general clause prohibiting discrimination. Unfortunately the Protocol No. 12 has been neither signed nor ratified by Denmark. I will therefore not further examine the special procedures for initiating complaints as the Convention has no direct bearing on employment issues. However, the succesful incorporation of the ECHR into the practice of Danish courts as we will see later is the only example of the practical monism, the Danish state claims it partakes of. The European Commission against Racism and Intolerance (ECRI) was established in order to vigilize whether the States Parties of the CoE live up to their obligations of combating racism and xenophobia. The Commission prepares country reports based on visits to the different Member States. The first report on Denmark was published in November 1997.

The European Union

> "The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect

fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as derived from the shared constitutional traditions common to the Member States, as general principles of Community law" (Council Decision 2000/750/EC).

The right to equal treatment is seen as a core value and premise of the development of European Union as a space of 'liberty, security and justice' (EU, Årsberetning 2003: 3).

Discrimination based on religion or belief, disability, age or sexual orientation runs counter to the objectives of the EC Treaty particularly in the field of obtaining a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons (EU: Official Journal of the EC: para. 11). Special focus has been put on racial discrimination and racism as part of the so-called European Union Anti-Discrimination Policies. Back in 1996 the programme, Joint Action of 15 of July 1996 was adopted by the Council based on the concern that 'despite the efforts made over recent years by the Member States, racism and xenophobia are still on the increase' (EU: Official Journal L 185). On a Council Decision of the 27th of November 2000, a Community action programme was established to combat discrimination (2001 to 2006), referred to as 'the programme'. Its aims are to promote measures to combat direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation. As part of 'the programme' the EU has launched a major information campaign in all EU countries, working closely with trade unions, employers, NGOs, and national authorities to highlight the benefits of diversity in the workplace and beyond. The EU-wide campaign 'For Diversity. Against Discrimination' provides fact sheets which contain basic information on EU anti-discrimination policies, and practical advice on how organisations and individuals can avoid and combat discrimination[7].

[7] For further information visit the website of the campaign: www.stop-discrimination.info.

Denmark joined the European Community in 1973 and is now a member of the European Union. Part of the legislative power rests within the EU meaning that the EU regulations which are legally binding are directly applicable in all member countries. Furthermore it contains directives which are binding for how national Parliaments of the member countries are allowed to choose the form and implementation (UN Core Docu. Denmark: 3). EU directives have a much higher status than domestic law of individual EU member states, including Denmark. In some circumstances the directive can be directly applicable in national courts. A new Article 13 was inserted to strengthen the measures to combat discrimination on grounds of racial or ethnic origin and religion or belief. The Amsterdam Treaty and Article 13 entered into force in May 1999. Furthermore the year after acknowledging that the Joint Action, among other initiatives did not suffice, the Council of Ministers adopted the Council Directive 2000/43/EC of 29 June 2000, the so-called Race Equality Directive. The aim of the Race Equality Directive is to ensure the development of democratic and tolerant societies, allowing the participation of all persons irrespective of racial or ethnic origin. To this end, the Race Directive implies that any direct or indirect discrimination based on racial or ethnic origin is to be prohibited throughout the Community. According to Article 3, the following areas encompass both the public and the private sectors: access to employment as well as employment conditions. However, the Directive does not oblige states to take special measures but only states in Article 5 concerning positive action that:

> "With a view to ensuring equaity in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin".

In Article 8, the Directive further requires that member states must ensure a shared burden of proof in cases of racial and ethnic discrimination. It also requires that a body must be established with the authority to provide

independent assistance to victims of discrimination in pursuing their complaint. What is of great importance is the requirement of the sharing of burden proof in civil and administrative cases (see the EU document: 'What you should know about anti-discrimination legislation'). The Article 13 obliges the Member states to designate bodies that promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The competences of these bodies should be as cited in Article 13 (2.):

> "-without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7 (2)[8], providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
> -conducting independent surveys concerning discrimination,
> -publishing independent reports and making recommendations on any issue relating to such discrimination."

The requirements of the Directive would have had to be met by July 2003. Furthermore in its Article 17 it is stated that the Member States have to turn in a report by the 19th of July 2005 on the measures taken to implement the Directive. In the report the States Parties have to take into account the views of the European Monitoring Centre on Racism and Xenophobia, as well as the other social partners and NGOs.

Yet another Directive concering the equal treatment in employment and occupation, Council Directive 2000/78/EC of November 2000, was established recognizing that 'employment and occupation are key elements in guaranteeing

[8] "Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complinant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive" (Article 7 (2)).

equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential' (EU: official Journal of the European Communities L 303/16, para. 9.). The purpose of the Directive is to:

> "Lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment (ibid: Article 1)".

In 2001 a proposal for a Council Framework Decision on combating racism and xenophobia was laid forward acknowledging that that these phenomena are prevalent in Europe. The aim of the Framework Decision is to make racism and xenophobia punishable in all EU Member States by effective criminal penalties and a clearly defined common EU criminal law (see Proposal for a Council Decision on combating racism and xenophobia). In spite of the reporting system, the efficiency of the EU legislation is questionable leaving aside the responsibility of implementation to the Member States[9], an aspect I will touch upon later in this paper. However, the Directives have had important consequences for the strengthening of anti-discrimination legislation in Denmark. The first part of the forthcoming chapter on the Danish legislation and Constitution will take as its point of departure the UN Core Document on Denmark (UN Core Docu. 1995: 3-17).

[9] In order to discuss the problems relating to the implementation of the anti-discrimination Directives a conference, The European Conference on the Implementation of the Anti-discrimination Directives into National Law was held in Copenhagen the 14th and 15th of November 2002, the focus of the workshop concerning racial discrimination being that of the non-employment elements of the Race Directive.

