Flerdimensional diskrimineringspolitik i Norden – en oversigt

Multidimensional Discrimination Policies in the Nordic Countries – an overview

Rapporten er udarbejdet af **NIKK – Nordisk institutt for kunnskap om kjønn** på opdrag af Nordisk Ministerråd for ligestilling 2008

The report is carried out by **NIKK – Nordic Gender Institute** at the commission of the Nordic Council of Ministers for Gender Equality 2008

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FORORD

Denne rapport er udarbejdet på opdrag af det finske formandskab i Nordisk Ministerråd for ligestilling (MR-JÄM) 2007. Formandskabet ønsker en sammenstilling af lovgivning og forvaltning på området "flerdimensional diskrimineringspolitik" i de nordiske lande.

Rapporten er forfattet i 2007-2008 og beskriver forhenværende og nuværende lovgivning og forvaltning i den nordiske anti-diskrimineringspolitik på dette tidspunkt.

I nationale oversigter gennemgår rapporten de forskellige tiltag mod en ny politik på området i alle nordiske lande.

Desuden udpeger rapporten tendenser i argumenterne for revideringerne og i høringssvarene hertil.

Da processen med at ændre politikken i enkelte lande endnu pågår, skal denne rapport læses som en status over situationen pt.

I rapporten medvirker Rikke Randorff Hegnhøj (projektleder, NIKK), Ingrid Rusnes (projektmedarbejder, NIKK), Lovise Brade Johansen (projektmedarbejder, NIKK), Kevät Nousiainen (professor, Helsingfors Universitet) och Guðrún D. Guðmundsdóttir (direktør, Mannréttindaskrifstofa Íslands/Icelandic Human Rights Center).

Rapportens afsnit om Danmark, Norge og Sverige er skrevet på skandinavisk og oversat til engelsk. Afsnittene om Finland og Island er skrevet på engelsk.

Rikke Randorff Hegnhøj, rådgiver
NIKK, juni 2008.

PREFACE

This report is prepared at the commission of the Finnish presidency of the Nordic Council of Ministers for Gender Equality (MR-JÄM) 2007. The presidency requires a comparison of the legislation and administration within the field of "multi-dimensional discrimination policy" in the Nordic countries.

The report is written in 2007-2008 and describes the previous and current legislation and administration in the Nordic anti-discrimination policies at this time.

By means of national surveys, the report discusses the different initiatives for new policies in the field both within the legislation and administration.

In addition to this, the report points out trends in the arguments for the revisions and the related statements on the issues submitted for consultation.

As the process of changing the policies is still in progress in some of the countries, this report should be read as a status of the situation at present.

Contributors to this report are: Rikke Randorff Hegnhøj (project manager, NIKK), Ingrid Rusnes (project assistant, NIKK), Lovise Brade Johansen (project assistant, NIKK), Kevät Nousiainen (professor, University of Helsinki) and Guðrún D. Guðmundsdóttir (manager, Mannréttindaskrifstofa Íslands/Icelandic Human Rights Center).

Rikke Randorff Hegnhøj, adviser
NIKK, June 2008.

1. INDLEDNING

Den 1. januar 2006 begyndte Likestillings- og diskrimineringsombudet i Norge sin virksomhed på baggrund af en ny anti-diskrimineringsombudslov. Ombudet blev sat i verden efter en længere politisk proces, der begyndte tilbage i 2000 med det formål at øge indsatsen mod diskrimination[1] og forbedre norske borgeres rettigheder på området. I samtlige nordiske lande[2] har man enten iværksat eller gennemført lignende revideringer af ligestillings- og ligebehandlingslovgivningen for at give bedre beskyttelse mod diskrimination og få en mere effektiv behandling af klagesager.

Norges forgang indenfor diskrimineringspolitik beskriver en tendens væk fra en endimensional politik, det vil sige det faktum at en lovgivning, der bygger på ét grundlag (fx etnicitet), opfattes som utilstrækkelig til at bekæmpe den reelle form for diskrimination, der finder sted. I de nordiske lande gennemgår ligestilling som politikområde i disse år en udvikling fra at være tæt knyttet til forestillingen om en kønsmæssig uligestilling til at dække over flere forskellige sociale kategorier. Dette kan ses i lyset af nyere teorier indenfor kønsforskningen fx intersek- tionalitet, som i flere nordiske og europæiske landes ligestillingspolitik inkluderes på forskellig vis som et spørgsmål om "mangfoldighed" og "lige muligheder for alle".[3] Dette afspejles også i EUs ligestillingspolitik. År 2007 var udnævnt til "Det europæiske år for lige muligheder for alle" og havde til formål at øge den europæiske befolknings bevidsthed om retten til ligestilling og ikke-forskelsbehandling samt om problematikken om diskrimination på flere grundlag. I de officielle dokumenter om året hedder det bl.a., at "[d]*et europæiske år vil fokusere på det budskab, at alle er berettigede til ligebehandling uanset køn, race eller etnisk oprindelse, religion eller tro, handicap, alder eller seksuel orientering*", og at "[d]*et europæiske år* […], *navnlig ved at fremhæve fordelene ved mangfoldighed,* [vil] *fokusere på, at alle uanset køn, race eller etnisk oprindelse, religion eller tro, handicap, alder eller seksuel orientering kan bidrage positivt til samfundet som helhed.*"[4] Mangfoldighed betragtes således som en strategi, der kan beskytte mod forskelsbehandling.

Som rapporten viser, bunder de nordiske tiltag mod bekæmpelse af diskrimination på et multidimensionalt grundlag dels i et øget behov for og bedre beskyttelse af særligt udsatte og nye grupper fx etniske minoriteter og ofre for trafficking; samt et ønske om at skabe større synlighed omkring diskrimination og rettigheder. Derudover er der store variationer i landenes måder at organisere politikken på, hvad angår lovgivning og tilsyn med denne. I det følgende vil vi opridse de tendenser, som de nordiske lande følger.

Intersektionalitet – tendenser i forskningen

I nyere kønsforskning er det blevet stadigt vigtigere at tematisere forskellige sociale kategorier (som fx køn, etnicitet og klasse) og deres samspil. Intersektionalitet beskriver dette samspil.[5] I en nordisk kontekst er begrebet blevet adopteret i kønsforskningen som et centralt teoretisk og til dels også analytisk begreb, som en kritik af identitetspolitiske forfladigelser af forskellighed. Intersektionalitet fokuserer på, at vi forstår mennesker i al deres mangfoldighed, mænd såvel som kvinder, sorte såvel som hvide, homoseksuelle såvel som heteroseksuelle ved hjælp af kategorier (fx køn og alder), og at disse kategorier til stadighed er forbundet med magtstrategier. Intersektionalitet peger på krydsninger af forskellige strukturelle dimensioner, fordi vi alle lever i et kønssystem, såvel som i et klassesystem, som i et etnisk system m.v.[6] Nina Lykke (2008) peger på, hvorfor det er politisk relevant at tænke intersektionalitet som en strukturel, politisk og repræsentationel ulighedsskabende dynamik mellem forskellige individer og grupper af individer: "*Sexistiske, racistiske, homofobe og xenofobe diskurser går som regel hånd i hånd...bestræbelser på at etablere alliancer mellem anti-sexistiske, anti-racistiske, anti-homofobe, anti-nationalistiske, anti-kolonialistiske etc. bevægelser* [har] *ligeledes fremkaldt refleksioner over og teoretiseringer af intersektionalitet mellem kategorier.*"[7]

Anti-diskrimineringspolitik i EU

Den basale beskyttelse mod diskrimination på EU-niveau begynder med Europakonventionen fra 1950 til beskyttelse af menneskerettigheder og grundlæggende frihedsrettigheder. Her slås det fast, at: "*Nydelsen af de i denne Konvention aner-*

kendte rettigheder og friheder skal sikres uden forskel på grund af køn, race, farve, sprog, religion, politisk eller anden overbevisning, national eller social oprindelse, tilhørighed til et nationalt mindretal, formueforhold, fødsel eller ethvert andet forhold."[8] Men det er først siden slutningen af 1990'erne at arbejdet for en styrket anti-diskrimineringslovgivning har taget fart.[9] I 1997 vedtog medlemslandene Amsterdamtraktatens artikel 13, der introducerer en bredere anti-diskrimineringsregel. Her slås det fast, at: "*...the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*"[10] Siden 1999 har man i EU arbejdet systematisk med at udvikle anti-diskrimineringslovgivningen og implementere den i medlemslandenes lovgivninger.[11] Man anerkender, at implementering og håndhævning på et individuelt grundlag ikke er nok til at takle de mangefacetterede mønstre af ulighed, som opleves af nogle bestemte grupper: "*EU equality law is multidimensional in being based on different rationales and concepts. Consequently, the concept of discrimination has become fragmented, with different instruments envisaging different scopes of protection. This raises questions as to the ability of EU law to address the situation of persons excluded on a number of grounds*."[12]

Den aktuelle anti-diskriminationslovgivning i EU beror på to direktiver fra 2000: Racial Equality Directive (2000/43/EC) og Employment Equality Directive (2000/78/EC),[13] der er adopteret af medlemslandene om end på forskellig vis.[14] Direktiverne udstikker et sæt af regler ved at opliste visse minimumskrav og forbyder diskrimination på grund af race og etnisk oprindelse, handicap, alder, religion og overbevisning og seksuel orientering. *Racial Equality Directive* beskytter mod diskrimination på baggrund af race og etnisk oprindelse og gælder for arbejdsmarkedet, medlemskab af organisationer, socialhjælp og sundhedstjenester, uddannelse, tilgang til varer, tjenester og bolig. Direktivet berettiger hvert medlemsland til at oprette en specialiseret enhed, der har til formål at promovere ligebehandling på grundlag af race og etnisk oprindelse. *Employment Equality Directive* forbyder diskrimination på grund af handicap, alder, religion eller overbevisning og seksuel orientering og gælder for arbejdsmarkedet og medlemskab af organisationer. Begge direktiver beskytter både mod direkte og indirekte diskrimination.

Foruden de nordiske lande har flere europæiske lande et samlet tilsyn med diskrimineringslovgivningen på trods af en mosaisk lovgivning. Intet land udenfor

Norden har endnu en samlet lov mod diskriminering, men i Storbritannien foreligger et lovforslag til en samlet lovgivning (se nedenfor). Modellerne i blandt andet Storbritannien og Irland har dannet forlæg for flere nordiske landes reformer af forvaltningen på området. Nedenfor gennemgår vi kort de enkelte landes love og tilsyn.

I **Storbritannien** begyndte *The Equality and Human Rights Commission* sin virksomhed den 1. oktober 2007. Enheden er en fusion af *The Commission*[14a] *for Racial Equality*, *The Disability Rights Commission* og *The Equal Opportunities Commission*. Kommissionen har i tillæg ansvar for diskrimineringsgrundlagene seksuel orientering, alder, religion og overbevisning, samt menneskerettigheder generelt. *The Equality and Human Rights Commission* er en ikke-ministeriel og uafhængig enhed, og som i de øvrige lande er lovgivningen en broget samling af love: Disability Discrimination Act (2005), Employment Equality Regulations (2006) med ansvar for alder, Employment Equality Regulations (2003) med ansvar for religion eller tro, Equality Act (2006), Equal Pay Act (1970), Human Rights Act (1998), Race Relations Act (1976), Sex Discrimination Act (1975), Special Educational Needs and Disability Act (2001), Convention for the Protection of Human Rights and Fundamental Freedom (2000). Argumenterne for oprettelsen af kommissionen var et krav om at rationalisere, modernisere og forenkle den mudrede lovgivning og inkludere nye grundlag, samt en mulighed for at håndtere intersektionalitet.[15] Lovgivningen placerer et krævende antal opgaver hos kommissionen, der blandt andet indebærer at håndhæve lovene, skabe forståelse for menneskerettigheder generelt og fremme lige muligheder for borgerne.

Debatten om en samlet lovgivning i Storbritannien har stået på siden 2002.[16] Støtten til en samlet enhed har beroet på et ønske om en samlet lovgivning. Nogle har ment, at det burde være en forudsætning for en enhed fx the Women's National Commission, som i 2002 udtalte: "…a single Equality Act must underpin any changes to the equalities commissions."[17]

Det har længe været den nuværende regerings ønske at samle lovgivningen i en mere moderne, konsistent og effektiv lovgivning.[18] I juni 2008 fremlagde regeringen derfor et forslag til en samlet lovgivning. Forud for lovforslaget lå en længere udredning af den hidtidige lovgivning, som er sammenfattet i rapporten *Discrimination Law Review. A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*.[19]

I **Nordirland** har *The Equality Commission*[20] eksisteret siden 1998. Institutionen er uafhængig og har til formål at fremme lige muligheder for alle i henhold til lovgivningen, informere offentligheden, føre tilsyn med lovene og komme med ændringsforslag. Kommissionens beføjelser og ansvar er blandt andet at rådgive og assistere klagere, undersøge og sikre overholdelsen af lovgivningen, og fremme forskning. Den nuværende lovgivning er sammensat af følgende love: Sex Discrimination (1976) dækker grundlaget køn (kvinde og mand),[21] Race Relations (1997) dækker grundlagene "racial grounds" (hudfarve, race, nationalitet og etnisk eller national oprindelse); Disability Discrimination Act (1995); Fair Employment and Treatment (1998) dækker grundlaget religiøs overbevisning og politisk anskuelse; Employment Equality (Sexual Orientation) Regulations (2003) dækker homo-, hetero- og biseksualitet. Alle lovene gælder for arbejdslivet, uddannelse og tilgang til varer, tjenester og bolig. I 2007 blev personer diagnosticeret med blandt andet kræft og HIV, men også peroner med psykiske sygdomme beskyttet i loven mod diskriminering på grundlag af handicap. Diskrimination på grund af alder er endnu ikke omfattet af lovgivningen i Nordirland.

Kommissionen anbefaler en samlet anti-diskrimineringslovgivning og kom i 2001 med en hensigtserklæring. I 2004 blev rapporten *A Single Equality Bill for Northern Ireland*[22] sendt på høring. Ministeren for ligestilling udarbejdede i 2005 en rapport, der opsummerer høringssvarene til rapporten.[23] For øjeblikket foretager ministeriet forskning, der skal ligge til grund for det videre forløb mod en samlet lovgivning.

I **Irland** består diskrimineringslovgivningen af to love: Employment Equality Act (1998) og Equal Status Act (2000). Begge love dækker grundlagene køn (kvinde og mand), ægteskabelig status (single, gift, separeret, skilt eller enke/enkemand), familiestatus (forældre/værge), seksuel orientering (hetero-, homo- og biseksualitet), religiøs overbevisning, alder, handicap, race (race, hudfarve, nationalitet, etnisk eller national oprindelse) og "membership of the traveller community". Employment Equality Act gælder for arbejdslivet og Equal Status Act gælder for uddannelse og tilgang til varer, tjenester og bolig. Tilsynet med lovgivningen føres af den uafhængige institution *The Equality Authority* fra 1999.[24] Ankesager tages op af *The Equality Tribunal*. *The Equality Authority* er en uafhængig instans, der blev oprettet i 1999. Institutionen arbejder for at udrydde diskrimination i de

samfundsområder lovgivningen gælder for; fremme lige muligheder, informere offentligheden og stille ændringsforslag.

Som det fremgår har alle tre institutioner flersidede mandater: information, tilsyn med lovgivning og mandat til at stille ændringsforslag til lovgivningen.

I **Belgien** har man også for nylig reformeret ligebehandlings- og anti-diskrimineringspolitikken, men valgt en helt anden strategi, hvad angår forholdet mellem beskyttelse af grundlaget køn og andre grundlag. I modsætning til Storbritannien, Irland og de nordiske lande[25] satser man på en institutionel todeling, og fastholder et skel mellem ligestillingsinstitutioner og anti-diskrimineringsinstitutioner.[26] Man ønskede en uafhængig og særlig institution til at håndtere køn samt en særlig lovgivning for ligestilling.[27] Beslutningen bygger på en forståelse af, at diskrimination på grund af køn er strukturelt forskellig fra andre former for diskrimination, fordi det berører et flertal af befolkningen, og fordi køn går på tværs af de andre grundlag. I 2002, på samme tid som parlamentet gennemgik et lovforslag om anti-diskriminering, blev det vedtaget at oprette *The Institute for Equality of Women and Men.*[28] Institutionen er uafhængig og har til formål at bekæmpe diskrimination og forskelsbehandling på baggrund af køn, udvikle strategier til en integreret tilgang til køn og fremme ligestilling mellem kvinder og mænd.

