

September 2009

Policy Brief - DENMARK

<b>The project aims</b>	<b>EMILIE PROJECT OVERVIEW</b> <p>EMILIE examines the migration and integration experiences of nine EU Member States and attempts to respond to the new challenges that multiculturalism is facing in Europe in the early 21<sup>st</sup> century. EMILIE studies three important areas: Education; Discrimination in the workplace; Voting rights and civic participation, in Belgium, Denmark, France, Germany, Greece, Latvia, Poland, Spain and the UK. EMILIE aims to:</p> <ul style="list-style-type: none"><li>• track the relationship between migration-related diversity and citizenship, i.e. multicultural citizenship, across these EU countries; and</li><li>• identify whether multicultural citizenship is emerging in Europe, and if so what distinctive patterns and types can distinguished.</li></ul>
<b>Case studies</b>	EMILIE conducted three policy-related case studies in each country. The first set of case studies focused on education policy and the measures and practices adopted in dealing with cultural diversity in secondary education. The second set of case studies assessed the implementation of the EU 2000 Anti-Discrimination Directives in the different national contexts. And the third set of case studies investigated voting rights and overall issues of political participation and representation of migrant communities and ethnic minorities in the countries studied.
<b>Definitions</b>	(Multicultural) Citizenship: The notion of citizenship requires a self-governing political community in which individuals have rights and correlative duties enforced by law but are likely to also have a sense of shaping and being shaped by a public space that goes beyond law and politics. Multicultural citizenship debates ask how citizenship can be fully enacted for and by individuals that are culturally diverse.
<b>Methods, data and period of reference</b>	Each case study focuses in the last twenty year period (from 1989 till today). Data collected include policy documents, media coverage, scholarly studies, statistical data, qualitative interviews with key informants, and where it has been possible discussion groups with civil society actors and policy makers.
<b>Focus</b>	The project is concerned with migration-related cultural diversity and not with historical, native ethnic minorities. Special attention is paid to religious diversity and issues concerning Muslim migrants as their integration in European societies has been approached as increasingly challenging in these EU Member States.

**Main findings** **Immigrants and discrimination facts:** Immigrants and their descendants make up 10% of Denmark's total population. Forms of direct or indirect discrimination are rather widespread in the Danish labour market and can be noted by the striking differences in employment rates between migrants and natives; by the disconnect that exists between professional qualifications and job placements for migrant workers; and by the disproportionately high levels of unemployment and the overall lower wages earned by migrants.

**The Danish Anti-discrimination legislative framework:** Criminal law caters for the protection against publicly racist statements and against discrimination in the private sector. In 2003 and 2004, the RED directives [i.e. the Racial Equality directive (2000/43/EC of 29/06/2000) and the Employment Equality directive (2000/78/EC of 27/11/2000)] were implemented in civil law a) by altering a law from 1996 on prohibition of differential treatment in the labour market and b) by introducing a law on Ethnic Equal Treatment covering the non-labour market aspects of the directives. The Equality Board is the new administrative body that processes complaints about discrimination on all grounds since January 2009, while the Danish Institute for Human Rights (DIHR) is responsible for promoting human rights, equality, and anti-discrimination and may investigate cases of discrimination on its own initiative.

**Problems of implementation:** The Danish anti-discrimination legislation fulfils Denmark's European and international obligations. In practice, however, there is a notable lack of knowledge about this legislation and the ensuing rights and possibilities for legal recourse among both the native and migrant population. The gap between the small number of registered cases of discrimination and the high levels of perceived discrimination in the labour market, in educational institutions and in public places that is registered in opinion surveys and studies testifies to this. Critics point out that there is a lack of adequate institutional support towards victims of discrimination to enable the full implementation of the existing anti-discrimination legislative framework.