Chapter 4: The Danish Jurisdiction

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 from the Ministry of Justice. Denmark is divided into 82 districts with each of its own court. The duties of the judge of the district court are many; they are in charge of the administration of justice, the functions of bailiff, they function as estate administrator, the notary and they are in charge of the system of records and registrations of mortgage. Denmark has two high courts with full jurisdiction to determine all matters and questions whether of fact or of law. The courts can hear appeals from the district courts. The Supreme Court as the highest court in Denmark functions as a court of final appeal in all cases, criminal, civil and administrative. As regards special courts in Denmark a few special actions are referred for final interim by such, the reason being a desire to supplement judicial knowledge by other expertise. A Maritime and Commercial Court deal with cases requiring special knowledge of maritime and commercial affairs, and tax cases are dealt with by the Tax Tribunal. The Labour Court assists in solving conflicts in the labour market. As a member of the EU, Denmark is subject to the ruling of the Court of Justice of the European Communities. The jurisdiction of the ECJ is limited to cases regarding the application of the European Treaty or sources of law deriving therefrom. In general the national courts are competent to rule on questions concerning European Union Law. The Treaty however ensures that the final comptence to give statements on the interpretation and validity of European Union Legislation with binding effect for the member States lies with the European Community Court. Furthermore Denmark has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and has now acknowledged the right of petition of individuals to the European Commission of Human Rights, as well as the competence of the European Court of Human Rights. The Ombudsman is an independent authority elected by the

Parliament with the authority to investigate any administrative action within the civil central Government, the military forces, and as a general rule, within the local government administration. The Ombudsman can conduct an investigation either on the basis of a complaint from an individual affected by a certain administrative action or on his/her own initiative. The Ombudsman is however not empovered to hand down binding decisions regarding the subject matter of a case but limited to make recommendations. But in practice the Ombudsman has a great influence on the administration as conducted by the public authorities, and any case brought forth by this institution is taken into serious concern.

The Danish Court system provides the ultimate remedy against human rights violations. Cases regarding allegations of discrimination in the labour market must be brought before the Labour Court. According to the general Danish rules of tort law, an individual is entitled to compensation for any loss or damage incurred as the result of a human rights violation for which the Danish authorities are responsible. The same applies for violations committed by individuals. The courts are competent to award compensation. Apart from the court system, an individual who alleges to have been subjected to human rights violation by the administrative authorities has access to variuos other remedies; the Ombudsman as well as various independent councils funded by the State, may investigate and look into different kinds of alleged human rights violations. Fundamental human rights are protected by the Danish Constitution which covers civil, political, economic, cultural and social rights. Substantial protection is generally provided for by supplementary legislation. In order to comply with its obligations in international treaties Denmark has adopted certain human rights through supplementary legislation. In spite of being dealt with outside the Constitution the level of protection of human rights in Denmark is quite high (Dahl, Melchior & Tamm, 2002: 91). In the following I will highlight the most important Danish legislation concerning anti-discrimination.

Danish legislation on anti-discrimination and racism

One of Europe's oldest, the Danish Constitution dating back to 1849 does not have any provisions prohibiting racial discrimination. It does however have the freedom of religion and prohibition of religious discrimination mentioned in its section 67. The Danish Constitution does not provide a general principle of equality before the law, as it does not explicitly prohibit differential treatment on grounds of race or ethnic origin and religion or belief. However, there is one provision relevant, namely section 70:

> "No person shall for reasons of his creed or descent be deprived of access to complete enjoyment of his civic and political rights, nor shall he for such reasons evade compliance with any common law duty (cited in English in Forbes and Mead, 1992: 31)".

A proposed constitutional amendment in 1953 containing more specific provisions to secure the rights and freedoms of individuals, without discrimination on the basis of race, colour, sex, language, political or other beliefs, national or social origin, financial circumstances, birth or other social position was turned down. Therefore, the Danish Constitution did not until recently contain any specific race discrimination provision (Justensen, 2003: 28).

Futhermore, there is no general provision of special or positive measures in Danish law. The general presumption in Danish public law is against positive measures giving any preferential treatment to ethnic groups or others. It was not until 1996 with the introduction of the Act on the Prohibition of Differential Treatment in the Labour Market a specific provision was introduced allowing for special measures as exceptions to the prohibition of racial discrimination in the public sector (Hansen, 2004: 4-5). However, Denmark has for many years with the ratification of ICERD in 1971, entering into force the 8th of January and the ILO 111 in June 1960 been obliged under international law to combat racial discrimination with special measures. Legislation on anti-discrimination was until 1996 in the realm of criminal law.

Criminal law

Until recently no comprehensive anti-discrimination legislation in the labour market had been laid down, but Denmark had since 1971 enacted specific provisions counteracting racial discrimination and penal and civil codes such as section 266 (b) of the Criminal Code of 1992 and the Act on Prohibition against Treatment on Grounds of Race etc. of 1971 (The Act against Differential Treatment). The latter was established in order to comply with the ratification of ICERD and the former was altered in 1995 in order to comply with the same Convention. The Act of 1971 allows criminal prosecution in respect of direct but not of indirect discrimination in the conduct of a trade or business. The offences are dealt with by the police who decide whether a prosecution is warranted, the penalty being a fine, simple detention or imprisonment up to six months. The Act is very limited and the general terms so uncertain that it is highly doubtful that it would cover discrimination in the labour market (Forbes & Mead, 1992: 33).

Section 266 (b) concerns the prohibition and punishments regarding racist statements or messages in the public as well as private sphere. The penalty can be up to two years (Nielsen, Rehof & Harlang, 1997: 65). The section 266 (b) partly implements the Article 4 (a) of ICERD, which contains an obligation to make racist speech punishable. The Article 6 of the same Convention in conjunction with Article 4 obliges the State Member to 'assure to every one within their jurisdiction effective protection and remedies through competent national tribunals [...]'. However due to restrictions on the application of this Section very few cases have been dealt with (ibid: 66). Being criminal law, the Act against Differential Treatment requires that the intent to discriminate be proved. The main difficulties in application have been related to the proof consequently the provisions of the Act are rarely applied. Individuals who have experienced discrimination often do not have sufficient evidence to establish this element, since the only proof available is testimony from the parties involved and from witnesses (Justensen, 2003: 29). In addition to the judiciary, the effectiveness of the criminal Act depends on the prosecution. The lawyers; Henrik Karl Nielsen, Lars Adam Rehof and Christian Harlang point to the risque of a 'legal vacuum'

where the existing regulations cannot be enforced (Nielsen, Rehof & Harlang, 1997: 67). Due to the difficulties of putting forth a case based on criminal law, victims of discrimination often direct their complaint to civil law (Justensen, 2003: 29).