På trods af den institutionelle todeling fastholdes en samlet anti-diskrimineringslovgivning, som indeholder alle grundlag for diskrimination der forvaltes af *Centre for Equal Opportunities and Opposition to Racism*.[28a] I 2007 blev tre nye love vedtaget: 1) en generel lov mod diskrimination på grund af alder, seksuel orientering, civil status, fødsel, formue, religiøs eller filosofisk overbevisning, politisk overbevisning, sprog, nutidig eller fremtidig helbredstilstand, handicap, fysiske eller genetiske karakteristika eller social oprindelse, 2) en lov mod race-diskrimination; 3) en særlig lov mod kønsdiskrimination. Der er ikke åbnet for en samlet anti-diskrimineringslovgivning i udformningen af de tre love, fordi man ønsker at respektere den generelt anerkendte særegenhed, der kendetegner kampen mod racisme og af respekt for princippet om ligestilling. Målet er ikke at introducere et hierarki mellem de enkelte diskriminationsgrundlag, men garantere kohærens i beskyttelsen af ofre for diskrimination og forhindre mulige konflikter mellem lovene.[29]

Internationale tendenser

En del af den beskyttelse, man finder i EU-lovgivningen er baseret på internationale menneskerettigheder.[30] FN og Europarådet har anbefalet sine medlemsstater at oprette nationale uafhængige menneskerettighedsinstitutioner med så omfavnende virksomhedsområder som muligt. I Norden er det kun Danmark, Norge og Sverige som har internationalt anerkendte menneskerettighedsinstitutioner.[31] Også udenfor Europa har flere lande egne institutioner for anti-diskrimination og her har man i årevis arbejdet med en integreret lovgivning og eksplicit inddraget intersektionalitet som teoretisk begreb, der ligger til grund i dette arbejde. Flere af institutionerne har dannet forlæg for diskussionerne i de nordiske lande vedrørende, hvorvidt en sådan institution skal have et mere omfattende mandat end blot tilsyn med loven.

I **Canada**[32] arbejder *The Canadian Human Rights Commission*[32a] med at administrere The Canadian Human Rights Act (1985) og The Employment Equity Act (1995). I 1998 tilføjede man følgende undersektion til den førstnævnte lovgivning: "*A discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds [...] whenever this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of (a) two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and (b) the individual's association or relationship, whether actual or presumed, with an individual or class of individuals identified by a prohibited ground of discrimination*".[33] Denne sektion i lovgivningen giver konkrete bud på, hvordan kommissionen bør vurdere i klagesager vedrørende diskrimination: "*The Commission should enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its review of reports submitted by State parties on their compliance with treaty obligations*."[34] Den canadiske lovgivning dækker grundlagene race, nationalt eller etnisk oprindelse, hudfarve, religion, alder, køn, ægteskabelig status, familiestatus og handicap. Loven gælder i arbejdslivet og i adgang til varer, tjenester og bolig. Employment Equity Act stiller krav om særlige indsatser for at komme diskrimination i arbejdslivet til livs mod kvinder, aboriginere (indianere, inuitter og metiser), handicappede og etniske minoriteter. Loven gælder for større private og offentlige arbejdsgivere. Sidstnævnte er blandt andet forpligtet på at oprette mangfoldighedsplaner ("employment equity plans").

I **Australien** blev *The Human Rights and Equal Opportunity Commission* (nu *The Australian Human Rights Commission*) oprettet i 1986.[35] Institutionen rapporterer til parlamentet, håndterer klager, samt fokuserer specielt på forskning og uddannelse. Institutionens lovmæssige forpligtelser omfatter også politik- og lovgivningsudvikling. *The Australian Human Rights Commisson* administrerer følgende love: Age Discrimination Act (2004), Disability Discrimination Act (1992), Race Discrimination Act (1975): grundlag: race, hudfarve, herkomst, samt national eller etnisk oprindelse, Sex Discrimination Act (1984): grundlag: køn (mand/kvinde), ægteskabelig status, familiestatus og graviditet, samt Human Rights and Equal Opportunity Commission Act (1986). Lovene gælder i arbejdslivet, uddannelse og adgang til varer, tjenester og bolig. Allerede i 2000 udgav kommissionen en rapport, der sætter fokus på diskrimination i et intersektionelt perspektiv, hvor man blandt andet fokuserer på samspillet mellem "køn" og "race": "*The experience of race-and-gender discrimination is qualitatively different from race discrimination or gender discrimination. As evidenced by the example below, women often experience discrimination because of their identity as racially disadvantaged women in a way that cannot be understood by thinking about race or gender in isolation. Women also experience racism as migrants, as refugee women, as Indigenous women, or as women from backgrounds other than English speaking when they are single heads of households, living with disabilities, girl children, lesbian women, young mothers, or older women. Each of these facets of identity can compound the experience of racism.*"[36]

I **New Zealand** etablerede man i 1978 *The Human Rights Commission*,[36a] som administrerer The Human Rights Commission Act (1977) i overensstemmelse med FN-konventionerne. I 2001 blev der oprettet to nye kommissærstillinger for henholdsvis "Race Relations" og "Equal Employment Opportunities". Institutionen er en uafhængig national menneskerettighedsinstitution, der rapporterer til Justitsministeriet. Institutionens mandat er at fremme respekt, forståelse for og anerkendelse af menneskerettigheder generelt. Kommission er bemyndiget til at løse sager om diskrimination og uddanner, informerer og rapporterer om menneskerettigheder generelt.

Lovgivningen gælder for diskrimineringsgrundlagene køn[37] (inkl. graviditet og barnefødsel), ægteskabelig status, familiestatus, hudfarve, race, etnisk eller national oprindelse (inkl. nationalitet og medborgerskab), religiøs overbevisning, etisk overbevisning, handicap, seksuel orientering, alder, politisk synspunkt og

ansættelsesstatus. Loven dækker arbejdslivet, uddannelse og adgang til varer, tjenester og bolig.

Flerdimensional diskrimination i teori og praksis

I Europa er det indtil nu hovedsagligt indenfor forskningen, at man har ofret "flerdimensional diskrimination" indgående opmærksomhed og analyse, men begrebet får stadig større politisk opmærksomhed. Mens forskningen blandt andet har kritiseret den politiske endimensionale tilgang til ligebehandling ("one-size-fits-all"-modellen) og ignoreringen af intersektionalitet som teoretisk bregreb,[38] har man i det politiske liv forsøgt at finde praktiske løsninger på, hvordan man nærmer sig det komplekse fænomen i forhold til forskellige grupper og individer.

Den hollandske kønsforsker Mieke Verloo (2006) reflekterer kritisk over forholdet mellem den sjældne politiske og praktiske reference til begrebet i en europæisk kontekst i forsøget på at bekæmpe flerdimensionale uligheder. Hun ønsker med begrebet "diversity mainstreaming" at bidrage teoretisk til at konceptualisere forholdet mellem forskellige uligheder (intersektionalitet) i praksis.[39] Hendes påstand er, at den endimensionale tilgang til flerdimensional diskrimination (fx oprettelsen af én institution for ét tilsyn med anti-diskrimination på flere grundlag) er baseret på en ukorrekt antagelse af enslighed af de sociale kategorier, der er forbundet til uligheder og til de mekanismer og processer, der konstituerer dem: "*Focusing on similarities ignores the differentiated character and dynamics of inequalities. It also overlooks the political dimension of equality goals* [...] *attention to structural mechanisms and the role of the state and private sphere in reproducing inequalities is much needed.*[40] "Diversity mainstreaming" tager som strategi udgangspunkt i, at 1) Uligheder eksisterer både i den private og i den offentlige sfære. De reproduceres gennem identiteter, adfærd, interaktioner, normer og symboler, organisationer og institutioner, inklusiv stater og lignende institutioner, 2) Uligheder er ikke ekvivalente; sociale kategorier er forbundet til uligheder på forskellig vis, og 3) Uligheder er dynamiske problemstillinger, der kan lokaliseres i adskillige særskilte strukturer, der erfares forskelligt og som reproduceres på forskellig vis. Verloo pointerer dermed, at strategier til at håndtere differentierede uligheder på et strukturelt plan ikke kan være "de samme", og at en individualistisk anti-diskrimineringspolitik er utilstrækkelig. I stedet bør man udvik-

le komplekse metoder og værktøjer, der er informeret af teorier om intersektionalitet.[41]

Perspektiver

Indenfor EU's institutioner synes denne tilgang til arbejdet med en flerdimensional diskrimineringspolitik at vinde indpas. I en udgave af *Equal Voices* (udgivet af European Union Agency for Fundamental Rights) med undertitlen "Equality and discrimination through the 'gender lens'", lyder det: "*When addressing discrimination one size does not fit all. The gender dimension needs direct targeting as is evident when one considers issues like the insidious trafficking of women which continues to be an issue in the European Union and beyond.*"[42] Louise Arbour, UN High Commissioner for Human Rights udtaler i samme publikation: "*Women's experiences of racism and discrimination often differ from those of men because women and girls may suffer multiple forms of discrimination, both on the grounds of gender and on the basis of ethnic or religious identity.*"[43] I EU har man desuden lanceret PROGRESS-programmet (2007-2013)[44], der blandt andet dækker arbejdet med anti-diskrimination og ligestilling. I 2007 er hovedaktiviteterne at støtte et netværk af juridiske eksperter indenfor anti-diskrimination, nationale ligestillingsenheder og nationale embedsmænd, der skal udforske implementeringen af EU-lovgivning i medlemslandene og uddanne juridiske og "policy practitioners" på EU-niveau i at promovere "uniform interpretation of EU equality law"[45], samt støtte undersøgelsen af diskrimination på områder, der endnu ikke er dækket af EU-lovgivningen og komme med forslag til politik på områderne.

Udfordringerne for EUs anti-diskrimineringspolitik synes således fremover – som i de nordiske lande – at pege på konkrete politiske og praktiske måder at implementere dette i lovgivningen såvel som i tilsynet. En aktuel undersøgelse gennemført af *Institut for Menneskerettigheder i Danmark* på opdrag af EU-kommissionen slår blandt andet fast, at udfordringerne – på EU-niveau – for anti-diskrimineringspolitik består i at opruste viden om, hvordan man anerkender og identificerer flerdimensional diskrimination. Derudover anbefaler rapporten en mere holistisk og integreret tilgang til arbejdet med diskrimination generelt, samt at satse stærkere på at indsamle data og overvåge diskrimination via mere forskning, lovgivning, uddannelse, bevidstgørelse og formidling af "good practice" på området.[46]

Litteratur

· Arnardottir, Oddny Mjoll (2003): *Equality and Non-Discrimination under the European Convention on Human Rights*, Brill Academic Pub.
· Bagilhole, Barbara (2006): *Exploration of UK Equal Opportunities and Diversity Legislation and Implementation Agencies through the Lens of Intersectionality*. Paper presented at the conference "Equal is Not Enough", European Conference on Equal Oppotunities, university of Antwerp, 13-15 September 2006.
http://www.equalisnotenough.org/followup/papers/BarbaraBagilhole.pdf
· Bagilhole, Barbara (forthcoming 2008): *Understanding Equal Opportunities and Diversity: The Social Differentiations and intersections of gender, race, disability, religious belief, sexual orientation and age*. The Policy Press.
· Humhauser-Henning (ed.) (2001): *Legal Perspectives on Equal Treatment and Non-Discrimination*, Kluwer International.
· Lykke, Nina (2008): *Kønsforskning. En guide til feministisk teori, metodologi og skrift.* Forlaget Samfundslitteratur.
· Nielsen, Ruth (2006): EU Law and Multiple Discrimination. CBS Law Studies, Copenhagen Business School http://ir.lib.cbs.dk/download/ISBN/8791759013.pdf
· Schiek, Dagmar and Chege, Victoria (eds.) (2008): *European Union Discrimination Law: Comparative Aspects on Multidimensional Equality Law*, Routledge-Cavendish, London.
· Squires, Judith (2007): "*The Challenge of Diversity: The Evolution of Women's Policy Agencies in Britain*" in *Politics and Gender*, 3 (4) 2007.
· *Tackling Multiple Discrimination. Practices, policies and laws*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.4 (2007).
· Verloo, Mieke (2006): "Multiple Inequalities, Intersectionality and the European Union" in *European Journal of Women's Studies* vol. 13 no 3.

1. INTRODUCTION

On 1 January 2006, the Equality and Anti-discrimination Ombud started its activities in Norway based on a new Anti-discrimination Ombud Act. The Ombud was established after an extended political process, which started in 2000 with the purpose of enhancing the efforts against discrimination[1] as well as the rights of the Norwegian citizens. In all the Nordic countries[2] there have either been initiated or implemented similar revisions of the gender equality and equal treatment legislation in order to provide better protection against discrimination and to have a more effective handling of complaints.

Norway's leading efforts within the field of discrimination policy describe the trend away from a one-dimensional policy, i.e. the fact that legislation on one ground (e.g. ethnicity) shall be considered to be inadequate in order to combat the actual form of discrimination taking place. In the Nordic countries, gender equality as a policy area is currently developing from being closely connected to the conception of gender inequality to covering several, different social categories. This may be seen in the light of recent theories within the field of gender research, e.g. intersectionality, which in the gender equality policies of several Nordic and European countries are included in different ways as a question of "diversity" and "equal opportunities for all".[3] This is also reflected in the EU gender equality policies. 2007 was appointed "The European Year of Equal Opportunities for All" and aimed at increasing the knowledge of the European population about the right to gender equality and non-differential treatment as well as the problems with discrimination on several grounds. In the official documents regarding the year it is stated that "*the European year will focus on the message that all people are entitled to equal treatment regardless of gender, race or ethnic origin, religion or faith, disability, age or sexual orientation*," and that "*the European year […], specifically by emphasizing the advantages of diversity, [will] focus on the fact that all people regardless of gender, race or ethnic origin, religion or faith, disability, age or sexual orientation may contribute to society as a whole in a positive way*".[4] Di-

versity shall thus be regarded as a strategy to protect against differential treatment.

As the report will demonstrate, the Nordic initiatives against discrimination are based on a multi-dimensional foundation, partly in the shape of an increasing need for and better protection of exposed and new groups, e.g. ethnic minorities and victims of trafficking, and partly in the shape of a wish to create greater visibility with regard to discrimination and rights. In addition to this, there are great variations in the way the countries organise the policies as regards legislation and the supervision of these. In the following section, we will outline the trends that the Nordic countries are following.

Intersectionality – research trends

In recent gender research is has become increasingly important to thematise different social categories (e.g. gender, ethnicity and class) and their interplay. Intersectionality describes this interplay.[5] In a Nordic context, the concept has been adopted by gender research as a central, theoretical and partly also analytical concept criticizing identity-political vulgarization of diversity. Intersectionality focuses on the concept that we understand human beings in all their diversity, men as well as women, black people as well as white people, homosexuals as well as heterosexuals based on categories (e.g. gender and age) and that these categories are continuously connected to power strategies. Intersectionality points to crosses of different structural dimensions, as we all live in a gender system as well as in a class system and an ethnic system etc.[6] Nina Lykke (2008) points out why it is politically relevant to think of intersectionality as a structural, political and representational, inequality creating dynamism between different individuals and groups of individuals: "*Sexist, racist, homophobic and xenophobic discourses usually go hand in hand…the efforts to establish alliances between anti-sexist, anti-racist, anti-homophobic, anti-nationalistic, anti-colonialist etc. movements* [have] *thus given rise to consideration and theorisation of intersectionality between categories*."[7]

Anti-discrimination policies in the EU

The basic protection against discrimination at EU level started with the European Convention from 1950 for the protection of human rights and fundamental civic rights. Here it was established that: "*The enjoyment of the rights and freedoms 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 origin, association with a national minority, property, birth or other status.*"[8] But it was not until the end of the 1990s that the work towards a strong anti-discrimination legislation gathered way.[9] In 1997, the member states adopted Article 13 of the Amsterdam Treaty, which introduced a wider anti-discrimination rule.