## **Immigrants and discrimination in Denmark**

There are 526,000 immigrants and immigrant descendants in Denmark making up a 10% of the total population. The biggest groups from non-Western countries are Turks, nationals from the countries of the Former Yugoslavia (mainly from Bosnia-Herzegovina), Iraq, Lebanon and Palestine. Although the employment rate for all non-Western migrants and their descendants has increased from 36% in 1997 to 55% in 2007, and the unemployment rate has dropped from 27% to 10% during the same period, large differences in the employment rates between different nationalities continue to be notable. Native Danes have the highest employment rate (79.3%), followed by migrants from Sri Lanka, Thailand and Vietnam (who reach levels of approximately 70%). Lebanese and Somali migrants on the contrary register employment rates of about half of that of native Danes.

In addition, OECD studies (2008) and research on the Danish labour market indicate that there exist a number of other significant discrepancies between migrant and native workers. Forms of direct or indirect discrimination are illustrated by the gap that often exists between professional qualifications and job placements for migrants (managerial positions vs. elementary positions); and by the disproportionately high levels of unemployment and the overall lower wages earned by migrants. However, there is a very low number of legal cases on issues of discrimination and racism both in the labour market and outside it, even though research suggests that migrants perceive high levels of 'discrimination' in the labour market, in educational institutions and in public places. Finally, studies suggest that few migrants and Danes are aware of their rights in the field of anti-discrimination and equal opportunities and tend not to file complaints against instances of discrimination.

## **Anti-discrimination policy**

Criminal law caters for the protection against publicly racist statements and against discrimination in the private sector since 1971. In 1993, the Board for Ethnic Equality (BEE) was established in order to mainstream equality and fight discrimination in all spheres of Danish society through campaigns and advice to policy makers. In 1996, a civil law on the prohibition of differential treatment in the labour market was introduced in order to implement the ILO Convention No. 111 dating from 1969. Until this point, the issue of discrimination in the labour market had been left to the social partners; however, they failed to introduce provisions on anti-discrimination in the general labour market agreements. In 2001, the BEE was abolished in a politically controversial restructuring of governmental boards and advisory bodies. In 2003 and 2004, the RED directives [i.e. the Racial Equality directive (2000/43/EC of 29/06/2000) and the Employment Equality directive (2000/78/EC of 27/11/2000)] were implemented in civil law a) by altering a law from 1996 on prohibition of differential treatment in the labour market and b) by introducing a law on Ethnic Equal Treatment covering the non-labour market aspects of the directives. A new body, the Complaints Committee on Ethnic Equal Treatment (CCEET), was also established in order to process all complaints concerning discrimination on the grounds of race and ethnicity; the CCEET could also investigate cases of discrimination on its own initiative. In 2009, the CCEET was replaced by a new Equality Board that administratively processes cases of discrimination on the grounds of sex, race, ethnic origin, religion, belief, sexual orientation, political observation, social and national origin, age and handicap. The investigation of cases of discrimination is currently entrusted to the Danish Institute of Human Rights (DIHR).

In the last two decades, Denmark's anti-discrimination policy has been tied to the salient political debate about immigration and integration. As the legal history of the country suggests, there has been no general agreement that anti-discrimination is an important priority. Left-wing parties consider discrimination as a significant social challenge and that the anti-discrimination legislation and relevant public bodies are necessary means to address it. Right wing parties are sceptical about the extent of the problem and have been reluctant to introduce legislation and establish equality-monitoring bodies that would go beyond the European and international law basic requirements. The monitoring of the labour market is left to the social partners, who, as critics remark, have been slow in pursuing the anti-discrimination agenda on ethnic, cultural and religious grounds.

**Bodies responsible for implementing anti-discrimination policy**

The DIHR has the responsibility for pursuing a general human rights, equality and anti-discrimination agenda. Since the CCEET was replaced by the new Equality Board, more resources have been made available to the DIHR to pursue the anti-discrimination agenda on its own initiative. The DIHR is currently working to create and reinforce a network of NGOs that will be competent in promoting the anti-discrimination agenda and in supporting victims of discrimination.

The Equality Board decides on the validity of complaints regarding discrimination. If the defendant in a specific case does not agree with the Board's decision, the Board can open a court case on the claimant's behalf, if he or she so wishes.