Access to the law

Denmark is obliged to ensure that victims of unlawful discrimination have effective ressource remedies. But there has not been any organized program for informing the immigrants of their rights and the remedies available. Furthermore the law is quite complex and uncertain. Until recently there existed only four possible ways to approach unlawful discrimination: 1) The Racial Discrimination Act of 1971 allows criminal prosecution in respect of direct, but not of indirect discrimination in the conduct of a trade or business. These offences are dealt with by the police who also decide if a prosecution is warranted. The penalty is a fine or imprisonment up to six months. The Act is so uncertain that it is little likely that it can be used to include discriminatory behaviour in employment. Illustrating the weakness of this remedy only few cases have been settled upon. 2) The Public Prosecutor's Office and the Ministry of Justice are responsible for bringing proceedings in respect of incitement to racial hatred under the Section 266b of the Penal Code. Again, the very few cases points to a reluctance to institute such proceedings. 3) Denmark has an Ombudsman to whom claims can be made based on the principle that all are equal and are to be treated equal in all levels of public administration. The Ombudsman's Institution who enjoys a high degree of respect has stated that public employers are obliged to make a fair assessment of all jobseekers and to choose the applicant which is the most qualified, thereby unfortunately leaving out the possibility of giving preference to applicants of a certain ethnic or religious background (Hansen, 2004: 4). In practice there have been few cases relating to racial discrimination, and these have concerned discrimination in the housing area: during the years 1979 to 1985 the Consumer's Ombudsman received four cases of racial discrimination to which one offence was found, but only responded, by stating an Opinion. ECRI

notes that the Office of Ombudsman is not designed in such a manner as to bring to light discrimination on the basis of ethnicity as evidenced in the few cases where this issue was specifically highlighted by the complainant (ECRI, Second Report Denmark, 2001: 8, para.14.). 4) The industrial tribunal: here it is the general nature of the proscriptions of law and the lack of detailed and comprehensive provisions relating to discrimination on grounds of colour in employment which is the problem. An individual has to prove discrimination rather than the employer (Forbes & Mead, 1992: 33). Furthermore, it is difficult for the immigrants (and other Danish citizens) to become confident with the laws. And the legislation coverage so far has only extended to the refusal to serve a person in a public place, and incitement to racial hatred. Denmark has until recently not had legislation in the field of racial discrimination in the labour market in spite of having ratified the ICERD and the ILO 111.

In connection to a complaint from DACoRD to the Ombudsman it was acknowledged by the Ministry of Working Affairs that the law on racial discrimination was insufficient. It stated that the Danish Authorities during autumn 1995 would elaborate a law proposal. As a civil law counterpart to the Section 266(b) and Act against Differential Treatment, the first Danish anti-discrimination act on the labour market was adopted in 1996: Act No. 459 on the Prohibition of Differential Treatment in the Labour Market (Act on Differential Treatment in the Labour Market).

Civil law

The commentary on the law was that it was made as an acknowledgement of the inability of Denmark to comply with its international obligations under the ILO 111 and ICERD even though the Act does not cover the full range of obligations put forth in the latter which contains a number of issues besides the ones of the labour market. The Act contains a general prohibition against discrimination in relation to employment or engagement, transfer, promotion, dismissal, vocational guidance and training as well as salary and working conditions.

As civil law the enforcement of the prohibition of discrimination in the labour market is easier than the enforcement of the Danish anti-discrimination legislation in the form of Criminal provisions. Especially the problem of proof has become less difficult to solve under civil law, although the 'burden of proof' was still on the victim until the modification of the Law in 2003 (see chapter 5).

The examination of the current legal situation in Denmark indicates that the protection against racial discrimination suffers from weaknesses in the legislation in the labour market as well as lack of enforcement of existing legislation (Nielsen, Rehof & Harlang, 1997: 34). However, with the introduction of the two Council Directives of the EU, Denmark has been compelled to add important modifications to the Act which will be touched upon later in the evaluation of the conformity of the Danish State with international and regional law.

Chapter 5: The Danish state's conformity with international law

The Race Convention should according to the official statement of the Danish Government to the Race Committee, be applicable as a legal source for the Danish courts. In cases of conflict between the Danish Legislation and the Race Convention the latter should take precedence (see CERD/C/SR.1378, para. 38). ICERD is partly adopted via the Law Number 459 of the 12th of June 1996, concerning equal treatment in the labour market. Article 4(a) of the ICERD is almost fully covered by the Section 266b of the Criminal Law (see chapter 4). However, administrative practice illustrates that the Race Convention is referred to in very few instances. There exists a much greater hesitation or even indifference towards the Race Convention than officially stated by the Danish government. CERD recommended in 1996 that the Danish state 'take appropiate measures to ensure the direct application of the provisions of the Covernant into domestic law' (CCPR/C//)/Add.68). In a concrete case it was the opinion of a former Minister supposedly speaking on behalf of the Danish Government, that the Race Convention 'could not be used directly in the Danish courts' and that the provisions in this Convention under no circumstances could be used in conflict with unclear Danish provision of Danish legislation (Justensen, 2003: 26). This statement contradicts the unwritten constitutional rules as well as the official statements of the Danish government.

The Race Convention provides a number of tools to combat different kinds of discrimination. Measures aimed at eliminating racial discrimination in all its forms as required by the Racial Discrimination Convention must be equally complex. Simplistic measures such as the unadorned criminal prosecution model chosen by Denmark are not sufficient commitment to the principle of its abolition or to the full implementation of the Convention (Wilkie, 1990: 70). Denmark is not in a state of practical monism since the Race Convention has such a limited status (see introduction to chapter 4).

The ILO 111 has even a lower status than ICERD. By the ratification of the ILO 111 Denmark recognised its conformity with existing Danish legislation, which

meant that no amendments were made. Therefore the ILO 111 was not incorporated into constitutional law (Nielsen et al. 1997: 23). The Conventions have since then hardly been referred to in labour law. The Expert Committee of the ILO has several times made comments on the lack of use of the Convention:

> "While affirmation of the principle of equality before the law (as in Denmark) may be an element of such a policy, it cannot in itself constitute a policy within the meaning of Article 2 of the Convention" (Report of the (ILO) Committee of Experts, 1988: 168).

Denmark has been critized for not living up to its obligations as Member State to the ILO 111 and ICERD as stated in very strong terms by Wilkie:

> "The failure to prohibit racial discrimination in the labour market and in the private employment represents a fundamental failure to comply with the obligations imposed by the Racial Discrimination Convention and by the ILO No 111 on Discrimination in Employment and Occupation" (Wilkie, 1990: 104).