Here it was established that: ""*...the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*"[10] Since 1999, systematic efforts have been made in the EU to develop the anti-discrimination legislation and implement it in the legislations of the member states.[11] It is acknowledged that the implementation and enforcement on an individual basis is not enough to handle the multi-faceted patterns of inequality that are perceived by certain groups: "*EU equality law is multidimensional in being based on different rationales and concepts. Consequently, the concept of discrimination has become fragmented, with different instruments envisaging different scopes of protection. This raises questions as to the ability of EU law to address the situation of persons excluded on a number of grounds*."[12]

The current anti-discrimination legislation in the EU is due to two directives from 2000: The Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC),[13] which are adopted by the member states, even though this may be in different ways.[14] The directives chart a set of rules by listing certain minimum requirements and ban discrimination based on race and ethnic origin, disability, age, religion and opinions and sexual orientation. The *Racial Equality Directive* protects against discrimination based on race and ethnic origin an applies to the labour market, membership of organisations, Social Security benefits and health services, education, access to goods, services and housing. In addition to this, the directive charts the course that will entitle each member state to create a specialised unit with the purpose of promoting equal treatment based on race and ethnic origin. The *Employment Equality Directive* bans discrimination based on disability, age, religion or opinion and sexual orientation and applies to the labour market and membership of organisations. Both directives

protect against direct as well as indirect discrimination. In addition to the Nordic countries, several European countries have joint supervision of the discrimination legislation despite a mosaic legislation. No country outside the Nordic countries does yet have a common legislation against discrimination, but in Great Britain a bill on a common legislation has been introduced (see below). The models, e.g. in Great Britain and Ireland, have formed the basis of the reforms in several Nordic countries of the administration within this field. In the section below, we will briefly go through the acts and supervision of the individual countries.

In **Great Britain**, *The Equality and Human Rights Commission* commenced its activities on 1 October 2007. The unit is an integration of *The Commission*[14a] *for Racial Equality*, *The Disability Rights Commission* and *The Equal Opportunities Commission*. Furthermore, the Commission is responsible for the discrimination bases of sexual orientation, age, religion and opinion as well as human rights in general. *The Equality and Human Rights Commission* is a non-departmental and independent unit and as in the other countries, the legislation is a heterogeneous collection of acts:

The Disability Discrimination Act (2005), the Employment Equality Regulations (2006) with responsibility for age, the Employment Equality Regulations (2003) with responsibility for religion or faith, the Equality Act (2006), the Equal Pay Act (1970), the Human Rights Act (1998), the Race Relations Act (1976), the Sex Discrimination Act (1975), the Special Educational Needs and Disability Act (2001), the Convention for the Protection of Human Rights and Fundamental Freedom (2000). The arguments for the establishment of the commission were a demand for the rationalisation, modernisation and simplification of the muddy legislation and to include new grounds as well as an opportunity to handle intersectionality.[15] The legislation places a demanding number of tasks with the commission which include the administration of the acts, efforts to create a general understanding of human rights and to promote equal opportunities for the citizens.

The debate on a common legislation in Great Britain has been going on since 2002.[16] The support of a joint unit was due to a request for a common legislation. Some people believed that it should be a precondition for a unit, e.g. the Women's National Commission, which made the following statement in 2002: *"…a single Equality Act must underpin any changes to the equalities commissions."*[17]

For a long time, it has been the wish of the present Government to integrate

the legislation as a more modern, consistent and effective legislation. In June 2008, the Government introduced a bill for a common legislation.[18] Prior to the bill there was a thorough analysis of the former legislation, which is summarised in the report *Discrimination Law Review. A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain.*[19]

In **Northern Ireland**, *The Equality Commission*[20] has existed since 1998. This is an independent body with the purpose of promoting equal opportunities for all in accordance with the legislation, inform the public, supervise the acts and propose amendments. The authority and responsibility of the commission is, for instance, to advise and assist complainants, monitor and ensure the compliance with the legislation and promote research. The present legislation consists of the following acts: The Sex Discrimination (1976) covers gender (woman and man),[21] Race Relations (1997) covers "racial grounds" (skin colour, race, nationality and ethnic or national origin); the Disability Discrimination Act (1995); the Fair Employment and Treatment (1998) covers religious persuasion and political views; the Employment Equality (Sexual Orientation) Regulations (2003) covers homosexuality, heterosexuality and bisexuality. All acts apply to the working life, education and access to goods, services and housing. In 2007, persons who were diagnosed with e.g. cancer and HIV, but also persons with mental illnesses, were protected by the act against discrimination based on disability. Discrimination based on age is not yet included by the legislation in Northern Ireland.

The commission recommends a common anti-discrimination legislation and presented a policy statement in 2001. In 2004, the report *A Single Equality Bill for Northern Ireland*[22] was submitted for consultation. The Minister for Gender Equality prepared a report in 2005 which is summarizing the statements for the report.[23] At the moment, the Ministry conducts research to make the basis of the progress towards a common legislation.

In **Ireland**, the discrimination legislation consists of two acts: The Employment Equality Act (1998) and the Equal Status Act (2000). Both acts cover the bases of gender (woman and man), marital status (single, married, separated, divorced or widow/widower), family status (parent/guardian), sexual orientation (heterosexuality, homosexuality and bisexuality), religious persuasion, age, disability, race (race, skin colour, nationality, ethnic or national origin) and "membership

of the traveller community". The Employment Equality Act applies to the working life and the Equal Status Act applies to education and access to goods, services and housing. The supervision of the legislation is conducted by the independent institution *The Equality Authority* from 1999.[24] Appeals will be considered by *The Equality Tribunal. The Equality Authority* is an independent body which was established in 1999. The body works to root out discrimination in the areas of society to which the legislation applies, promote equal opportunities, inform the public and propose amendments.

As it appears, all three bodies have multilateral mandates: Information, supervision of the legislation and mandate to propose amendments of the legislation.

In **Belgium**, there has also recently been made revisions of the equal treatment and anti-discrimination policies, but a completely different strategy has been chosen as regards the relationship between protection of gender and other grounds. Unlike Great Britain, Ireland and the Nordic countries,[25] an institutional two-tier system is applied and a distinction between gender equality bodies and anti-discrimination bodies is maintained.[26] There was a requirement for an independent and specific body to administer gender and a specific gender equality legislation.[27] The decision is based on an understanding of the fact that discrimination based on gender is structurally different from other types of discrimination, as it concerns a majority of the population and because gender goes across the other causes of discrimination. In 2002, at the same time as the Parliament reviewed the bill on anti-discrimination, it was decided to establish *The Institute for Equality of Women and Men.*[28] The body is independent and aims at combating discrimination and differential treatment based on gender, develop strategies for an integrated approach to gender and promote equality between women and men.

Despite the institutional two-tier system, a common anti-discrimination legislation is maintained, which includes all grounds of discrimination administered by the *Centre for Equal Opportunities and Opposition to Racism*.[28a] In 2007, three new acts were passed: 1) a general act against discrimination based on age, sexual orientation, civil status, birth, property, religious or philosophical persuasion, political opinion, language, present or future health, disability, physical or genetic characteristics or social origin, 2) an act against racial discrimination, 3) a specific act against sexual discrimination. Efforts have not been made to open up to a common anti-discrimination legislation in the wording of the three acts, as

there is a wish to respect the generally accepted properties characterizing the battle against racism and out of respect for the principle of gender equality. The aim is not to introduce a hierarchy between the individual discrimination grounds, but to guarantee the coherence in the protection of the victims of discrimination and prevent potential conflicts between the acts.[29]

International trends

Part of the protection found in the EU legislation is based on international human rights.[30] The UN and the European Council have recommended their member states to establish national, independent human rights bodies with as extensive an activity area as possible. Among the Nordic countries only Denmark, Norway and Sweden have established internationally recognised human rights bodies.[31] Also outside Europe, several countries have their own anti-discrimination bodies and for years they have worked with an integrated legislation and explicitly involved intersectionality as a theoretical concept which is the basis for this work. Several bodies have formed the basis of the discussions in the Nordic countries regarding whether such a body should have a more comprehensive mandate than just supervising the act.

In **Canada**,[32] *The Canadian Human Rights Commission*[32a] works to administer The Canadian Human Rights Act (1985) and The Employment Equity Act (1995). In 1998, the following subsection was added to the first-mentioned legislation: "*A discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds [...] whenever this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of (a) two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and (b) the individual's association or relationship, whether actual or presumed, with an individual or class of individuals identified by a prohibited ground of discrimination*".[33] This section of the legislation provides concrete suggestions as to how the commission should consider complaints regarding discrimination: "*The Commission should enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its review of reports submitted by State parties on*

their compliance with treaty obligations."[34] The Canadian legislation covers race, national or ethnic origin, skin colour, religion, age, gender, marital status, family status and disability. The act applies to working life and access to goods, services and housing. The Employment Equity Act requires special initiatives to combat discrimination in working life against women, aboriginals (Indians, Inuits and Métis), disabled persons and ethnic minorities. The act applies to larger private and public employers. The latter is e.g. obliged to set up diversity plans ("employment equity plans").

In **Australia**, *The Human Rights and Equal Opportunity Commission* (now *The Australian Human Rights Commission*) was established in 1986.[35] The body reports to the Parliament, hears complaints and has special focus on research and education. The statutory obligations of the body also include policy and legislation development.

The Australian Human Rights Commission administers the following acts: The Age Discrimination Act (2004), the Disability Discrimination Act (1992), the Race Discrimination Act (1975): race, skin colour, descent, as well as national or ethnic origin, the Sex Discrimination Act (1984): gender (man/woman), marital status, family status and pregnancy, and the Human Rights and Equal Opportunity Commission Act (1986). The acts apply to working life, education and access to goods, services and housing. Already in 2000, the commission published a report, which focuses on discrimination in an intersectional perspective where e.g. the correlation between "gender" and "race" is in focus: "*The experience of race-and-gender discrimination is qualitatively different from race discrimination or gender discrimination. As evidenced by the example below, women often experience discrimination because of their identity as racially disadvantaged women in a way that cannot be understood by thinking about race or gender in isolation. Women also experience racism as migrants, as refugee women, as Indigenous women, or as women from backgrounds other than English speaking when they are single heads of households, living with disabilities, girl children, lesbian women, young mothers, or older women. Each of these facets of identity can compound the experience of racism.*"[36]

In **New Zealand**, *The Human Rights Commission*,[36a] was established in 1978, which administers The Human Rights Commission Act (1977) in accordance with the UN conventions. In 2001, two new commissioner positions were estab-

lished for "Race Relations" and "Equal Employment Opportunities", respectively. The body is an independent, national human rights body, which reports to the Ministry of Justice. The mandate of the body is to promote respect, understanding and acknowledgement of human rights in general. The commission is authorised to solve cases on discrimination and will educate, inform and report on human rights in general. The legislation applies to the discrimination bases of gender[37] (including pregnancy and childbirth), marital status, family status, skin colour, race, ethnic or national origin (including nationality and citizenship), religious persuasion, ethical persuasion, disability, sexual orientation, age, political views and employment status. The act applies to working life, education and access to goods, services and housing.

Multidimensional discrimination in theory and practice

In Europe, up till now it is mainly within the area of research that particular attention has been given to "multidimensional discrimination" has been analysed, but the concept still attracts more political attention. While the research has often criticized the political one-dimensional approach to equal treatment (the "one-size-fits-all"-model) and disregard of intersectionality as a theoretical concept,[38] the political players have worked to find practical solutions to the approach to the complex phenomenon in relation to different groups and individuals.

The Dutch gender researcher Mieke Verloo (2006) reflects critically on the relationship between the rare political and practical reference to the concept in a European context in the attempt to combat multi-dimensional inequalities. With the concept of "diversity mainstreaming", she wishes to make a theoretical contribution in order to conceptualise the relationship between different inequalities (intersectionality) in practice.[39] She claims that the one-dimensional approach to multi-dimensional discrimination (e.g. the establishment of one body to supervise anti-discrimination on several grounds) is based on an incorrect assumption of equality of the social categories connected to inequalities and the mechanisms and processes that constitute them: "*Focusing on similarities ignores the differentiated character and dynamics of inequalities. It also overlooks the political dimension of equality goals* [...] *attention to structural mechanisms and the*

role of the state and private sphere in reproducing inequalities is much needed.[40] "Diversity mainstreaming" as a strategy is based on the notion that 1) Inequalities exist in the private as well as the public sphere. They are reproduced through identities, behaviour, interactions, norms and symbols, organisations and institutions, including Government institutions and the like, 2) Inequalities are not equivalent; social categories are connected to inequalities in different ways, and 3) Inequalities are dynamic problems, which can be localised in several separate structures that are perceived differently and reproduced in different ways. Verloo thus points out that strategies to handle differentiated inequalities at a structural level cannot be "the same" and that an individualistic anti-discrimination policy is inadequate. Instead, complex methods and tools should be developed, which are informed by theories of intersectionality.[41]

Perspectives

Within the EU institutions, this approach to the work with a multi-dimensional discrimination policy seems to gain a foothold. In an edition of *Equal Voices* (published by the European Union Agency for Fundamental Rights) with the subtitle "Equality and discrimination through the 'gender lens'", it says: "*When addressing discrimination one size does not fit all. The gender dimension needs direct targeting as is evident when one considers issues like the insidious trafficking of women which continues to be an issue in the European Union and beyond.*"[42] Louise Arbour, UN High Commissioner for Human Rights states in the same publication: "*Women's experiences of racism and discrimination often differ from those of men because women and girls may suffer multiple forms of discrimination, both on the grounds of gender and on the basis of ethnic or religious identity.*"[43] In the EU, the PROGRESS programme (2007-2013)[44] has also been launched, which e.g. covers the anti-discrimination and gender equality work. In 2007, the main activities are to support a network of legal anti-discrimination experts, national gender equality units and national government officials who shall explore the implementation of the EU legislation in the member states and train legal and policy practitioners at EU level in the promotion of "uniform interpretation of EU equality law"[45] and support the inquiry into discrimination in areas that are not yet covered by the EU legislation and propose policies within these areas. The future challenges of the EU anti-discrimination policies thus seem – as in the

Nordic countries – to point at concrete political and practical ways to implement this in the legislation as well as in the supervision. A recent study performed by the *Danish Institute for Human Rights* upon assignment by the EU Commission e.g. establishes that the challenges – at EU level – of the anti-discrimination policies consist in the armament of knowledge on how to recognise and identify multi-dimensional discrimination. In addition to this, the report recommends a more holistic approach to the discrimination work in general and to aim more at gathering data and supervise discrimination through more research, legislation, education, awareness and communication of "good practice" in this area.[46]

References

· Arnardottir, Oddny Mjoll (2003): *Equality and Non-Discrimination under the European Convention on Human Rights*, Brill Academic Pub.

· Bagilhole, Barbara (2006): *Exploration of UK Equal Opportunities and Diversity Legislation and Implementation Agencies through the Lens of Intersectionality*. Paper presented at the conference "Equal is Not Enough", European Conference on Equal Opportunities, University of Antwerp, 13-15 September 2006.
http://www.equalisnotenough.org/followup/papers/BarbaraBagilhole.pdf

· Bagilhole, Barbara (forthcoming 2008): *Understanding Equal Opportunities and Diversity: The Social Differentiations and intersections of gender, race, disability, religious belief, sexual orientation and age*. The Policy Press.

· Humhauser-Henning (ed.) (2001): *Legal Perspectives on Equal Treatment and Non-Discrimination*, Kluwer International.

· Lykke, Nina (2008): *Kønsforskning. En guide til feministisk teori, metodologi og skrift. (Gender research. A guide to feminist theory, methodology and writing).* Forlaget Samfundslitteratur.

· Nielsen, Ruth (2006): EU Law and Multiple Discrimination. CBS Law Studies, Copenhagen Business School http://ir.lib.cbs.dk/download/ISBN/8791759013.pdf

· Schiek, Dagmar and Chege, Victoria (eds.) (2008): *European Union Discrimination Law: Comparative Aspects on Multidimensional Equality Law*, Routledge-Cavendish, London.

· Squires, Judith (2007): "*The Challenge of Diversity: The Evolution of Women's Policy Agencies in Britain*" in *Politics and Gender*, 3 (4) 2007.

· *Tackling Multiple Discrimination. Practices, policies and laws*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.4 (2007).