Social partners are expected to pursue the anti-discrimination agenda through labour market agreement and other means. Anti-discrimination legislation does not apply to labour market issues to the extent that labour market agreements provide a protection against discrimination. Furthermore, in the cases where the trade union in question does not wish to pursue a discrimination suit on a member's behalf, the Equality Board will process the complaint.

The Council of Ethnic Minorities advises the Minister of Integration on matters relating to immigrants and refugees. The Council is composed of representatives from local municipal integration councils who fulfill similar responsibilities at the local level of administration. Certain municipalities have initiated their own anti-discrimination policies and some have so-called 'citizen counselors' who also process complaints against discrimination.

**Main problems in anti-discrimination policy implementation in Denmark**

The Danish anti-discrimination legislation fulfils Denmark's European and international obligations. The civil anti-discrimination legislation from 1996 and 2003/4 and the new Equality Board set up in early 2009 constitute improvements in the fight against discrimination not least because they facilitate access to filing complaints (particularly as administrative procedures, contrary to court procedures, facilitate the filing of complaints for persons with few economic and personal resources).

The Danish anti-discrimination efforts fall short on the level of awareness raising. The gap between the small number of registered cases of discrimination and the high level of perceived discrimination suggests a significant gap in knowledge about anti-discrimination legislation. The public discourse and lack of political consensus on addressing issues of discrimination also contribute to this lack of knowledge.

Critics of the Danish anti-discrimination efforts point out that too much is left to victims of discrimination and that more institutional support is needed from the public authorities as well as from NGOs. They also emphasise that the lack of knowledge about what discrimination means does not only concern potential victims of discrimination but also employers, trade union members, public institutions (e.g. schools, hospitals) and officials.

Another problem is that the independence of equality bodies from the government is questionable. The restructuring of governmental boards and advisory bodies in 2002 have, in particular, undermined trust in Danish anti-discrimination efforts.

**Key messages for Non Governmental Organisations**

- Information campaigns towards members of trade unions and other NGOs about what constitutes discrimination, what rights individuals have and which are the remedies that could be used would be valuable. Relevant information on existing rights and recourses need to be addressed not only towards groups that may be vulnerable to discrimination but also towards groups likely to discriminate.
- Persons holding key management or administrative positions in companies should be trained to be able to detect and confront discriminatory practices at the work place.
- There exists significant room to improve and provide counselling and support functions for victims of discrimination.

**Key messages for public authorities**

- Information campaigns on anti-discrimination targeting employers, lawyers, public institutions and public officials, including judges are required.
- Sectoral analyses of practices of discrimination that would draw together all relevant stakeholders with a view of initiating common dialogue and best practices in countering such phenomena would be valuable initiatives.
- Continuing to invest in and fund research on different types of discrimination, their effects and possible remedies is necessary in order to improve currently available information and support relevant policies.
- Funding legal counselling, possibly through NGOs, all over the country would facilitate the implementation of Denmark's anti-discrimination legislative framework.

**Recommendations for reforming the legal framework**

- Rendering the implementation and reporting of anti-discrimination measures mandatory for public institutions and private companies would constitute an important step.
- Introducing a general prohibition against discrimination on all grounds that pertains to all spheres of society would also be a welcome initiative, particularly if the same sanctions are applied irrespective of the grounds on which discrimination is made (i.e. gender, race, age, ethnic background, religious affiliation, sexual orientation or other). Such a 'horizontal approach' would make the current legislation more transparent and hence enhance knowledge about discrimination and rights; it would also serve as a basis for mainstreaming anti-discrimination efforts.
- Explicit references to international legal practice and more substantial elaboration of what constitutes direct or indirect forms of discrimination is necessary on the part of judges and other legal practitioners.

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The EMILIE Research Project is funded by the European Commission, DG Research, 6th Framework Programme, Citizenship and Governance in a Knowledge Based Society. All Project Reports and Policy Briefs are available through the project's web site <http://emilie.eliamep.gr>.



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For more information on the Social Sciences and Humanities Research Programme of the European Commission please see:

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