A reluctance which has resulted in 13 serious cases against the Danish government during the last 10 years. Apparently in vain, Denmark has been put under a lot of pressure of the international community; CERD, ECRI and the ILO Expert Committee oblige the Danish state to submit reports on the improvements made in order to comply with the different Conventions. The recommendations made by the mentioned Commitees are not legally binding and therefore the impact of the reporting system is doubtful. However, Justensen notes that during time the reports submitted on behalf of the Danish state to CERD have become more and more detailed suggesting that Denmark is more aware of its obligations as States Parties to the Race Convention. The Law Firm; Harlang, Koch and Christensen published in 1996 guide lines to the most important ILO Conventions in order to deal with the reluctance to acknowledge the importance of these

Conventions and incorporate them into practice (Harlang, Koch & Christensen, 1996). ECRI as well, notes that most of the existing legal provision aimed at combating racism and discrimination do not appear to provide effective protection against these phenomena. It recommends that the Danish authorities take further action by ensuring that the legal framework aimed at combating these phenomena is adequate and effective (ECRI, 2nd Report on Denmark, 2001:1).

In the 1970s and the 1980s it was highly debated what status human rights treaties should have as opposed to other international conventions in Danish law. It was not until the 1990s that it was recognized that the dualist approach hindered effective use and appliance of the ECHR before domestic courts. In 1992 the ECHR was formally incorporated by law into the Danish legislation as an ordinary statute with the incorporation of Protocols 1 to 8. The Article 14 has been adopted as part of the convention body by the Law Number 285 of the 29th of April 1992 which was changed by the Law 1080 of the 20th of December 1995. The implementation of Article 11 is partly made via the Law Number 443 of the 13th of June 1990 (UN Core Docu. Denmark: 17). Today the ECHR represents the second but in practice the most important constitution regarding civil political rights. The incorporation and explicit use and visibility of the ECHR has furthered the awareness of human rights not only among the Danish population but also among the legal practictioners of the ECHR, improving the possibility of the national judges to have a human rights-updated level of protection in domestic courts decisions (ibid: 17). The ECHR supplements the written Danish Constitution, Grundloven, with a number of fundamental human rights only briefly or not at all dealt with in the latter. In cases of unclear Danish legislation, the ECHR can take precedence over any law which by interpretation of the Danish Courts (in light of the Danish Constitution) is recognized as unwritten Danish constitutional law (ibid: 248). But still the ECHR as international law is subordinate to national law and still cannot be equalized with constitutional law (ibid: 251). Still the ECHR is the most important international Convention (Rytter, 2003: 249). And as a former judge of the Supreme Court, Torben Jensen stated,

the ECHR is the expression of a common fundamental European source of law, that a civilized society should not deviate from (cited in Rytter, 2003: 252). As mentioned before the ECHR does not explicitly cover the prohibition on discrimination in the labour market, therefore it is not very useful when bringing a case of such nature to court.

For the purpose of implementation of the EU Directive in Danish law, it has been decided to appoint two committees to consider how the body for the promotion of equal treatment prescribed in the Directive can most suitably be established in Denmark (CERD, 15th Report on Denmark, 2001: 18, para. 92.). However, as Niels Erik-Hansen states in the report, 'Executive Summary on race equality directive State of Play in Denmark January 2004', the work of this committee has been overshadowed by the shift of government. As part of the work and consultance process of the two committees representatives of the social partners in Denmark participated, but a great number of relevant NGOs and religious communities the latter of which Denmark has recognized 63 were never invited (Hansen, 2004: 2). By December 2001 before the work of the Committee was even done the Danish Government decided to close down the Board for Ethnic Equality and the Danish Centre for Human Rights. The necessary changes in order to transpose the employment aspects of the Race Directive did not take effect on time scheduled as it was on the 19th of July 2003 (ibid: 3). As a first step to transpose the Race Directive, the Act No. 411 of June 2002 (re)established the Danish Institute for International Studies and Human Rights, which is the new body designated according to Article 13 of which the Institute now is to carry out all the tasks mentioned in this Article; mapping out discrimination and public independent survey. It has also taken over the functions of DACoRD, which was the independent body designated to assist victims of discrimination, but whose funds were stopped with the new Government in 2001. As part of the Institute for Human Rights, the Complaint Committee was established on the 1st of October 2003 by Act no. 40 of the 30th of March 2004, amending the Act on Prohibition against Discrimination on the grounds of race or ethnic origin in the labour market (see webpage: http://www.humanrights.dk/departments/complaint). The

object of the Complaints Committee is to hear complaints of discrimination on grounds of race or ethnic origin. The Committee can decide whether there has been a violation of the Act. The Committee cannot however impose any sanction on the respondent or award any kind of damages as a result of discrimination. Furthermore the Complains Committee can on its own initiative conduct independent surveys concerning discrimination, publish reports, and make recommendations. It must be noted, though, that only the non-employment aspects of the Race Directive are covered by the mandate of the Committee. The Complaints Committee can in some cases when finding a violation of the Act recommend granting free legal aid at the courts. The expenses in relation to going to court continue to be a great problem. The Government argues, that victims of discrimination in the employment area must ask for assistance from their trade unions (a membership which is compulsory in the biggest sectors of the labour market); however case law shows that this poses a problem for trainees, students, newly arrived refugees and others who are still not members of a trade union. They have to ask DACoRD for free legal advice, and as mentioned, their funding has been radically cut and has therefore had to reduce its functions. This policy is contradictory to the ECRI General Policy Recommendation No. 7, paragraph 26 that states; 'the law should guarantee free legal aid [...] to victims who wish to go before the courts [...] and who do not have the necessary means to do so'. According to paragraph 24 of the same Recommendation the law should provide for; 'the establishment of an independent specialised body to combat racism and racial discrimination at national level'. Concurring with this point of view, the Institute for Human Rights stated in their annual report, 'Menneskeret I Danmark. Status 2003', that they would have preferred that the Complaints Committee be established as an independent body, and with a broader mandate (Institute for Human Rights, 2003).

The Act on Equal Treatment irrespective of Ethnic origin covering the non-employment aspects of the Race Directive entered into force on the 1st of July 2003. With the adoption of the Directives important changes have been added to

the Act from the 1st of July 2003, the very day the Directives had to be enforced: in Article 1 of the Act containing the prohibition of indirect and direct discrimination, the grounds of 'faith' and 'religion' have been added. And a new article 7 (a) introduces the principle of shared burden of proof (DRC/DACoRD, 2003, appendix: 31).