· Verloo, Mieke (2006): "Multiple Inequalities, Intersectionality and the European Union" in *European Journal of Women's Studies* vol. 13 no 3.

2. OPSUMMERING

Dette kapitel opsummerer de enkelte landes nylige tiltag indenfor anti-diskrimineringspolitik.

Oversigten opridser de politiske processer i alle nordiske lande og præsenterer:

- Fremlagte lovforslag
- Forslag til omorganisering af eksisterende og/eller ny forvaltning
- Anti-diskrimineringslovgivningen efter reformerne
- Argumenter for og imod en samlet lovgivning og forvaltning
- Hvilke diskrimineringsgrundlag der er omfattet af lovgivningen, deres beskyttelsesområde samt klageadgang.

Til slut i kapitlet spørger vi: *i hvilken grad kan nordisk anti-diskrimineringspolitik siges at være fler- eller multidimensional?*

Oversigt over de politiske processer for en samlet diskriminerings-lovgivning i de nordiske lande samt fremlagte lovforslag:

Danmark

2006: Regeringen fremlægger *Forslag til lov om Klagenævnet for Ligebehandling*[1] Formålet er at samle alle klager over forskelsbehandling i ét nævn, der er fælles for alle seks nuværende diskriminationsområder. Man ønsker en mere ensartet klageadgang for den enkelte borger, der skal erstatte de eksisterende klageinstanser: *Ligestillingsnævnet* og *Klagekomitéen for etnisk ligebehandling*.
2007: Forslaget sendes i høring.
2008: Forslaget behandles i Folketinget.
13. maj 2008: Lovforslaget vedtages.[2]
1. januar 2009: Loven træder i kraft (loven gælder ikke for Færørerne og Grønland).

Finland

2007: Justitsministeriet nedsætter en komite til revidering af jämlikhets- och jämställdhetslagstiftningen.[3] Målet er at revidere jämlikhetslagstiftningen så den bedre end i dag modsvarer kravet om et ligestillet og omfattende diskrimineringsforbud. Komitéen gives frie hænder til at vælge mellem to alternativer: én samlet lov mod diskriminering eller opretholdelsen af en mosaiklovgivning. Komitéen skal også overveje, om tilsynet med menneskerettigheder skal gøres til en del af reformen.
Januar 2008: Kommissionen afgiver sin midtvejsrapport, der vurderer behovet og alternativerne for en revidering af lovgivningen og forvaltningen.[4]
Marts 2008: Betænkning på høring.
September 2009: Kommissionen fremlægger sin betænkning om revidering av jämlikhetslagstiftningen.
2010: Regeringsproposition om reformen fremlægges for Riksdagen.

Island

2006: Komite til udredning af ligestillingsloven nedsættes af Socialministeriet. Formålet er at foreslå ændringer, der kan styrke lovgivningen i arbejdet med at bekæmpe kønsdiskriminering.
Komitéen afviser at erstatte den nuværende lovgivning med en bredere multi-dimensional diskrimineringslovgivning, fordi en specifik lovgivning til at promovere ligestilling stadig er nødvendig: "*…if the authorities wish to address multidimensional discrimination the mandate of the complaints procedure available for gender based discrimination could be amended to include competence to receive discrimination claims based on other grounds.*"
To offentlige institutioner – Islands Universitet og Reykjavik kommune – har dog valgt at adoptere en bred anti-diskrimineringspolitik, hvor adskillige grundlag er inkluderet.[5]
Oktober 2007: Lovforslag til ny ligestillingslovgivning[6] fremlægges i Althingi.
2008: Loven vedtages i Althingi.

Norge

2000: Regeringen nedsætter et udvalg, der skal arbejde for en lov mod etnisk diskriminering.
2001: Forslaget fremlægges.
2002: Regeringen nedsætter en tværfaglig arbejdsgruppe, der skal udrede muligheden for et felles håndhævningsapparat for diskriminering på grund af køn og etnicitet. Udvalget anbefaler et fælles håndhævningsapparat for ligestillingsloven og en ny lov mod etnisk diskriminering.

2003: Forslag til sammenslægning af Senter mot etnisk diskriminering, Likestillingssenteret og Likestillingsombudet på høring.
2005: Regeringen fremsætter forslag om oprettelse af et likestillings- og diskrimineringsombud.[7]
2005: Forslaget vedtages af Stortinget
1. januar 2006: Likestillings- og diskrimineringsombudet begynder sin virksomhed.
2007: Nedsættelse af Diskrimineringslovutvalget,[8] som skal udrede en samlet lov mod diskriminering. Udvalget har til opgave at vurdere:
· sammenslutning af dagens forskellige love på diskrimineringsområdet,
· andre diskrimineringsgrundlag der skal inkluderes i loven
· hvorvidt listen over diskrimineringsgrundlag skal være udtømmende eller ikke.
2009: Udvalget afgiver sin indstilling.

Sverige

2002: Integrationsministeren nedsætter en diskrimineringskomite, som har til opgave at gøre statusopgørelse over den svenske lovgivning på diskrimineringsområdet og fremlægge forslag til, hvordan beskyttelsen af udsatte grupper kan forbedres og implementeringen af loven styrkes.
2004: Del-udredningen *Ett utvidgat skydd mot könsdiskriminering*[9] fremlægges.
2006: Den samlede udredning *En sammanhållen diskrimineringslagstiftning*[10] overleveres til Jämställdhetsministeren. Komiteen foreslår, at de nuværende fire svenske ombundsmandsinstitutioner slås sammen til en fælles myndighed, som skal fungere på grundlag af og holde tilsyn med den nye lov.
2008: Regeringen afleverer sit forslag til en ny diskrimineringslov[11] til Riksdagen.
22. Maj 2008: Lovforslaget behandles 4. juni 2008: Lovforslaget vedtages i Riksdagen..
1. januar 2009: Loven træder i kraft. Den fælles ombudsmand mod diskriminering påbegynder sit arbejde.

Af oversigten fremgår det, at behovet for revidering af ligebehandlings- og/eller diskrimineringslovgivningen skyldes et ønske om:

· Harmonisering og effektivisering
· Behov for bedre beskyttelse (fx af udsatte grupper)
· Ensartet klageadgang for alle

· Styrkelse af lovgivningen
· Større synlighed og fokus på den enkelte borgers rettigheder
· Fælles forvaltning

Ændringsforslagene indikerer et skirfte i nordisk ligebehandlingspolitik mod en mangfoldig forståelse af lighed og en vægt på "lige muligheder for alle".[12] Det indebærer en tendens væk fra et dominerende endimensionalt rammeværk, baseret på kønsligestilling, til en flerdimensional ligestillingspolitik. Det fælles grundlag for de nordiske lande kan siges at være en opfattelse af, at anti-diskrimineringslovgivningen kan udgøre et centralt politisk styringsværktøj til at fremme lighed.[13]

På trods af de fælles-nordiske tendenser er der væsentlige forskelle i de politiske processer, hvorigennem landene har valgt at effektuere ændringerne i diskrimineringslovgivningen:

· I alle lande undtagen Danmark er der nedsat komitéer eller udvalg, der skal forberede udredninger, der ligger[13a] til grund for lovforslagene.
· Det er forskellige ressortområder, der har ansvar for komitéerne, idet lovgivningen på området forvaltes af social-, justits-, integrationsministerierne. I Danmark og Norge er initiativet kommet direkte fra regeringerne.
· I enkelte lande har man lagt vægt på en hurtig proces, hvor man i andre har prioriteret en lang høringsperiode.

I Norge og Sverige er man på hver sin måde kommet længst i arbejdet mod en samlet diskrimineringslovgivning og –forvaltning: Sverige har vedtaget en fælles lovgivning, men mangler endnu at igangsætte diskrimineringsombudets virksomhed; i Norge har man haft et fælles ligestillings- og dikrimineringsombud siden 2006, men mangler endnu at vedtage en samlet lov mod diskriminering.

Forslag til nye forvaltninger eller omorganisering af eksisterende:

Danmark 1. januar 2009: Ligebehandlingsnævnet oprettes ved at sammenlægge Ligestillingsnævnet og Klagekomitéen for etnisk ligebehandling. Ligebehandlingsnævnet behandler klager over forskelsbehandling på grund af køn, race, hudfarve, religion eller tro, politisk anskuelse, seksuel orientering, alder, handicap eller national, social eller etnisk oprindelse

Nævnet kan indhente erklæringer fra sagkyndige i forbindelse med behandlingen af en klage.
Nævnet kan afvise at behandle en klage, hvis det må anses for åbenbart, at der ikke kan gives klageren medhold i sagen.
Nævnets afgørelser kan ikke indbringes for anden administrativ myndighed.
Klagenævnet får ikke adgang til at tage sager op af egen drift. Klagenævnets sekretariat vil kunne rådgive borgere, virksomheder, organisationer, myndigheder m.v. med hensyn til, hvor og hvorledes en sag om forskelsbehandling kan indbringes, ligesom klagenævnets sekretariat kan rådgive om nævnets praksis.

Finland

Forslag er under udarbejdelse
Komitéen til revidering af jämlikhets- och jämställdhetslagstiftningen konstaterer i sin mellembetænkning: "*Vid reformen av myndighetsorganisationen beaktas behovet av att på längre sikt utveckla främjandet av och tillsynen över grundläggande och mänskliga rättigheter också som en helhet i enlighet med internationella förpliktelser och rekommendationer.*" og foreslår tre alternativer:
1. Att utveckla myndighetsorganisationen utgående från den nuvarande organisationen. Nya organ mot diskriminering eller nuvarande myndigheternas befattningsbeskrivning breddas. Expertis och synlighet som specialfrågorna kräver skal bevaras och myndigheterna skal fortsättningsvis kunna verka i anslutning till det ministerium som svarar för ansvarsområdet. Systemet skulle dock förbli splittrat och de synergifördelar som ett förenande medför skulle inte kunna utnyttjas.
2. Att inrätta en förenad myndighetsorganisation i anslutning till statsrådet. Nuvarande myndigheterna förenas till en ny jämlikhetsombudsman, vars uppgiftsbeskrivning skulle omfatta även helt nya diskrimineringsgrunder. Inrätta en förenad nämnd och delegation för diskrimineringsärenden. Sakkunskapen i fråga om olika områden skulle kunna tryggas t.ex. genom att specialombudsmannatjänster inrättas. Organet vore en kontaktinstans i alla jämställdhets- och jämlikhetsärenden.
3. Att inrätta en förenad myndighetsorganisation i anslutning till riksdagen. Jämlikhetsombudsmannen enligt den föregående modellen placeras i anslutning till riksdagen, vilket skulle trygga det oberoendet i förhållande till regeringen som förutsätts i internationella rekommendationer. Ombudsmannen skal samarbeta särskilt med riksdagens justitieombudsman. Organet skulle självständigt svara för sitt arbete och skulle friare än för närvarande kunna samarbeta med t.ex. organisationer och forskningsinstitut.

Island

Ingen forslag
Nuværende indstans: Klagekomite for ligestilling. Komitéens rolle er: "*...to consider and issue in writing a substantiated opinion on whether the provisions of the Gender Equality Act have been violated.*" (se også kapitel 5.3).

Norge

1. januar 2006: Likestillings- og diskrimineringsombudet oprettes. Ombudet bekjemper diskriminering og fremmer likestilling uavhengig av blant annet kjønn, etnisitet, funksjonshemming, språk, religion, seksuell orientering og alder. Ombudet er faglig uavhengig, men administrativt underlagt Barne- og likestillingsdepartementet og har hjemmel i diskrimineringsombudsloven. Ombudets pådriverarbeid skal bidra til økt likestilling i samfunnet som helhet. Ombudets lovhåndheverrolle innebærer å avgi uttalelser i klager om brudd på lover og bestemmelser under ombudets virkeområde, og å gi råd og veiledning om dette regelverket. Ombudet har dessuten plikt til å gi veiledning i diskrimineringssaker som omfattes av andre regler enn de ombudet håndhever. Likestillings- og diskrimineringsnemnda behandler klager på Likestillings- og diskrimineringsombudets uttalelser og vedtak.

Sverige

1. januar 2009: Diskrimineringsombudsmannen oprettes. Ombudet skal have tillsyn över att lagen följs og ska ha rätt att i domstol föra talan för en enskild person som anser sig ha blivit diskriminerad. En sådan talerätt föreslås också för vissa intresseorganisationer. Diskrimineringsombudsmannen har de uppgifter som framgår av Diskrimineringslagen. Ombudsmannen ska därutöver verka för att diskriminering som har samband med kön, könsöverskridande identitet eller uttryck, etnisk tillhörighet, religion eller annan trosuppfattning, funktionshinder, sexuell läggning eller ålder inte förekommer på några områden av samhällslivet.
Ombudsmannen ska också i övrigt verka för lika rättigheter och möjligheter oavsett diskrimineringsgrundlagene.
Diskrimineringsombudsmannen ska vidare inom sitt verksamhetsområde
· informera, utbilda, överlägga och ha andra kontakter med myndigheter, företag, enskilda och organisationer,
· följa den internationella utvecklingen och ha kontakter med internationella organisationer,
· följa forsknings- och utvecklingsarbete,
· hos regeringen föreslå författningsändringar eller andra åtgärder som kan motverka diskriminering, och

· ta initiativ till andra lämpliga åtgärder.
19 lokale anti-diskrimineringsbureauer som tilbyder rådgivning og støtte bevares.

De nordiske lande har valgt at organisere deres forvaltning af anti-diskrimineringslovværket ganske forskelligt, hvilket først og fremmest hænger sammen med lovgivningens udformning. I Norge og Sverige afspejler ét ombud én lovgivning. I Danmark skal det fælles klagenævn forvalte en mosaik af love. I Finland arbejder man med tre forskellige alternativer, der adskiller sig fra hinanden ved hvorvidt opgaverne med at forvalte loven skal fordeles på flere myndigheder eller samles under én. På Island bibeholder man klagekomitéen for ligestilling.

Et andet vigtigt aspekt er, at De nordiske lande har forskellige erfaringer med og historik bag den nuværende organisering af forvaltningen af anti-diskrimineringslovgivningen, hvilket afspejler sig i de eksisterende myndigheder og behovet for en omorganisering af disse. På Island har man fx ikke erfaringer med anti-diskriminering på baggrund af etnicitet og ser intet behov for at udvidde klagemuligheden på dette grundlag p.t. I Danmark har der været utilfredshed med synligheden af Ligestillingsnævnet og man håber, at et fælles klagenævn vil afhjælpe dette problem.

Når det kommer til forvaltningens rolle som henholdsvis håndhæver, pådriver og informationsvirksomhed er der også væsentlige nationale forskelle. Det danske Ligebehandlingsnævn får ikke adgang til at tage sager op af egen drift, mens det norske Likestillings- og diskrimineringsombud (LDO) skal arbejde for at fremme ligestilling som en betydelig del af sin virksomhed. Den svenske Diskrimineringsombudsman får desuden til opgave at informere og uddanne bl.a. myndigheter, virksomheder og andre organisationer samt at tage initiativ til andre passende initiativer, der kan modvirke diskriminering. I Finland har man ambitioner om at inkludere nye grundlag og arbejdet med at overvåge fundamentale menneskerettigheder i anti-diskriminerigsarbejdet. Uanset organisering og status af myndighederne er forventingen i samtlige lande imidlertid, at den nye lovgivning og forvaltning skal bidrage til øget lighed i hele samfundet.

Graden af uafhængighed for de enkelte eksisterende eller nye institutioner er forskellig fra land til land. I Danmark placeres klagenævnets sekretariat hos Ankestyrelsen,[14] som er en del af Velfærdsministeriet. LDO i Norge er administrativt underlagt Barne- og likestillingsdepartementet, men er fagligt uafhængigt. I Finland er det netop graden af selvstændighed og uafhængighed af det enkelte ministerium, der adskiller de tre alternativer, der diskuteres p.t. På samme tid er

ekspertice og synlighed afgørende for, hvordan man ønsker at opbygge forvaltningen. På Island er klagekomitéen underlagt Socialministeriet og i Sverige er diskrimineringsombudsmanden uafhængigt af et ministerium.