Summarizing, one can conclude that international law regarding anti-discrimination in the labour market has had minor importance for the practice in the Danish Courts. Rather unfortunate since the ILO 111 and ICERD provide powerful tools to combat the racial discrimination in the labour market. Surprisingly in light of the ratification of the mentioned Conventions, the ECHR is the only provision which has been incorporated into Danish legislation; the Article 14 dealing with the prohibition of discrimination adopted by law no. 285 of the 29th of April 1992. The Race Directive has been essential in preventing the lowering of protection of the standards in the 1996 Act, due to the non-regression principle and has forced the Danish state to introduce important changes into the Act on Differential Treatment in the Labour Market. It is interesting to see if the Complaints Committee and the Danish courts can effectively enforce the new Act.

Apart from the lackful enforcement and as a premiss for the implementation process has been the lack of monitoring. The legislative division of the Ministry of Justice was supposed to monitor the Danish Implementation of international convention obligations. However, this has turned out to have little bearing on day-to-day practice. The parliament has been passive in the establishment of its own monitoring system. In 1999 however, the Minister of Justice appointed the Committee of Human Rights Conventions into Danish Legislation (the Incorporation Committee) (Dahl, Melchior & Tamm, 2002: 93 & 94).

The incorporation of international human rights conventions: the Incorporation Committee

The Incorporation Committee is in charge of examining of advantages and disadvantages of incorporating the general human rights conventions into Danish law. The Committee has found that some special conventions govern matters of such practical and fundamental importance that they must be considered central to the protection of human rights and should therefore be incorporated. According to the Committee a central criterion should be whether the provisions are applicable as a legal basis for the resolution of concrete disputes before the courts or other law-applying authorities. Furthermore, importance should be attached to the question whether international monitoring bodies have been established that are empowered to interpret and apply conventions and, in affirmative, whether any case law exists from these monitoring bodies that clarifies the content and scope of the provisions of the conventions. The Committee also has to take into consideration whether the convention in question is one that has already been invoked before and/or applied by Danish courts and other law-enforcing agencies. On the basis of these criteria the Committee recommended the incorporation of ICERD, the International Covernant on Civil and Political Rights, ICCPR and the Convention against Torture, CAT (UN Conventions) (Dahl, Melchior & Tamm, 2002: 93 & 94).

As prevised I will now turn to the non-legal measures taken by the Danish Government. Important to have in mind is the fact that this chapter will not contain an exhaustive list of all the non-legal special measures taken by the Danish state. Nor will I be able to evaluate the initiatives in question since documentation of the effects has not been elaborated yet. The main object is to give the reader a survey of the efforts made by the Danish Government in strenghtening the inclusion of the immigrant population into the labour market.

Chapter 6: how to improve the situation of immigrants

Wilkie suggests three pillars upon which a national commitment to the elimination of racial discrimination and racism must stand: 1) there must be a just ethnic affairs policy. 2) Legislation which includes a strong prohibition of racial discrimination in all its forms, coupled with a committed prosecution policy. 3) There should be a sensitively adjusted programme of special measures applied to those groups in society who continue to suffer disadvantages as a result of past or present discrimination against them. Furthermore it is urgent that the country in question looks at its social context when elaborating the mentioned policies providing a broad framework which focuses on the common realities for the visible immigrant groups within its borders. Ian Forbes and Geoffry Mead point to the problem of skin colour: in spite of full citizenship rights, members of visible immigrant groups are regularly discriminated against merely on the basis of colour (Forbes & Mead, 1992: 5). Wilkie argues that eradiction of discrimination on the basis of colour is consistent with efficient human resource management within a culture where fair and unbiased treatment becomes the norm for all sections of the community (see Wilkie 1990). As we will se, the Danish Ministry of Integration has actually incorporated these strategies into its anti-discrimination and integration policies.

Strategies and actual steps taken

In November 2000 the Minister of Interior appointed a Think tank, 'Tænketanken' in Denmark to clarify the integration of foreigners in the Danish society, analyse the future population development as well as adress the social consequences of the population development and the integration of foreigners. The Think Tank has so far published four reports on the issues and status quo of the integration process followed up by its own recommendations. The Think Tank also acts as an advisory panel for future initiatives of the Ministry of Integration. It has participated in the elaboration of the reports that will be presented in this chapter. According to the Think Tank the key to a successful integration lies in the inclusion of the immigrant into the labour market. Having a job should empower

the immigrant to change his/her living standards and opportunities and drastically improve his/her language skills, and thereby facilitating integration into the Danish society (Tænketanken, 2002:1).

As a requirment of the UN World Conference in Durban, South Africa in 2001, Denmark as well as the other State Members had to make a report on the measures taken to combat racism[10]. The report, 'the Action Plan to Promote Equal Treatment and Diversity and Combat Racism' from November 2003 brings forth the main strategies made by the Danish State[11]. Among the initiatives has been the establishment of regional knowledge centers. The purpose of these is to make sure that all public authorities have access to qualified information and advice about qualification assessment. As part of this agreement there has been a focus on incorporating solutions in collective pay and employment agreements to ensure integration is implemented. This means that the individual work places will make local agreements on concrete working conditions such as lower start pay or reduced hours. Businesses and municipalities can enter into agreements for refugees and immigrants to follow a cohesive plan in close association with a workplace. The Government has also implemented an incentive scheme which started on the 1st of January 2004. The municipalities will receive financial support in the form of a 'result subsidy' for every foreigner in regular employment after the three-year introduction period. By agreement with the local municipality, businesses will be reimbursed for the cost of upgrading the professional and language skills of new employers (The Danish Government, Action Plan, 2003:14-15).

Related to this initiative, the Government has introduced special initiatives to improve the situation of the immigrants in the labour market. These positive action measures have their legal basis in the Act on the Prohibition of Differential

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[10] For more general and brief information see the report, 'The Goverment's Vision and Strategies for Improved Integration', 2003.

[11] DACoRD published a parallel report, "NGO Action Plan for the Elimination of Racism, Racial Discrimination and Xenophobia" (own translation), evaluating the Danish government (See DRC(DACoRD), 2003a).

Treatment on the Labour Market etc. In connection with these special initiatives all the regional employment services have engaged special consultants with expert knowledge about ethnic questions. In accordance with guidelines laid down by the regional labour market councils, funds are made available to these consultants for development activities, such as special guidance activities, job seeking courses, training programmes, language courses, etc. Furthermore, methods are being developed to improve measures taken in relation to ethnic minorities. Measures intended to change traditional attitudes and stereotyped thinking are being initiated in enterprises in the individual regions. In addition to these special initiatives, the so-called 'ice-breaker scheme' was introduced on the 1st of April 1998. Under this scheme, financial support is granted to enterprises which wish to recruit highly qualified young persons from a non-Danish ethnic background. Of a total of 141 highly educated 'ice-breakers', two-thirds have maintained job relations in the enterprise beyond the period of support. There are many concrete examples of activities which the public employment service has initiated intended to improve employment opportunities for immigrants. In the period from 2001 to 2003 the Ministry of Integration has supported a number of projects under the title 'Danish in the Work Place', 'Dansk på Arbejdspladsen', aimed at providing Danish language classes at the work place. This is a very innovative initiative based as it is on cooperation between private firms and the state (I job nu: 2004: 6 & 10). Yet another and very untraditional initiative is the presence of an 'ambassadeur' in the work place: an employer is trained in 'plural policies' making him able to act as a spokesperson and mediator between colleagues of different ethnic backgrounds (ibid: 9).

A fund was established as part of the Government's Action Plan for aliens in Denmark which supports experimental activities within the immigrant and refugee field, in Denmark and abroad. The criteria for applying for the fund is that the activity in question contributes to developing new forms of practice and policy in the immigration or refugee fields, in Denmark and abroad (see CERD, the 14th Report: 34).

The Danish Institute for Human Rights gives away the so-called MIA[12]-Prize for the firms who in an active way promote plurality and combate discrimination in their work place. The Prize is established by the Institute with financial support from the European Union as part of the EU legislation and campaigns. In connection to the Prize, the Institute has published a MIA-guide, consisting of four main principles furthering the understanding of 'plurality management'; plurality meaning many different groups of people be that women, ethnically different people, dissabled, older people, people with a different sexual orientation or religiuos belief working together, and the importance of encompassing them all in the work place. The first principle, 1) states that all of the mentioned groups are to be encompassed on an equal footing in the plurality policy of the firm. 2) The principle that plurality management should encompass more motives at the same time; ethical, economical and legal ones. 3) Plurality management is not only the responsibility of the leaders of the work place, but is to be practised by everybody in the firm, making it a shared value. 4) Plurality management is not to be considered as a temporal and timely fixed project but rather as a process. The Prize was awarded the 30th of March this year. There also exists a Mia-network consisting of different organisations focusing on plurality management and equal treatment (see www.miapris.dk).

In a number of public working places such as the Danish prisons and the Court Administration, campaigns have been initiated in order to recruit more staff of a different ethnic background, the aim being to reflect the developments in society (CERD, 15th State report, 2001, para. 113,116, 117, 121 & 122).

Recognizing the difficulties in entering the Danish labour market without personal contacts to firms, a social network strategy approach has been established. KVINDFO is an independent institution within the Danish Ministry of Culture. The idea behind KVINDFO is to provide a link between experienced female professionals and students of the same educational background, the latter being of another ethnic background (The Danish Government, I Job Nu, 2004:12).

[12] The abbreviation MIA stands for Mangfoldighed i Arbejdslivet, 'Plurality in working life'.

Forbes and Mead mention the importance of informing the population about the available anti-discrimination legislation, since the most disadvantaged sectors of society are least likely to be aware of the legal remedies. Information on subjects relating to immigrants and on the Convention: to enhance the level of information on immigrants, the Ministry of Interior and the Danish Immigration Service publishes a magazine, 'Nyhedsbrev om Danmarks Udlændinge'; 'news about aliens in Denmark'. The magazine has articles of relevance to the immigration field, including information on relevant legislation, projects and statistical data. The magazine also provides information on international initiatives in the immigration field and on Denmark's reports pursuant to the ICERD and the examination of Denmark in this respect. In addition to the magazine, the Ministry of Interior grants subsidies from the operation fund to 'Samspil', an independent magazine discussing issues relating to the situation of immigrants in Denmark. Furthermore, the Board for Ethnic Equality issues a number of publications on subjects relating to the fight against racial discrimination and the advancement of ethnic equality. The Danish Board for Ethnic Equality is another initiative taken by the Danish state. It is supposed to work with information and communication. It has already published a large amount of reports on topics such as integration in the labour market and the every day life of immigrants[13] (CERD, 13th Report, 1997: para. 114). Recently the Danish Board for Ethnic Equality published a handbook for the newcomers in Denmark which is supposed to be a guide providing the latter with all kinds of practical information about the Danish society, constitution, history, language, values etc (I job nu, 2004: 11). Yet another body dealing with integration policies and the documentation of racism and racial discrimination, the Council for Ethnic Minorities was however closed down in 2001 with the take-over of the new Danish government.

[13]Among these can be mentioned: "Race and Equal Treatment", Ethnic Minorities in Local Authorties", "Racial Equality and Integration of Ethnic Minorities in Århus", Police Booklet (information about the police in Denmark), "The Situation as regards Places of Practical Training for Ethnic Minorities".

The Government, as put forth in the Action Plan, has also initiated a number of campaigns to shape public opinion, focusing on the special professional and cultural skills and resources of ethnic minority workers (Action Plan, 2003: 15). I would like to elaborate upon the issues of the promotion of differences in the forthcoming subchapter.

The promotion of multi-culturalism and tolerance

Pedersen criticizes the Danish government for having focused on the integration problem in a very simplistic manner. He encourages future research to explore the mechanisms of exclusion of people of different ethnic origin from the labour market (Pedersen, 2002: 28). Guidelines on how to obtain more tolerance in society are provided for in a recent UNESCO document. In relation to the UN Year for Tolerance in 1995, UNESCO, United Nations Educational, Scientific and Cultural Organization established an important document, Declaration on the Principles of Tolerance. In this document as elsewhere, there is recognition that discrimination and intolerance are inextricably linked, almost synonymous, while tolerance is their counter value. The Article 1 (1) of the Declaration reads as follows:

> "Tolerance is respect, acceptance and appreciation of the rich diversity of the world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony of difference. It is not only a moral duty it is also a political and legal remedy".

In the second paragraph it is stated that:

> "Tolerance is not concession, condensation or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human righs and fundamental freedoms of others. In no circumstance can

it be used to justify infringements of these fundamental values. Tolerance is to be practised by individuals, groups and states".

However, as the Danish Social Anthropologist and former Senior Researcher at the Institute for Human Rights, Kirsten Hastrup argues, following rules is not only about knowing them from a declaration, as much as social behaviour itself rarely is based on complete awareness. Individual acts are based on learned dispositions and the unlearning of those which is rather complex. The Law 'represents' historically derived and collectively endorsed values and hence functions as rather general measure of right and wrong, which means that a 'represention' of values probably does not suffice to changing the political culture (Hastrup, 2002: 6). However, the forging of tolerance and the valoration of cultural differences among the population should definite be part of the government's anti-discrimination policies.