Da man endnu ikke har erfaringer fra lignende institutioner i Norden har forlægget for flere af landenes forslag været blandt andet Canada (Canadian Human Rights Commission) og Storbrittanien (Government Equalities Office).[15] I Belgien, hvor en ny samlet lov mod diskriminering gennemførtes for nylig, besluttede man at udvide ligebehandlingsmyndighedens virksomhedsområde, så det – bortset fra kønsdiskriminering som bibeholder sin egen lovgivning – takler alle former for diskriminering.[16]

Lovgivningen efter reformerne:

Danmark

Lov om ligestilling af kvinder og mænd (2007).[17]
Lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse (2006).[18]
Lov om ligeløn til mænd og kvinder (2006).[19]
Lov om børnepasningsorlov (2004).[20]
Lov om ligebehandling af mænd og kvinder inden for de erhvervstilknyttede sikringsordninger (2001).[21]
Lov om ret til orlov og dagpenge ved barsel (2006).[22]
Lov om etnisk ligebehandling (2003).[23]
Lov om forbud mod forskelsbehandling på arbejdsmarkedet (2005).[24]

Finland

Forslag er under udarbejdelse
Nuværende lovgivning:
Jämställdhetslagen (2005).[25]
Lagen om likabehandling (2004).[26]
Lagen om tillsynen över arbetarskyddet (2006).[27]

Island

Ingen reform planlagt.
Nuværende lovgivning:
Lög um jafna stöðu og jafnan rétt kvenna og karla (ligestillingsloven) (2008).[28]

Norge

Forslag er under udarbejdelse
Diskrimineringsombudsloven (2005).[29]
Likestillings- og diskrimineringsombudet håndhæver følgende lover:

Likestillingsloven (2006),[30] Diskrimineringsloven (2007),[31] Arbeidsmiljølovens kapittel 13 om likebehandling,[32] Ikke-diskriminerings-bestemmelsene i boliglovene (Husleieloven,[33] Burettslagslova,[34] Bustadbyggjelagslova[35] og Eierseksjonsloven[36]).

Sverige Diskrimineringslagen (2008).[37]

Der er også afvigelser blandt landene i forslagene til harmonisering og effektivisering af lovgivningen på området. I Sverige og Norge ønsker man en samlet lovgivning, i Finland udreder man p.t. stadig de to alternativer og deres fordele og ulemper, i Danmark ønsker man ingen samlet lovgivning, men derimod én klageindstans og på Island har man endnu ikke igangsat processen.[38] Diskussionen om en samlet lovgivning er mangefacetteret og præget af, hvornår og hvor længe de nordiske lande har haft særskilt lovgivning mod diskriminering.

I de tre lande, hvor man har diskuteret (og i et enkelt tilfælde allerede gennemført) konkrete forslag til en samlet anti-diskrimineringslovgivning og forvaltning har argumenterne FOR været:

- Sammentænkning af alle diskrimineringsgrundlag bidrager til et helhedsgreb om problemet og til øget kundskab og forståelse på tværs af områderne.
- En samlet lovgivning vil hjælpe folk til at opfatte diskriminering som et problem, være mere ensartet og tydelig og hjælpe til at skabe et mere omfattende syn på diskriminering; det vil tillade at takle multidimensional diskriminering lettere.
- Én gruppes kamp kan andre grupper bygge videre på.
- Marginaliserede grupper synliggøres.
- Fordele for dem der tilhører mere end en gruppe
- Information til befolkningen om deres rettigheder gøres enklere.
- Service til alle grupper bliver mere systematisk og håndhævelsen af politikken gøres nemmere, idet arbejdet fokuserer på at implementere én politik i stedet for flere.
- Brugervenlighed
- Gennemslagskraft
- Stimulerende fagmiljø
- Kompetenceoverføring
- Ressourceudnyttelse
- Klageadgangen forenkles

Argumenterne MOD en samlet lovgvning og forvaltning har været:

- Diskrimineringsgrundlagene er per defition forskellige og at samle alle under én lov vil marginalisere nogle af grundlagene.
- En sådan fælles lov vil være særlig kompliceret at forvalte.
- En stor del af den oparbejdede kundskab om den særlige dynamik, der kan ud spille sig indenfor hvert enkelt område går tabt. Man risikerer en dårligere sagsbehandling.
- Politikken kan vise sig at være for general og for ukonkret.
- Kønsulighed overskygges af andre diskrimineringsgrundlag
- Grupperne kan konkurrere om ressourcer.
- Forskellige metoder i arbejdet med de enkelte grundlag
- Alle grundlag må først have sin egen lov og praksis må udvikles for disse love
- Vanskeligt at nå de forskellige målgrupper gennem ét organ
- Kombinationen af en pådriver- og en håndhæverrolle: pådriverarbejdet sætter fokus på magtstrukturer i samfundet, håndhæverarbejdet drejer sig omrettigheder og lovværk. For vanskeligt at kombinere disse to roller. Pådriverrollen vil få mindre handlerum og således svække dette arbejde. Troværdighedsproblem med to roller i samme myndighed. Kun én stemme i medierne og samfunds debatten vedrørende anti-diskriminering
- Det oplysende og forebyggende arbejde risikerer at stå tilbage for individuelle klagesager.
- Diskriminering af kvinder adskiller sig fra de øvrige diskrimineringsgrundlag eftersom kvinder ikke er en minoritet og eftersom kvinder indgår i de øvrige diskrimineringskategorier.

Diskrimineringsgrundlag efter reformerne:

Danmark:

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn	Arbejdsgiver, myndighed og organisation inden for offentlig forvaltning og almen virksomhed og myndigheder og organisationer og alle personer, som leverer varer og tjenesteydelser, der er tilgængelige for offentligheden inden for både den offentlige og den private sektor, herunder offentlige organer, og som tilbydes uden for privat- og familielivet, samt transaktioner i den forbindelse.	Ligebehandlingsnævnet
Race Etnisk oprindelse	Offentlig og privat virksomhed i spørgssmål om social beskyttelse (social tryghed og sundheds- og sygehusomsorg), social forsikring, uddannelse, tilgang til og anskaffelse af varer, tjenester og almennyttige boliger, medlemskab i organisationer.[39]	
Hudfarve Religion eller tro Politisk anskuelse Seksuel orientering Alder Handicap National eller social oprindelse	Arbejdsmarkedet	Ligebehandlingsnævnet

Finland: *(forslag er under udarbejdelse)*

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn	Arbejdsmarkedet[40]	Jämställdhets-ombudsmannen Jämställdhetsnämden
Alder Etnisk eller national oprindelse Nationalitet Sprog Religion Overbevisning Anskuelse Sundhedstilstand Funktionshindring Seksuel orientering Andre årsager som gælder hans eller hendes person	Offentlig og privat virksomhed (vilkår for selvstændige erhvervs- eller forretningsudøvning eller støtte til forretningsvirksomhed), ansættelseskriterier, arbejdsforhold eller ansættelsesvilkår, personaleuddannelse eller avancement, uddannelse, medlemskab i en arbejdstager- eller arbejdsgiverorganisation, *Etnisk oprindelse:* Social- og sundhedstjenester, sociale støtteordninger, værnepligt, frivillig miitærtjeneste for kvinder og mænd eller civiltjeneste, tilgang til bolig.	Minoritets-ombudsmannen Diskrimineringsnämnden

Island:[41]

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn	Arbejdsmarkedet, udenfor arbejdsmarkedet	Klagekomité for ligestilling Ligestillingsnævnet
Religion Meninger National oprindelse Race Hudfarve Finansiel status Herkomst	Arbejdsmarkedet	Ombudsmanden

Norge: *(forslag er under udarbejdelse)*

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn Etnicitet National oprindelse Afstamning Hudfarve Sprog Religion og livssyn	Alle samfundsområder[42]	Likestillings- og diskrimineringsombudet
Politisk syn Medlemskab i fagforening Seksuel orientering Funktionshæmning Alder Homoseksuel orientering	Arbejdslivet	Likestillings- og diskrimineringsombudet

Sverige:

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn Kønsoverskridende identitet eller udtryk Etnisk tilhørsforhold Religion eller anden trosopfattelse Funktionshindring Seksuel orientering	Arbetsgivare, utbildningsverksamhet, arbetsmarknadspolitisk verksamhet och arbetsförmedling utan offentligt uppdrag, start eller bedrivande av näringsverksamhet, yrkesbehörighet, medlemskap i vissa organisationer, varor, tjänster och bostäder, allmän sammankomst och offentlig tillställning, hälso- och sjukvården, socialtjänsten, socialförsäkringen, arbetslöshetsförsäkringen, studiestöd, värnplikt och civilplikt, og offentlig anställning.	Diskrimineringsombudsmannen
Alder	Arbetslivet, utbildningsverksamhet, arbetsmarknads-	Diskrimineringsombudsmannen

politisk verksamhet och
arbetsförmedling utan
offentligt uppdrag, start
eller bedrivande av närings-
verksamhet, yrkesbehörighet
och medlemskap i vissa
organisationer.

Oversigten tydeliggør, at der før reformerne herskede et hierarki af diskrimineringsgrundlagene, hvor køn og etnicitet nød mest omfattende beskyttelse. Begge grundlag er beskyttet på særlige områder og har selvstændig klageadgang. I Danmark har man valgt at fastholde den ulige beskyttelse og udelukker på den måde at sager om flerdimensional diskriminering kan føres på andre områder end arbejdsmarkedet. På samme tid kan håndteringen af klager over diskriminering med et fælles klagenævn styrkes markant, idet der åbnes op for en lige administrativ klageadgang for alle diskrimineringsområder. I Norge, Sverige og Finland er ambitionen at ligestille beskyttelsen for alle grundlag. Sveriges lov er således unik, idet alle grundlag (undtagen alder)[43] er beskyttet på alle samfundsområder. De mest markante nationale forskelle i grundlagene er at Sverige og Island har valgt at holde alder adskilt fra de andre grundlag. Derudover har man i Sverige tilføjet "kønsoverskridende identitet eller udtryk" til listen, hvilket skyldes at man ønsker at give bedre beskyttelse til gruppen af transpersoner. Seksuel orientering nævnes ikke som grundlag i den islandske forfatningstekst om forbud mod diskriminering. Sprog regnes som særskilt diskrimineringsgrundlag i Finland og Norge, men ikke i de andre lande.

Overordnet set er det karakteristisk, at Finland opererer med en ikke-udtømmende liste af diskrimineringsgrundlag, mens de andre lande opererer med en udtømmende liste.[44] Fordelene og ulemperne ved de to modeller er endnu ikke tydelige, da man har få erfaringer med håndhævelsen af diskriminering på samtlige grundlag. Diskussionen vedrørende dette tager desuden uvilkårligt udgangspunkt i en hierarkisering af de forskellige grundlag og dertilhørende gruppers interesseorganisationer.[45]

I hvilken grad kan nordisk anti-diskrimineringspolitik siges at være fler- eller multidimensional?

I Danmark nævnes det i forslaget til et samlet klagenævn, at det bør være muligt

at rejse sager om multidimensional diskriminering uden dog at det specificeres med udgangspunkt i hvilken lovgivning. Som nævnt er det ikke muligt, at sager om diskriminering på flere end ét vilkår kan føres på andre områder end arbejdsmarkedet. På samme tid har blandt pres fra Institut for Menneskerettigheder skabt debat om diskriminering på flere end ét grundlag og skærpet opmærksomheden på den enkeltes rettigheder.

I Finland har diskussionen været overskygget af agendaen for at udvidde beskyttelsen mod etnisk diskriminering. Der har været yderst sparsom diskussion om de problemer der opstår, når flere diskrimineringsgrundlag gør sig gældende på samme tid. Multidimensional diskriminering synes at være en logisk følgeslutning i stedet for hovedargumentet i den seneste diskussion. På den måde, at møde Multidimensional diskriminering brugtes som argument for en sammenlægning af myndighederne og lovgivningen i stedet for at være et selvstændigt mål for anti-diskrimineringspolitikken i Finland.

På Island har der i politiske fora næsten ikke været diskuteret behovet for vidtgående anti-diskrimineringslovgivning. Komitéen til udredning af ligestillingslovgivningen konkluderede imidlertid også, at hvis relevante myndigheder ønsker at adressere multidimensional diskriminering, kan mandatet for klageproceduren for diskriminering på grundlag af køn omarbejdes til at inkludere kompetence til at imødekomme klager baseret på andre gundlag. I et høringssvar til komitéen lød det endvidere, at der på Island findes begrænset viden om områder andre end køn. Anti-diskrimineringslovgivning er elementær, og den offentlige og politiske debat er endnu ikke moden for avancerede diskussioner om multidimensional diskriminering. Bemærkelsesværdigt er Island det eneste nordiske land, der fastholder et hierarki af diskrimineringsgrundlagene, idet køn nyder størst beskyttelse.

I Norge er LDO det første håndhævningsapparat i Norden, der arbejder mod diskriminering på flere forskellige grundlag. Alligevel er der kun tale om et delvist flerdimensionalt system, idet lovgivningen (endnu) ikke er samlet og idet det politiske ansvar for de forskellige diskrimineringsgrundlag er spredt på flere ministerier. Dette afventes at blive ændret med den kommende lovgivning.

I Sverige står man overfor et nybrud i anti-diskrimineringspolitikken der med

den nye diskrimineringslov både får én lovgivning med samme beskyttelse af alle grundlag og én forvaltning. At loven skal gælde på nye områder er også at betragte som førende i de nordiske lande. Alle muligheder for at bekæmpe multidimensional diskriminering sysnes at være tilstede med den svenske lovgivning og forvaltning, hvis der åbnes op for at inkludere nye grupper for beskyttelse.

2. SUMMARY

This chapter summarises the recent initiatives of the individual countries in relation totheir anti-discrimination policies.

The summary outlines the political processes in all the Nordic countries and presents:

- The introduced bills
- The proposals for the reorganisation of existing and/or new administration
- The anti-discrimination legislation after the reforms
- The arguments for and against a common legislation and administration
- The discrimination bases covered by the legislation, their areas of protection as well as the right to complain.

At the end of the chapter we ask: *To what extent may the Nordic anti-discrimination policy be said to be multi-dimensional?*

Overview of the political processes of a common discrimination legislation in the Nordic countries as well as the introduced bills:

Denmark

2006: The Government introduces the *Act on the Complaints Board for Equal Treatment Bill.*[1] The purpose is to gather all complaints about differential treatment in one board which is common to all six current areas of discrimination. A more uniform right to complain for the individual citizen is required to replace the existing complaints authorities: *Ligestillingsnævnet* (The Gender Equality Board) and *Klagekomitéen for etnisk ligebehandling* (The Complaints Committee for Ethnic Equal Treatment).
2007: The bill is submitted for consultation.
2008: The bill is read in the Danish Parliament.
13 May 2008: The bill is passed.[2]

1 January 2009: The act will come into force (the act will not apply to Greenland and the Faroe islands).

Finland

2007: The Ministry of Justice appoints a committee to revise the equal rights and equality legislation.[3] The aim is to revise the equal rights legislation, making it more suitable to the demand for an equal and comprehensive discrimination ban. The committee is free to select one of the two following options: One common act against discrimination or the upholding of a mosaic legislation. The committee also has to consider whether the supervision of the human rights should be made part of the reform.
January 2008: The commission submits its mid-term report, assessing the requirement and alternatives of a revision of the legislation and administration.[4]
March 2008: Report up for consultation.
September 2009: The commission presents its report on the revision of the equal rights legislation.
2010: Government bill on the reform presented to the Finnish Parliament.

Iceland

2006: A committee for analysing the gender equality act is appointed by the Ministry of Social Affairs. The purpose is to propose revisions to strengthen the legislation in the work against sexual discrimination. The Committee rejects the replacement of the current legislation with a wider multi-dimensional discrimination legislation as a specific legislation to promote gender equality is still necessary: "*…if the authorities wish to address multidimensional discrimination the mandate of the complaints procedure available for gender based discrimination could be amended to include competence to receive discrimination claims based on other grounds.*"
Two public institutions – the University of Iceland and the municipality of Reykjavik – have, however, chosen to adopt a wide anti-discrimination policy, which includes several bases.[5]
October 2007: Bill on a new gender equality legislation[6] is introduced in the Icelandic Parliament.
2008: The act is passed in the Icelandic Parliament.

Norway

2000: The Government appoints a committee to work on an act against ethnic discrimination.
2001: The bill is introduced.
2002: The Government appoints a cross-departmental working com-

mittee to analyse the option of a common law enforcement body for discrimination based on gender and ethnicity. The Committee recommends a common law enforcement body for the gender equality act and a new act against ethnic discrimination.
2003: The bill on the integration of the Centre against ethnic discrimination, the Centre for Gender Equality and the Gender Equality Ombud submitted for consultation.
2005: The Government introduces the bill on the creation of an Equality and Anti-Discrimination Ombud.[7]
2005: The bill is passed by the Norwegian Parliament.
1. January 2006: The Gender Equality and Anti-discrimination Ombud commences its activities.
2007: Appointment of the Discrimination Act Committee[8] which should analyse a common act against discrimination. The Committee's task is to evaluate:
· the integration of the different current acts within the field of discrimination,
· other discrimination bases to be included in the act
· whether the list of discrimination bases should be exhaustive or not.
2009: The Committee submits its recommendation.

Sweden

2002: The Minister of Integration and Democracy appoints a discrimination committee with the purpose of making an appraisal of the Swedish legislation in the area of discrimination and submit a proposal as to how the protection of exposed groups could be improved and the implementation of the act could be strengthened.
2004: The partial report *Ett utvidgat skydd mot könsdiskriminering*[9] (An expanded protection against sexual discrimination) is submitted.
2006: The aggregate report *En sammanhållen diskrimineringslagstiftning*[10] (A unified discrimination legislation) is submitted to the Minister of Gender Equality. The Committee proposes that the current four Swedish ombudsman institutions will be integrated as one common authority, which should function on the basis of the new act and administer the act.
2008: The Government introduces its bill on a new discrimination act[11] to the Swedish Parliament.
May 2008: The bill is read in the Swedish Parliament.
4 June 2008: The bill is passed by the Swedish Parliament.
1 January 2009: The act becomes effective. The common ombudsman against discrimination starts working.

From this overview is appears that the need for a revision of the gender equality and/or discrimination legislation is due to a requirement for:

· Harmonisation and improvement of efficiency
· A need for better protection (e.g. of exposed groups)
· A uniform right to complain for all
· A strengthening of the legislation
· More exposure and focus on the rights of the individual citizen
· Common administration

The amendments indicate a shift in the Nordic equal treatment policies towards a manifold understanding of equality and emphasis on the concept of "equal opportunities for all".[12] This implies a trend away from a predominant and one-dimensional framework based on gender equality towards a multi-dimensional gender equality policy. The common base for the Nordic countries may said to be a conception that the anti-discrimination legislation may constitute a central political management tool to enhance equality.[13]

Despite the common Nordic trends, there are significant differences in the political processes, through which the countries have chosen to execute the amendments to the discrimination legislation.

· In all countries, except for Denmark,[14] committees or commissions have been appointed to prepare the reports which the bills are based on. It is the different competence areas that are responsible for the committees as the legislation within the area is administered by the Ministers of Social Affairs, Justice and Integration. In Denmark and Norway, the initiatives come directly from the Governments.
· In some countries a fast process was emphasised whereas other countries have prioritised a long consultation process.
· In Norway and Sweden, there has been more progress in the work towards a common discrimination legislation and administration in different ways. Sweden has passed a common legislation, but still needs to initiate the activities of the anti-discrimination ombud; in Norway there has been a common equality and anti-discrimination ombud since 2006, but a common act against discrimination still needs to be passed.

Proposal for new administrations or a reorganisation of existing ones:

Denmark

1 January 2009: The Equal Treatment Board is established by combining the Gender Equality Board and the Complaints Committee for Ethnic Equal Treatment. The Equal Treatment Board hears complaints about differential treatment based on race, colour, religion, political views, sexual orientation, disability, age or national, social or ethnic origin. The board may ask for an expert opinion in connection with the hearing of a complaint. The board may reject the hearing of a complaint if is evident that the complainant's claim cannot be upheld. The board's decisions cannot be brought before another administrative authority. The Complaints Board will not be allowed to raise cases on its own accord. The secretariat of the Complaints Board will be able to advise citizens, businesses, organisations, authorities etc. with regard to where and how a case on differential treatment may be submitted, just as the secretariat may advise on the practice of the board.

Finland

Bill is under preparation

The committee appointed to revise the equality legislation points out in its mid-term report: *"In connection with the reform of the authority organisation, regard should be paid to the need for a long-term development of the promotion and supervision of fundamental and human rights also as a whole in accordance with international obligations and recommendations."* and proposes three alternatives:

1. To develop the authority organisation based on the present organisations. New bodies against discrimination or extension of the job description of the present authorities. Expertise and exposure, which the special issues require to be answered, and the authorities should continue to work in connection with the ministry responsible for the area. However, the system should remain separated and the synergy advantages caused by an integration should then remain unexploited.

2. To establish a common authority organisation in connection with the council of state cabinet. The present authorities should be combined into a new equality ombudsman whose job description should include entirely new causes of discrimination. To establish a common commission and delegation for discrimination issues. The expert knowledge on the different areas should be ensured, e.g. by establishing special ombudsman services. The body would be a contact authority in all equality issues.

3. To establish a common authority organisation in connection with the

Parliament. The Equality Ombudsman, according to the model above, should be placed in connection with the Parliament which would ensure the independence in relation to the Government which is implied in international recommendations. The Ombudsman should have special cooperation with the justice ombudsman in the Parliament. The body should be allowed to independently vouch for its work and to cooperate freely e.g. with organisations and research institutes to a greater extent than before.

Iceland

No bills

Present authority: Complaints committee for gender equality. The Committee's role is: "*...to consider and issue in writing a substantiated opinion on whether the provisions of the Gender Equality Act have been violated*." (also see chapter 5.3).

Norway

1 January 2006: The Equality and Anti-discrimination Ombud is established. The Ombud combats discrimination and promotes equality regardless of gender, ethnicity, disability, language, religion, sexual orientation and age. The Ombud is independent with respect to its specialist areas, but is subject to the administration of the Ministry of Children and Equality under the provisions of the Anti-discrimination Ombud Act. The instigator work of the Ombud shall contribute to increased gender equality in society as a whole. The role as law enforcer means to make statements in connection with complaints about breach of acts and provisions falling within the competence of the Ombud and to give advice and guidance on these rules. Furthermore, the Ombud is obligated to provide guidance in discrimination cases that are covered by other rules than the rules enforced by the Ombud. The Equality Tribunal hears complaints on the statements and decisions of the Equality and Anti-discrimination Ombud.

Sweden

1 January 2009: The Discrimination Ombudsman is established. The Ombudsman shall ensure that the act is complied with and shall be entitled to speak in court for an individual person who believes to have been discriminated. Such permission to speak is also suggested for other interest groups. The Discrimination Ombudsman shall have the tasks that appear from the Discrimination Act. In addition to this, the Ombudsman should work to prevent discrimination which relates to gender, gender-transgressing identity or expression, ethnic origin, religion or other religious persuasion, disability, sexual orientation or age in all areas of society.

The Ombudsman shall also work for equal rights and opportunities, regardless of the discrimination bases.
The Discrimination Ombudsman shall go further within his area of activities
· inform, educate, confer and have additional contact with authorities, businesses, individuals and organisations,
· follow the international development and be in contact with international organisations,
· follow the research and development work,
· suggest constitutional amendments or other measures to the Government, which may prevent discrimination and
· take the initiative in other appropriate measures.
19 local anti-discrimination agencies which offer counselling and support are maintained.

The Nordic countries have chosen to organise their administration of the anti-discrimination code quite differently which is primarily a result of the legislation framework. In Norway and Sweden, one ombudsman reflects one legislation. In Denmark, the common complaints board shall administer a mosaic of acts. In Finland, they work with three different alternatives that differ when it comes to deciding whether the job of administering the act should be spread over several authorities or integrated in one. In Iceland, the complaints committee for gender equality is maintained. The Nordic countries have different experiences with and history of the present organisation of the administration of the anti-discrimination legislation, which is reflected in the existing authorities and the need for at reorganisation of these. In Iceland, they have no experience with anti-discrimination based on ethnicity and see no need to extend the right to complain on this ground at present. In Denmark, there has been a general discontent with the visibility of the Gender Equality Board and it is hoped that a common complaints board will redress this problem.

When it comes to the role of the administration as law enforcer, instigator and information provider, there are also significant national differences. The Danish Equal Treatment Board will not have permission to raise cases on its own accord, whereas the Norwegian Equality and Anti-Discrimination Ombud (LDO) should work to promote equality as a significant part of its activities. Additionally, the task of the Swedish discrimination ombudsman will be to inform and educate e.g. authorities, businesses and other organisations and to take the initiative in other appropriate measures to prevent discrimination. In Finland,

the ambition is to include new bases and the work of supervising fundamental human rights in the anti-discrimination work. Regardless of organisation and status of the authorities, all the countries expect that the new legislation and administration will contribute to increased equality in society as a whole.

The degree of independence for the individual existing or new bodies varies from country to country. In Denmark, the secretariat of the complaints board will be placed with the National Social Appeals Board[15] which is part of the Ministry of Social Welfare. The LDO in Norway is subject to the Ministry of Children and Equality, but is independent in relation to its specialist areas. In Finland, it is that very degree of independence and autonomy from the individual ministries that separates the three alternatives which are discussed at present. At the same time, expertise and visibility is decisive to the way the administration should be set up. In Iceland, the complaints committee is subject to the Ministry of Social Affairs and in Sweden, the discrimination ombudsman is independent of any ministry.

As there are no experiences from similar institutions in the Nordic countries yet, the bills from several of the countries have been based on experiences from Canada (Canadian Human Rights Commission)[16] and Great Britain (Government Equalities Office).[17] In Belgium, where a new common act against discrimination was passed recently, it was decided to expand the activity area of the equal treatment authority so that it – apart from sexual discrimination, which will maintain its own legislation – will handle all types of discrimination.[18]

The legislation after the reforms:

Denmark

Act on Equality Between Women and Men (2007).[19]
Act on Equal Treatment of Men and Women in respect of Employment (2006).[20]
Act on Equal Pay to Men and Women (2006).[21]
Act on Childcare Leave (2004).[22]
Act on Equal Treatment of Men and Women in relation to the Occupational Social Security Schemes (2001).[23]
Act on Maternity Leave and Benefits (2006).[24]
Act on Equal Treatment (2003).[25]
Act on the prohibition of differential treatment in the labour market (2005).[26]

Finland *Bill is under preparation*
Current legislation:
The Equality Act (2005).[27]
Act on Equal Treatment (2004).[28]
The Act on the Supervision of Labour Protection (2006).[29]

Iceland *No reform planned.*
Current legislation:
Lög um jafna stöðu og jafnan rétt kvenna og karla (ligestillingsloven) (The Gender Equality Act) (2008).[30]

Norway *Bill is under preparation*
The Anti-discrimination Ombud Act (2005).[31]
The Equality and Anti-discrimination Ombud enforces the following acts: The Gender Equality Act (2006),[32] the Act against Ethnic Discrimination (2007),[33] Chapter 13 on Equal Treatment in the Working Environment Act,[34] The provisions on non-discrimination in the housing acts (Husleieloven,[35] Burettslagslova,[36] Bustadbyggjelagslova[37] and Eierseksjonsloven[38]).

Sweden The Discrimination Act (2008).[39]

The countries also vary in relation to the proposal for the harmonisation and improvement of efficiency of the legislation in the area. In Sweden and Norway, they want a common legislation, in Finland they are presently analysing the two alternatives and their advantages and disadvantages, in Denmark no common legislation is required, however, one complaints authority is and in Iceland, the process has not been initiated yet.[40] The discussion on a common legislation is multi-faceted. In the three countries where specific bills for at common anti-discrimination legislation and administration have been discussed (and in one case already implemented) the arguments FOR have been:

- A sum-up of all areas will contribute to general control of the problem and to enhanced knowledge and understanding across the areas.
- A common legislation will help people understand that discrimination is a problem, will be more uniform and visible and help creating a more comprehensive view of discrimination; it will make it possible to easier handle multi-dimensional discrimination.
- Other groups may build on one group's fight.

- Marginalised groups will be made visible.
- Advantages for those people who belong to more than one group.
- Information for the population on their rights will be made simpler.
- Service for all groups will become more systematic and the enforcement of the policies will become easier as the work focuses on implementing one policy instead of several.
- User-friendliness
- Impact
- Stimulating expert environment
- Transfer of competences
- Deployment of resources
- Simplified right to complain

The arguments AGAINST a common legislation and administration have been:

- The discrimination bases are by definition different and to gather all under one act would marginalise some of the bases.
- A common act would be particularly complicated to administer.
- A big part of the built-up knowledge on the special dynamics which may take place within each area will be lost. You risk getting a poorer administrative procedure.
- The policy may prove to be too general or unspecified.
- Gender inequality will be eclipsed by other discrimination bases.
- The groups may compete for the resources.
- Different methods in the work with the individual bases.
- All bases should first have their own acts and practices must be developed for these acts.
- Difficult to reach the different target groups via one body.
- The combination of an instigator and enforcer role: The instigator work focuses on power structures in society, the enforcer work is about rights and codes. Too difficult to combine these two roles. The instigator role will have less space and thus this work will be impaired. Credibility problem with two roles in the same authority. Only one voice in the media and the public debate regarding anti-discrimination.
- The informative and preventive work will become inferior to the individual complaint cases.

· Discrimination of women differs from the other discrimination bases as women are not a minority and as women are part of the other discrimination categories.

The discrimination grounds after the reforms:

Denmark:

Area of protection	Area of society	Right to complain
Gender	*Gender:* Employer, authority and organisation within the public administration and general corporation and authorities and organisations and all persons delivering goods and services, which are available to the public, both in the public and private sector, including public bodies, and which are offered outside the private and family life as well as transactions in this connection.	
Race Ethnic origin	Public and private corporation on issues of social protection (social security and health and nursing), social insurance, education, access to and purchase of goods, services and council housing, membership of organisations.[41] The Equal Treatment Board	
Skin colour Religion or faith, political views, sexual orientation, age	Labour market	The Equal Treatment Board

Disability
National or social origin

Finland: *(Bill is under preparation)*

Area of protection	Area of society	Right to complain
Gender	Labour market[42]	The Ombudsman for Equality The Equal Opportunities Commission
Age Ethnic or national origin Nationality Language Religion Opinion Views State of health Disability Sexual orientation Other causes related to his or her person	Public or private corporation (conditions for independent businesses and self-employed traders or support for businesses), employment criteria, working conditions or terms of employment, training or promotion of staff, education, membership of employee or employers' organisations. *Ethnic origin:* Social and health services, social aid schemes, voluntary military service for women and men or civil defence service, access to housing.	The Minority Ombudsman The Anti-discrimination Commission

Iceland:[43]

Area of protection	Area of society	Right to complain
Gender	Labour market, outside labour market	Complaints committee for gender equality The Gender Equality Board
Religion Opinions	Labour market	The Ombudsman

National origin
Race
Skin colour
Financial status
Descent

Norway: *(Proposal is under preparation)*

Area of protection	Area of society	Right to complain
Gender Descent Skin colour Language Religion and philosophy of life	All areas of society[44]	The Equality and Anti-discrimination Ombud
Political views Union membership Sexual orientation Disability Age Homosexual orientation	Working life	The Equality and Anti-discrimination Ombud

Sweden:

Area of protection	Area of society	Right to complain
Gender Gender-transgressing identity or expression Ethnic origin Religion or other religious persuasions Disability Sexual orientation	Employers, educational establishments, labour market political activities and job provision without public instructions, start-up or administration of commercial activities, professional competence, membership of certain organisations, goods and services, housing, public gatherings and events, health and nursing, social services, social insurance, unemploy-	The Discrimination Ombudsman

	ment insurance, state education grants, military and civil defence services and public employment.	
Age	Working life, educational establishments, labour market political activities and job provision without public instructions, start-up or administration of commercial activities, professional competence, membership of certain organisations.	The Discrimination Ombudsman

This overview illustrates that before the reforms there was a hierarchy of discrimination bases, where gender and ethnicity were protected the most. Both bases are protected in specific areas and have an independent right to complain. In Denmark, they have chosen to maintain the unequal protection and thus exclude the hearing of cases on multi-dimensional discrimination in other areas than the labour market. At the same time, the handling of complaints of discrimination will be strengthened significantly with a common complaints board as it opens up to an equal administrative right to complain for all areas of discrimination. In Norway, Sweden and Finland, the ambition is to give equal rights to all bases. In this way, the Swedish act is unique as all bases (except for age)[45] are protected in all areas of society. The most significant national differences in relation to the bases are that Sweden and Iceland have chosen to separate age from the other bases. In addition to this, Sweden has added "gender-transgressing identity or expression" to the list, which is due to a wish to provide enhanced protection of the group of trans persons. Sexual orientation is not mentioned as a base in the Icelandic constitution text on the ban against discrimination. Language is regarded as a specific discrimination base in Finland and Norway, but not in the other countries.