Lately the Ministry of Interior has however recognized that it must work with these aspects as well. It has introduced the principle of multi-culturalism in the labour market, related to the appreciation of different skills and resources of the employees of a different ethnic background. What needs to be done and perhaps the hardest thing to do, is to change the common sense and inherent values of the labour market as Hastrup suggests. It is urgent that the Danish government as part of its affirmative action more explicitly forges a policy of multi-culturalism (in the labour market) in close collaboration with the civil society. As a closing comment one should keep in mind that integration is a process: the Danish society as well as the new arrivals have to become accustomed to a new more pluralistic reality whose values should be based on mutual understanding, tolerance and openness. Canada in many ways could be a role model for the Danish government. It might be an unfair comparison and should rather be seen as an advisory function since Canada has such a long history of immigration and of accommodating diverse groups. The Canadian government has openly stated in relation to announcing Canada's multiculturalism policy back in 1971 that it will:

> "support and encourage the various cultures and ethnic groups that give structure and vitality to our society [...] and be encouraged to share their cultural expression and values with other Canadians and so contribute to a richer life for us all" (Wayland, 1997: 33).

At the same time the government should in cooperation with other groups of society promote common values such as the belief in equality and fairness in democratic society, the importance of accommodation and dialogue, support for diversity, and compassion (ibid: 56).

As the last part of this chapter I will briefly present some comments of two important Committees, the CERD and ECRI in the country reports on Denmark.

'Sticks and carrots' from the international community: ECRI and CERD

In its Concluding Observations of the 14th periodic report on Denmark CERD commends the Danish state for providing language training programme to immigrants, the strenghtening of the Public Employment Services placement activities regarding refugees and immigrants and the "ice-breaker" programme. Despite overall improvements, the CERD is concerned with the disproportionate high level of unemployment among foreigners, particularly groups of immigrants of non-European and non-North American descent. CERD encourages the Danish state (noting at the same time that it is not obliged to provide work permits to foreign residents) as a minimum to guarantee that foreigners are not discriminated against in their access to employment. It goes on in paragraph 12 to encourage the Danish State to take all effective measures to reduce unemployment among foreigners and facilitate the professional integration of all persons belonging to ethnic minorities in the public administration (Concluding Observations CERD, 2002:3, para. 15).

In Its 2nd report on Denmark (based on contact visit which took place on the 26th to the 28th of April 2000) ECRI also commends the steps taken by Denmark to combat racism and discrimination and welcomes the special measures initiated

such as language training and special training programmes (ECRI, 2nd Report on Denmark, 2001: 6). But it expresses its concern over the prevalence of discrimination and xenophobia, the former especially evident in the labour market. ECRI notes that ethnic monitoring in the work place would be a valuable tool enabling goals to be set for policies aiming at promoting further equality in the labour market. In this connection ECRI encourages the Danish authorities to reexamine Article 4 of the Act on the Prohibition of Discrimination in Respect of Employment and Occupation which prevents such monitoring (ibid:17, para. 42). ECRI also encourages the Danish state to introduce a single body of anti-discrimination legislation covering discrimination in several fields of life, and providing for effective enforcement of the laws. ECRI stresses the fundamental role a specialised body of combating racism and intolerance could play in supervising the implementation of this legislation, and in serving as an important educative and awareness-raising element (ibid: 7).

Summarizing, the Danish Government has in the recent years been very active and creative in promoting and creating space for the immigrant population in the labour market. The Government has tried to live up to its own policies. It will be interesting to see whether the employment rate amongst the immigrants rises and if it is possible radically to change the employers' preference of workers with traditional Danish standards. I have stressed the fostering of tolerance and multi-culturalism as a premiss for this inclusion-process; a point of view supported by the Think Tank and being more and more prevalent within the policy makers of the Ministry of Integration. As the Danish Government has stated, non-legal meaures are important for the elimination of racism and racial discrimination. But as stated by the Committees, it is urgent that the Danish state strengthens its legislation and create independent bodies to monitor this process. Hopefully, the Government's focus on non-legal measures is not yet another 'excuse' for not enforcing and implementing international and national anti-discrimination laws.

Chapter 7: Concluding remarks

Contrary to many of its international colleagues, Denmark has been strikingly persistent in converting its words into action. Few other countries have been equally committed in terms of supporting the development of the UN's social agenda. Its' development assistance budgets per capita has been the highest in the world. In issues such as environmental, minority rights and human rights, Denmark has alongside the other Nordic countries been prime movers (Eknes, 1995: 7). Given the credibility of the Nordic countries in the area of human rights related matters, they have according to the law professor, Gudmundur Alfredsson the potential to promote the implementation of human rights standards (cited in Eknes, 1995: 14). When turning to the protection of human rights within the borders of Denmark, 'the picture' is rather different.

One of the main objects of this paper was to determine whether and to what extent the Danish State lives up to its international, regional and national obligations in the ambit of anti-discrimination legislation. The findings were mostly discouraging although not without hope. Officially, International law and domestic law should in practice not constitute dualistic systems but rather two interrelated ones. Consequently international human rights' law should have a high status in Danish law. In practice though, European Union Directives have the highest status in Danish legislation: even in cases where the Directives have not been adopted they can be directly implemented in Danish Courts; in a majority of cases any Danish citizen is entitled to claim the rights of the Directives in Danish Courts (Justensen, 2003: 117). The European Convention may in the future act as a surrogat constitution regarding the protection of civil liberties. The Danish implementation of fundamental human rights was considerately improved by the incorporation of the ECHR the 1st of July 1992, thereby making the Convention directly enforceable before national courts without reference to international treaties. The implementation of other human rights obligations has been inadequate, and if steps have been taken, they have been taken in a

somewhat haphazard manner. Experience shows that Danish courts are extremely reluctant to apply international obligations indirectly through use of interpretational principles. The lawyers Børge Dahl, Torben Melchior and Ditlev Tamm explains this divergence as partly due to the traditional Danish covert feeling of superiority towards foreign countries – 'they may indeed need human rights, but we, the Danes, are able to cope without' (Dahl, Melchior & Tamm, 2002: 92). A rather speculative explanation but not irrelevant, seeing at the Committee of CERD has rationalized in a similar manner (see Van Boven, 2002). Another explanation is that the politicians have focused more on compliance with fiscal and trade issues. Yet another sign of the negligence of international human rights has been the lackful monitoring of the implementation of the Conventions (Dahl, Melchior & Tamm, 2002: 92). As well as the lack of an independent specialised body to combat racism and racial discrimination at national level as recommended by ECRI.