From an overall perspective, it is characteristic that Finland operates with a non-exhaustive list of discrimination bases, whereas the two other countries operate with an exhaustive list.[46] The advantages and disadvantages of the two models are not yet clear as there are few experiences with the enforcement of discrimination in relation to all bases. Furthermore, this discussion takes as its start-

ing point a hierarchical classification of the different bases and the interest groups related to these.[47]

To what extent may Nordic anti-discrimination policy said to be multi-dimensional?

In Denmark, the proposal for a common complaints authority suggests that it should be possible to raise cases on multi-dimensional discrimination, however, without having to specify the legislation this is based on. As mentioned before, it is not possible to hear cases on discrimination based on more than one condition for other areas than the labour market. At the same time, pressure from e.g. the Danish Institute for Human Rights has started a debate on discrimination based on more than one cause and increased the attention on the rights of individuals.

In Finland, the discussion has been eclipsed by the agenda for the expansion of the protection against ethnic discrimination. There has been very little discussion of the issues arising when several discrimination bases are taken into account at the same time. Multi-dimensional discrimination seems to be a logical inference rather than the main argument. Multi-dimensional discrimination is used as an argument for a combination of the administration and legislation instead of being a separate object of the anti-discrimination policies in Finland.

In Iceland, there has hardly been any discussion in the political forums of the need for an extensive anti-discrimination legislation. However, the committee for analysing the gender equality act also concluded that if the relevant authorities wish to address multi-dimensional discrimination, the mandate of the complaints procedure for discrimination based on gender could be reworked to include a competence to comply with complaints based on other bases. In a statement to the committee it said that there is limited knowledge in Iceland regarding other areas than gender. The Icelandic anti-discrimination legislation is elementary and the public and political debate is not mature enough yet for these advanced discussions on multi-dimensional discrimination. Strikingly enough, Iceland is the only Nordic country maintaining a hierarchy of the discrimination bases as gender is protected the most.

In Norway, the Equality and Anti-discrimination Ombud (LDO) is the first enforcement body in the Nordic countries which is working against discrimination on several grounds. Still, it is only a partly multi-dimensional system as the legislation has not (yet) been gathered and as the political responsibility for the different discrimination bases are spread over several ministries. This is expected to be changed with the future legislation.

In Sweden, they are facing a new departure in the anti-discrimination policy which with the new discrimination act will both get a common legislation with equal protection of all bases and one administration. The fact that the act shall apply to new areas also makes Sweden leading among the Nordic countries. All opportunities to combat multi-dimensional discrimination seem to be present with the Swedish legislation and administration if it opens up to the inclusion of new groups to protect.

3. DANMARK

I oktober 2006 fremlagde det danske Beskæftigelsesministerium, Socialministerium og Integrationsministerium i Regeringens lovkatalog et fælles forslag om at oprette et fælles klagenævn for ligebehandling (Regeringen 2006). Formålet med initiativet var at samle alle klager over forskelsbehandling i ét nævn, der er fælles for alle seks diskriminationsområder, der i dag er omfattede af lovgivningens diskriminationsforbud og dermed erstatte de eksisterende to klageinstanser: *Ligestillingsnævnet* og *Klagekomitéen for etnisk ligebehandling* (Beskæftigelsesministeriet 2007). Forslaget sendtes i høring i januar 2007, hvorefter, der i februar 2007 efter planen skulle fremlægges et lovforslag om oprettelse af dette nye klagenævn, der således skulle træde i kraft fra 1. januar 2008. Processen forsinkedes imidlertid, hvorfor et lovforslag først blev fremlagt og vedtaget i 2008.[1] Loven træder i kraft pr. 1. januar 2009, hvor Ligebehandlingsnævnet begynder sin virksomhed.

Dette kapitel behandler baggrunden for lovforslaget og den generelle udvikling hen imod et mere omfattende klagesystem for en- og flerdimensional forskelsbehandling i Danmark. Kapitlet gennemgår dels det hidtidige system – Ligestillingsnævnet og Klagekomitéen for etnisk ligebehandling, samt den lovmæssige beskyttelse for øvrige potentielt diskriminerede grupper og overvejer dels de tidslige og politiske forudsætninger for forslaget om et fælles klageorgan – i form af erfaringer fra øvrige landes klageorganer og tendenser i de høringssvar der er kommet til forslaget. Denne gennemgang er baseret på officiel dansk dokumentation som høringsforslag, lovgrundlag, Folketingsdebatter, rapporter, direktiv og høringssvar samt på lignende dokumentation fra udlandet. Forfatteren har endvidere deltaget i og haft tilgang til referater fra et antal møder i det danske Råd for Menneskerettigheders Ligebehandlingsudvalg,[2] hvor netop et fælles klageorgan blev diskuteret, samt ved en høring på Christiansborg i februar 2007 om *Det inkluderende samfund og et fælles klageorgan for ligebehandling* arrangeret af Institut for Menneskerettigheder.

Kapitlet er opbygget kronologisk, således at det indledes med en kort histo-

risk oversigt over centrale danske love og tilblivelsen af det hidtidige system. Herefter gennemgås henholdsvis Ligestillingsklagenævnets og Klagekomitéen for etnisk ligebehandlings historik, mandat, opbygning og kapacitet samt hver institutions målelige "effekt" (konkretiseret i antal rejste klager og afgørelser). Endvidere redegøres der for den lovmæssige beskyttelse af de øvrige beskyttede diskriminationsområder.

På denne baggrund diskuteres de tidslige og politiske forudsætninger for forslaget om at oprette et fælles klageorgan med udgangspunkt i den generelle diskussion om fordele og ulemper ved denne organisering af anti-diskriminationsarbejdet, baseret på erfaringerne fra andre lande. Regeringens forslag præsenteres: Det foreslåede ligebehandlingsnævns sammensætning og struktur, dets beføjelser og foreslåede budget. Lovgrundlaget for forslaget gennemgås kort. Herefter beskrives den modtagelse, forslaget fik – med særligt fokus på tendenserne i de indkomne høringssvar og kapitlet sluttes af med en vurdering af lovforslagets aktuelle status og perspektiver for det fremtidige arbejde mod en- og flerdimensional diskrimination.

3.1. Det hidtidige system

Den danske ligebehandlingslovgivning er i vid udstrækning baseret på menneskeretslig og EU-retslig regulering, men tråde kan også trækkes tilbage til selvstændige dansk ret som Grundloven og straffeloven.[3] Vægten vil i det følgende blive lagt på den danske lovgivning, der indeholder såvel strafferetlig som civilretlig beskyttelse mod diskrimination og åbner op for forskellige sanktioner og klagemuligheder. Den civilretlige regulering indeholder tillige definitioner på de diskriminationsformer, som beskyttelsen omfatter.

Strafferetten

Straffeloven indeholder en række forbud mod diskrimination. Overtrædelse af disse kan medføre sanktioner og straf:

'Racismeparagraffen'

I forlængelse af de svære overgreb på jøder i Tyskland i 1930'erne blev den danske straffelov i 1939 udvidet med en bestemmelse i § 266b (den såkaldte 'racis-

meparagraf'), der forbyder truende, forhånende og nedværdigende udtalelser og propaganda mod en gruppe af mennesker på grund af deres race, hudfarve, national eller etnisk oprindelse, tro eller seksuelle orientering (sidstnævnte faktor tilkom ved en revision af loven i 1971).

Lov om forbud mod forskelsbehandling på grund af race mv., vedtaget 1971 og senest ændret 2000
Denne lov fastslår, at ingen må diskrimineres på grund af sin race, hudfarve, nationale eller etniske oprindelse, tro eller seksuelle orientering ved betjening og adgang til steder, der er bestemt for hele offentligheden, såsom transportmidler, hoteller, cafeer, restauranter, parker og teatre.

Civilretten

Foruden disse strafferetlige reguleringer er der tillige – særligt i de senere år – kommet et antal civilretlige love, der i forskellig udstrækning beskytter potentielt diskriminerede grupper på forskellige områder. Her gennemgås de love, der hidtil har spillet de mest centrale roller i det juridiske arbejde for ligebehandling:

Ligebehandlingsloven, vedtaget i 1989 og senest ændret i 2006
Loven regulerer ligebehandling på arbejdsmarkedet ved f.eks. ansættelse, forfremmelse og afskedigelse samt i forbindelse med barsel.

Lov om forskelsbehandling på arbejdsmarkedet mv., vedtaget i 1996 og seneste ændret i 2004
Loven forbyder direkte eller indirekte forskelsbehandling på grund af race, hudfarve, religion, politisk anskuelse, seksuel orientering, handicap, alder eller national, social eller etnisk oprindelse. Den fastslår endvidere, at også chikane og opfordring til eller instruktioner om at forskelsbehandle er omfattet af loven.

Lov om kompensation til handicappede i erhverv mv., vedtaget 1998 og senest ændret 2000.
Loven har som formål at styrke og stimulere funktionsnedsatte personers lige muligheder på arbejdsmarkedet, og regulerer den statslige kompensation for de individuelle eller omgivelsesbestemte konsekvenser af funktionsnedsættelsen på arbejdsmarkedet.

Lov om ligestilling mellem kvinder og mænd., vedtaget i 2000 og senest ændret i 2004.
Loven fastslår at kvinder og mænd skal behandles lige i offentlig, almen og erhvervsmæssig virksomhed og forpligter alle offentlige myndigheder til at arbejde for at fremme ligestilling gennem mainstreaming[4] samt fastsætter regler for lige repræsentation i råd, nævn og udvalg. Loven forvaltes blandt andet af Ligestillingsnævnet.

Lov om etnisk ligebehandling, vedtaget 2003.
Loven forbyder forskelsbehandling på grund af race eller etnisk oprindelse og gælder for al offentlig og privat virksomhed. Loven forvaltes blandt andet af Klagekomitéen for Etnisk Ligebehandling.

Som det fremgår af ovenstående er omfanget af beskyttelsen og klageadgangen ikke den samme i de forskellige lovbestemmelser: Diskrimination på grund af *køn, race og etnicitet* er forbudt både inden for og udenfor arbejdsmarkedet, ligesom der er etableret administrativ klageadgang på disse områder. For de øvrige områder er der kun vedtaget lovgivning, der sikrer mod diskrimination på arbejdsmarkedet, og der eksisterer ingen administrativ klagevej.

Danmark har således, (i lighed med de øvrige nordiske lande), valgt at sammenstykke den nationale diskriminationslovgivning af flere lovgrundlag, der dækker forskellige samfundsområder. Det fører til en form for mosaik-lovgivning, hvor den samlede beskyttelse må stykkes sammen af både national, EU-retlig og menneskeretlig regulering varierende ud fra diskriminationsgrund og sektor (IMR 2007). Af skemaet nedenfor fremgår det, hvilken beskyttelse, der gælder for hvert område i den danske lovgivning:

Beskyttelsesområde	Samfundsområde	Klageadgang
Køn	Offentlig forvaltning, erhvervsmæssig og almen virksomhed, arbejdsmarkedet	Ligestillingsnævnet
Race og etnisk oprindelse	Offentlig og privat virksomhed, vare- og tjenesteydelser, arbejdsmarkedet	Klagekomiteen for Etnisk Ligebehandling
Handicap	Arbejdsmarkedet	Ingen administrativ klageadgang
Alder	Arbejdsmarkedet	Ingen administrativ klageadgang
Religion/tro	Arbejdsmarkedet, vare- og tjenesteydelser	Klagekomiteen for etnisk ligebehandling (såfremt, der er tale om indirekte diskrimination på grund af etnicitet)
Seksuel orientering	Arbejdsmarkedet, vare- og tjenesteydelser	Ingen administrativ klageadgang
Politisk anskuelse	Arbejdsmarkedet	Ingen administrativ klageadgang
National eller social oprindelse	Arbejdsmarkedet	Ingen administrativ klageadgang

Med dette som baggrund gennemgås i det følgende de to hidtidige administrative klageinstanser såvel historisk som organisatorisk med særlig vægt på Ligestillingsnævnet, da det er organiseringen af dette, der ligger til grund for forslaget om lov om et fælles klagenævn for ligebehandling (jvf. Beskæftigelsesministeriets pressemeddelelse af 3. oktober 2006).

3.2. Ligestillingsnævnet

Efter pres fra socialdemokratiske kvinder nedsatte statsminister Jens Otto Krag i

1965 en kvindekommission, som havde til formål at beskæftige sig med forandringerne i kvinderollen og kvinders situation i samfundet. Kommissionen sad frem til 1974, hvorefter statsminister Anker Jørgensen (S) med henvisning til det internationale samarbejde i FN, EF og Nordisk Råd oprettede et nationalt Ligestillingsråd (jvf. Slutrapport fra *Kommission vedrørende kvindernes stilling i samfundet* 1974). Rådet kunne komme med vejledende udtalelser om ligestillingsspørgsmål og virkede herefter med varierende effektivitet og under en del turbulens frem til år 2000, hvor Folketinget vedtog en ny ligestillingslov (Borchorst & Fiig 2000). Den nye lov præciserede, at enhver arbejdsgiver, myndighed eller organisation skal behandle kvinder og mænd lige inden for offentlig forvaltning og erhvervsmæssig virksomhed.

Den nye ligestillingslov indebar endvidere en funktionsopdeling indenfor ligestillingsarbejdet mellem 1) det politisk-administrative, 2) det debat- og vidensskabende og 3) det juridisk håndhævende arbejde for ligestilling. Loven førte til oprettelsen af et egentligt *Ministerium for ligestilling* med sit eget sekretariat – *Ligestillingsafdelingen*, der blev ansvarlig for at implementere ligestillingsloven, et *Videnscenter for ligestilling*, der havde til formål at fremme, kvalificere og skabe debat om ligestilling mellem kvinder og mænd samt at understøtte bestræbelserne for at indarbejde ligestilling i al politik, planlægning og forvaltning (det såkaldte 'mainstreaming-princip') samt *Ligestillingsnævnet*, der skulle behandle klager over kønsdiskrimination (Betænkning nr. 1370 om det fremtidige ligestillingsarbejde og dets organisering; 1999). Denne organisering fik dog kun en levetid på to år idet Videnscenter for ligestilling i 2002 nedlages i forbindelse med en lovrevision[5] og dets opgaver overgik til universiteter, NGO'ere og Ligestillingsafdelingen (se bemærkningerne til Forslaget til lov om Klagenævnet for ligebehandling).

Ligestillingsnævnet blev nedsat som en uvildig, upartisk og uafhængig institution med det formål at behandle sager om forskelsbehandling på grund af køn efter følgende love:

- Ligestillingslovens § 2
- Lov om lige løn til mænd og kvinder,
- Lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselorlov m.v. og
- Lov om ligebehandling af mænd og kvinder inden for de erhvervstilknyttede sikringsordninger.