Denmark has through time been criticized by the international community for the lack of protection of its immigrant population against racial discrimination within the labour market. Unemployment figures are a good indicator for establishing the nature of any differences between ethnic groups. In Denmark the population originating from Middle Eastern countries has a critically high unemployment rate and occupies the least prestigious and badly-paid jobs, which cannot alone be ascribed the lack of education and language skills. Great concern has been expressed over the level of unemployment amongst this group of (non-)citizens and their difficult access to employment on behalf of the international community and local Danish authorities and NGOs. I have argued that it is urgent to overcome racial discrimination, since it clearly violates the fundamental premise of all human rights thinking, expressed in the Preamble of the Universal Declaration Human Rights, UDHR, 1948 states that:

> "Recognition of the inherent dignity and of equal and inaliable rights of all members of the human family is the foundation of freedoms, justice and peace in the world".

As ECRI notes, the enforcement of the law is important in the elimination of racial discrimination:

> "Aware that laws alone are not sufficient to eradicate racism and racial discrimination, but convinced that laws are essential in combating racism and racial discrimination" (ECRI, Gen.Policy Recom. No. 7:4).

The existing discrimination is not being effectively dealt with in Denmark. As briefly touched upon in chapter 2, discrimination is a very complex phenomena operating on many different levels. Consequently affirmative action must be accordingly multi-faceted, as elaborated more upon in chapter 6. Less overt discrimination has not been dealt with and the solutions are highly disputed amongst the specialist organisations. Some of these call for tougher laws, with sanctions and with an Ombudsman dedicated to the issue of discrimination as in the neighbouring country; Sweden. There are no codes of practice in existence which would indicate a developing expertise and commitment to equal opportunities principles and practices.

Denmark had not until recently any legislation covering racial discrimination in employment. Even though it has ratified ICERD and the ILO 111, the two most powerful instruments in this field, it has not introduced employment law legislation pursuant to these instruments, and the constitutional position is so that these conventions do not automatically become incorporated into domestic law. Judgments concerning access to the law are overshadowed by the inadequacy of the law's operation. Criminalizing racial discrimination has not proved an effective substitute for a range of policy instruments. The ECHR is the most practiced international Convention within Danish legislation. Its' Article 14 on the prohibition of discrimination forms part of the core human rights of Danish

constitutional law. The weakness of the Article 14 being that it has to be invoked in conjunction with another article of the very same Convention, that is one has to have a violation of one of the rights set forth in the ECHR in order to invoke the Article 14. It is indeed somewhat puzzling that the ICERD in spite of being the most important Convention against racism and racial discrimination does not have much influence when it comes to the practice of the Danish Courts. Denmark as a Member State is obliged however, according to the Convention's Article 6 to 'undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms'. Whether the victim of discrimination can make use of this right depends upon the existence of effective legal remedies provided by the state to the victim of discrimination. However, there exist no special laws and no specific authority to deal with cases of racial discrimination in Denmark. Recently the Complaints Committee has been established, with a quite limited mandate, not including the labour market. The only possibility is to bring the case to court; a process which tends to be tiresome and long.

It is somewhat paradoxical that the Danish state can ratify the majority of international conventions without any consequences for the practice of the Danish legislation or practice of its national courts. Even though most of the ratified international Conventions are not directly incorporated into the Danish legislation this does not mean, that the latter is in contradiction to the obligations and rights set forth in these; rather that it is difficult to determine to what extent Danish legislation is coherent with international law. It is of great concern that the Danish Government underestimates the importance of the (international) law in the combat of racial discrimination (see chapter 1). Progress has been made in that the introduction of the Race Directives has forced the Danish State to enforce their anti-discrimination laws. Critical reports on behalf of CERD, ECRI and the ILO Expert Committee have definitely contributed to this process which was initated in 1996 with the introduction of the Act on the Prohibition on Differential Treatment in the Labour Market. The lackful legislation in regards to racial discrimination in the labour market has been partly filled out by the Act on

Differential Treatment. What is interesting is whether the Danish Courts are willing to implement it, and whether the citizens are properly informed about their rights and legal remedies available.

It appears as if the Danish Government is beginning to assume its responsibility in the fight against racial discrimination and racism even though the closing down and withdrawal of funds from various monitoring bodies back in 2001 clearly was a set back and expression of the negligence of the problem of racial discrimination in the Danish society. The Danish state has, however initiated projects acknowledging the problem of unemployment and the lack of mobility in the labour market for the immigrants.

As should be evidenced especially in the first part of this paper, the problem of racial discrimination is not only a problem of marginalizing people originating from Middle Eastern countries in the labour market and of the lack of enforcement of anti-discrimination laws. Unfortunately it goes so much deeper and further, aspects I have not been able to fully explore in this paper. Evidence of the low level of awareness and development in relation to equal opportunities issues is reflected in the way that public discussions are still at the stage of assessing the respective virtues of assimilation and multiculturalism.

Another object of the paper was to recommend strategies for the improvement of the situation of immigrants. I concur with the Danish Government when it states that non-legal measures are important to the elimination of racism and racial discrimination. The Danish state has by initiating different project such as language and job training, cooperation with private companies, establishment of a Think Tank etc. improved the situation of its immigrant population (Thomsen & Moes, 2002:1). It is important to foster an environment of tolerance and respect for otherness, education and information for the prevention of discriminatory practice and racist attitudes. Optimistically, the Government's attention to non-legal measures is not yet another 'excuse' for not complying with international and national anti-discrimination laws.

Hastrup speaks about 'the problem of making room for difference' (Hastrup, 2002: 2). She also mentions problems related to anti-discrimination legislation in that:

> "to make 'others' subject to non-discrimination laws is in some sense to objectify them, however, and within this vocabulary we are imperceptibly – and in spite of ourselves – prone to see them as somehow inferior. The relationship between the protector and the protected is profoundly unequal. The notion belies the equality it professes" (ibid: 3).

Hastrup's statement stresses the difficulty in approaching racial discrimination and racism. However, to provide the legal means for the protection of immigrants are a very important political statement. Law is an important way of strenghtening equality for ethnic minorities. Effective legal protection against racial discrimination would ensure justice for more individuals as well as signalling to society in general that there are legal limits for what kinds of behaviour the society can accept. Denmark is only at the beginning of the process of developing good practice in this field.

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