I forbindelse med Ligestillingsnævnets oprettelse blev der lagt vægt på, at Nævnet skulle repræsentere en forbedring i forhold til klagebehandlingen i det nedlagte Ligestillingsråd på følgende punkter:

- Ligestillingsnævnet skulle sikres en større styrke og synlighed via en klar udskillelse af den juridiske klagefunktion fra de øvrige ligestillingspolitiske aspekter
- Ligestillingsnævnet skulle sikres en øget autoritet ved at dets afgørelser skulle være endelige frem for vejledende
- Ligestillingsnævnet skulle være hævet over politisering
- Ligestillingsnævnet skulle friholdes fra at prioritere begrænsede ressourcer mellem debatskabende og dokumentationsaktiviteter og klagebehandling
- Nævnet skulle friholdes fra at prioritere ressourcer mellem at behandle indkomne klager og selv at tage sager op, hvorfor det ikke fik kompetence til selv at tage sager op (betænkning nr 1370 s. 116-118)

Det ligger således ikke indenfor Ligestillingsnævnets mandat at tage sager op på egen hånd eller at bedrive holdningspåvirkende arbejde. Nævnet kan heller ikke føre parts- og vidneindlæg, hvorfor sager, hvor dette er påkrævet afvises eller henvises til ordinære domstole. Ligestillingsnævnets afgørelser kan ikke ankes, men hver af parterne kan efter ønske indbringe afgørelserne for domstolen. Nævnet sammensattes af tre jurister med kundskab om ligestilling og arbejdsmarkedsret og har tre centrale kompetencer:

- Behandling af klager over forskelsbehandling på grund af køn med mulighed for at træffe afgørelser om, hvorvidt lovgivningen er overtrådt
- Udmåling og tilkendelse af godtgørelse til ofre for ulovlig forskelsbehandling, samt
- Mulighed for at føre sager for de almindelige domstole, hvis nævnets afgørelser og forlig, som indgås for nævnet, ikke efterleves (Ligestillingsnævnets årsrapport 2006).

I Betænkningen om det fremtidige Ligestillingsarbejde og dets organisering fremkom Finansministeriet, DA og LO med en mindretalsudtalelse, hvoraf det fremgik, at de var imod oprettelsen af et selvstændigt klagenævn til behandling af spørgsmål om overtrædelse af ligestillingslovgivningen. De var af den opfattelse, at de eksisterende klagemuligheder ved de almindelige domstole og i det fag-

retlige system sikrede en tilstrækkelig og nødvendig retssikkerhed. Ligestillingsnævnet havde ved sin oprettelse således ikke opbakning fra arbejdsmarkedets hovedorganisationer (Evaluering af Ligestillingsklagenævnet, 2002).

I sine første år afgjorde Ligestillingsnævnet omkring 25 sager per år og yderligere ca. 30 sager behandles årligt uden at føre til afgørelse (årsrapporter 2001, 2002, 2003). 14 sager har i Nævnets levetid været overgivet til Kammeradvokaten med henblik på indbringelse for domstolene, men i nogle af sagerne blev der dog indgået forlig inden domsforhandlingen (jvf. Årsrapporter 2001-2006).

Ligestillingsnævnet blev i første omgang oprettet midlertidigt for to år, og blev evalueret af PLS Rambøll i 2002. Konklusionerne var, at Nævnet var kompetent og velfungerende i sin klagebehandling, men led under en markant usynlighed i offentligheden. PLS Rambøll fandt, at dette kunne påvirke såvel antallet af som bredden i de klager, der rettes til Nævnet. På grund af den manglende synlighed fandt man, at den reelle udvidelse af klageadgangen havde haft begrænset effekt, da det i stor udstrækning kun var klagere, der var organiserede fagligt, men hvis sager var blevet afvist i det fagretlige system, som benyttede Ligestillingsnævnet.

Evalueringen anbefalede på denne baggrund og i lyset af det nedlagte Videnscenter, at Nævnet tog et større ansvar for at sikre en politisk og samfundsmæssig debat på ligestillingsområdet og i dermed øge sin synlighed i offentligheden. Endvidere anbefaledes det, at nævnet fik en udvidet kompetence til at behandle sager på baggrund af andre love end ligestillingslovens § 2 samt sager, der relaterer sig til lovbestemmelser eller anden administrativ myndighed. Anbefalingen begrundedes med at nævnet havde måttet afvise mange sager, fordi de faldt udenfor dets kompetenceområde. Endvidere foresloges det at nævnet fik mandat til at tage sager op på eget initiativ, hvad der også kunne medvirke til øget synlighed og debat.

Som følge af evalueringen blev Ligestillingsnævnet i Folketingsåret 2002-2003 ved lov[6] gjort permanent. Af bemærkningerne til loven fremgik, at det var en forudsætning for dets fortsatte funktion, at nævnet udarbejder en offentlighedsstrategi for at øge kendskabet til nævnet og dets afgørelser (årsrapport 2003). Strategien kom i 2003, men har ikke haft mærkbar effekt på det årlige antal afgørelser i 2204. I 2005 og 2006 steg antallet henvendelser dog markant til ca. 35 årligt (årsrapporter 2005, 2006).

3.3. Klagekomitéen for etnisk ligebehandling

Loven om etnisk ligebehandling,[7] blev vedtaget som en del af implementeringen af EU Rådsdirektiv 2000/43/EF om ligebehandlingsprincippet i 2003. Med denne lov fik Institut for Menneskerettigheder ansvaret for de funktioner, der angik klageadgang i direktivet.

Direktivet pålægger medlemsstaterne at oprette uafhængige organer for at modvirke diskrimination på grund af race eller etnisk oprindelse, og bistå ofre for forskelsbehandling med at få deres klage behandlet. Hermed fik instituttet kompetence til at behandle klager over forskelsbehandling på grund af race og etnisk oprindelse. For at varetage denne funktion oprettede instituttet en *Klagekomite for Etnisk Ligebehandling*.

Forbuddet mod diskrimination i direktivet indbefatter såvel direkte som indirekte forskelsbehandling. Klagekomiteen får mulighed for at indlede uafhængige undersøgelser af forskelsbehandling og offentliggøre rapporter og fremsætte henstillinger i spørgsmål om forskelsbehandling. Klagekomiteen har således mere vidtrækkende beføjelser end Ligestillingsnævnet, men deler de samme tre centrale kompetencer:

- Behandling af klager over forskelsbehandling og mulighed for at træffe afgørelser om, hvorvidt lovgivningen er overtrådt
- Tilkendelse og udmåling af godtgørelse til ofre for ulovlig forskelsbehandling, samt
- Mulighed for at rejse sager for de almindelige domstole, hvis nævnets afgørelser og forlig, som indgås for nævnet, ikke efterleves.

Klagekomiteen består af tre medlemmer, der udpeges af bestyrelsen for Institut for Menneskerettigheder. To af medlemmerne skal have juridisk baggrund og det skal tilstræbes at begge køn er repræsenterede og at et medlem i komiteen har anden etnisk oprindelse end dansk.

Klagekomiteens kan behandle sager på eget initiativ og har endvidere mulighed for at tilbyde mægling i sager, som begge parter ønsker løst i mindelighed (fx hvis de implicerede skal fortsætte med at samarbejde efter klagegangen) eller i sager, der skønnes være opståede på baggrund af en misforståelse mellem klager og indklagede.

Klagekomiteen for Etnisk Ligebehandling behandlede i 2005 93 klager – 77 var indkomne som klager og i 16 tilfælde iværksatte komiteen selv sagerne. I pe-

rioden fra sommeren 2003 til december 2004 behandlede komitéen 81 sager, heraf 11 sager på eget initiativ (årsrapporter 2003-2006).

3.4. Forudsætningerne for forslaget om et fælles klageorgan

En række lande i og udenfor Europa har flere års erfaring med fælles klageorgan på diskriminationsområdet. Det kan derfor være relevant at betragte det danske lovforslag med afsæt i udviklingen på området i netop disse lande.

Fælles for de europæiske lande, som har igangsat processen er, at det er et relativt nyt initiativ (igangsat indenfor de seneste 12 år), og at ønsket om at sammentænke diskriminationsgrundene og deres klageadgang udspringer af en eller flere tidligere institutioner med fokus på en enkelt diskriminationsgrund (oftest køn). Foruden i de nordiske lande ses udviklingen f.eks, i Holland, Irland og Belgien. Der er dog store forskelle på hvor mange diskriminationsgrunde, der er inkluderede i ligebehandlingsorganernes mandat, hvilke beføjelser organerne har og hvor stor deres kapacitet er.

I samtlige lande var sammenlægningen af diskriminationsområderne et resultat af en omfattende debat, hvorfra man kan udkrystallisere to ret klare men modstridende analyser af udviklingen.

På den ene side finder vi fortalerne, der synes at udviklingen er positiv og bidrager til øget fokus på og aktivt arbejde mod diskrimination på alle områder. Denne gruppe mener, at samtænkning af alle områder bidrager til et helhedsgreb om problemet og til øget kundskab og forståelse på tværs af områderne. Dette er givtigt, eftersom diskrimination af forskellige underordnede grupper ofte hænger sammen og derfor bør bekæmpes samlet.

På den anden side hævder kritikerne, at en stor del af den oparbejdede kundskab om den særlige dynamik, der kan udspille sig indenfor hver enkelt diskriminationsområde går tabt når alt blandes sammen, og at man derfor risikerer en dårligere sagsbehandling. Der er endvidere en udbredt frygt for, at sammenlægningen snarere skyldtes et ønske om at spare på omkostningerne ved ligebehandlingsarbejdet, end et ønske om reelt at forbedre vilkårene for de diskriminerede grupper. Ligeledes mener kritikere, at det at arbejde mod diskrimination ikke er nok – at man ikke kan "anti-diskriminere" sig til ligestilling og ligebehandling.

De to modsatrettede tolkninger af udviklingens henholdsvis positive og nega-

tive konsekvenser for arbejdet mod diskrimination er kendetegnende for debatten i samtlige lande, der har iværksat omorganisering på området, og derfor principielt relevant at have som baggrundsinformation, når det danske lovforslag diskuteres.

3.5. Det foreliggende forslag

Udgangspunktet for organiseringen af den danske regerings forslag til fælles klageorgan er som nævnt ovenfor, den model, der danner grundlag for Ligestillingsnævnet og hvormed klageorganet også må formodes at få de beføjelser som Ligestillingsnævnet hidtil har haft. Grundlaget for det nye klageorgans behandling af diskriminationssager bliver den gældende civilretlige lovgivning som i forskellig grad beskytter de seks potentielt diskriminerede grupper på forskellige samfundsområder. Der er således *ikke* lagt op til en udvidelse af lovgrundlaget for beskyttelse mod diskrimination eller til en harmonisering af de samfundsområder som hver af de forskellige grupper er beskyttede på (Forslag til lov om klagenævnet for ligebehandling).

Det foreliggende forslag indebærer således, at det fælles klageorgan vil kunne behandle klager for så vidt angår:

Køn på baggrund af lov om ligestilling mellem kvinder og mænd, lov om lige løn til kvinder og mænd, lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselsorlov mv., lov omligebehandling af mænd og kvinder indenfor de erhvervstilknyttede sikringsordninger og lov om børnepasningsorlov.

Race eller etnisk oprindelse på baggrund af lov om etnisk ligebehandling og lov om forbud mod forskelsbehandling på arbejdsmarkedet mv,

Religion/tro, politisk anskuelse, seksuel orientering, alder, handicap og national eller social oprindelse på baggrund af lov om forbud mod forskelsbehandling på arbejdsmarkedet mv.,

Det nye fælles klageorgan kan således udelukkende behandle klager, der gælder diskrimination udenfor arbejdsmarkedet på baggrund af køn, race eller etnisk

oprindelse. Diskrimination på grund af en eller flere af de øvrige faktorer kan derimod kun behandles indenfor arbejdsmarkedsområdet, da det kun er her lovbeskyttelsen gælder. Endvidere specificeres det i bemærkningerne til lovforslaget, at der alene kan klages over forskelsbehandling inden for arbejdsmarkedet hvis klageren ikke er organiseret i en faglig organisation, eller i tilfælde, hvor den faglige organisation ikke vil iværksætte en fagretlig behandling af sagen (Forslag til lov om klagenævnet for ligebehandling).

Det nye klagenævn for Ligebehandling vil i følge lovforslaget have beføjelser til at afvise sager, som det ikke finder egnede til behandling, og det vil kunne tilkende økonomiske godtgørelser og underkende afskedigelser, ligesom Ligestillingsnævnet kan i dag. Endvidere vil det, på klagerens anmodning, kunne indbringe sager for domstolene, hvis en afgørelse fra klageorganet eller et forlig ikke er blevet efterlevet. Nævnet vil ikke få mulighed for at tage sager op på eget initiativ.

Sammensætning

Det foreliggende forslag giver kun overordnede indikationer på klageorganets sammensætning, struktur og placering. Det fremgår, at reglerne for Ligestillingsnævnets sammensætning skal følges, hvilket indebærer, at nævnets formand og to næstformænd skal være dommere og at nævnets øvrige ni medlemmer skal have bestået juridisk embedseksamen og desuden have ekspertise indenfor de forskellige beskyttelsesområder. Endvidere skal der, i overensstemmelse med ligestillingslovens regler, sikres en ligelig kønsrepræsentation i nævnet.

Ifølge forslaget, skal nævnet organiseres med et sekretariat, der skal forestå sagsbehandlingen i de enkelte sager og forbereder klager for nævnets behandling. Det svarer til den funktion, som Ligestillingsnævnets og Klagekomitéen for Etnisk Ligebehandlings sekretariater hidtil har haft. Forslaget fastslår endvidere, at ligebehandlingsorganets uafhængighed skal sikres ved at det vil blive oprettet og placeret uafhængigt af et ministerium, ligesom dets virke ikke vil være undergivet ministerielle instruktioner.

Ressourcer

På baggrund af det årlige sagsantal og antallet af henvendelser til henholdsvis Ligestillingsnævnet og Klagekomitéen for Etnisk Ligebehandling samt en formod-

ning om antallet klager på baggrund af de øvrige diskriminationsområder skønner lovforslaget at Ligebehandlingsnævnet vil modtage omkring 250 sager årligt til mødebehandling. Det skønnes at modsvare to årsværk til sagsbehandling og sekretariatsbistand. Hertil kommer udgiften til vederlag til nævnets medlemmer, hjemmeside, beretning m.v., hvilket tilsammen i lovforslaget skønnes at medføre en årlig udgift på 1,7 mio dkr.

Informations- og oplysningsarbejde

Lovforslaget forudsætter, at informations- og oplysningsarbejde fortsat skal ligge i Institut for Menneskerettigheders regi. Instituttet vil således fortsat have til opgave at fremme ligebehandling af alle uden forskelsbehandling på grund af race eller etnisk oprindelse (dvs. et fortsat mandat fra arbejdet i Klagekomitéen), ligesom det fortsat vil kunne indlede uafhængige undersøgelser af forskelsbehandling, offentliggøre rapporter om forskelsbehandling og fremsætte henstillinger om spørgsmål vedrørende forskelsbehandling.

På denne måde adskilles ansvaret for klagebehandlingen fra det udadvendte arbejde og risikoen for interessekonflikter eller modstridende signaler minimeres.

3.6. Forslagets modtagelse

Forslaget til Lov om Klagenævnet for Ligebehandling sendtes i høring den 16. januar 2007 med to ugers høringsfrist til den 29 januar. Nedenfor gennemgås de primære tendenser i høringssvarene opdelt i a) svar fra de hidtidige administrative klageinstanser og b) svar fra NGO'er m.v.

Det er interessant at se på udtalelserne fra de hidtidige klageinstanser, eftersom de kan sige meget om hvor stærkt lovforslaget vurderes være, og indikere, om de personer, der hidtil har arbejdet på området, vurderer at et fælles klageorgan vil indebære en styrkelse af arbejdet mod diskrimination på "deres" områder og i så fald hvorfor. Nedenfor gennemgås og sammenlignes de vigtigste kommentarer fra henholdsvis Institut for Menneskerettigheder (pva. Klagekomiteen for Etnisk Ligebehandling) og Ligestillingsnævnet. Høringssvarene udmærker sig ved at være bemærkelsesværdigt forskellige hvad gælder form og politisk indhold.

Institut for Menneskerettigheder

Institut for Menneskerettigheder, hvis svar indkom på vegne af Klagekomitéen for Etnisk Ligebehandling, hilste som udgangspunkt forslaget om et fælles klagenævn velkommet. Instituttet fandt, at en udvidelse af de grupper, der kan søge administrativ klageadgang er et fint bidrag til Danmarks forpligtelse til at give borgerne effektive retsmidler for at søge oprejsning for krænkelser af deres menneskerettigheder, herunder diskriminationsforbudet. Men instituttet påpeger samtidigt, at de ulige diskriminationsforbud for de forskellige potentielt diskriminerede grupper vil medfører at klageadgangen fortsat vil være ulige: Sager på baggrund af køn og race/etnisk oprindelse kan således rejses på alle områder hvorimod de øvrige grupper kun kan rejse sager indenfor arbejdsmarkedet. Derfor mener Instituttet at en reel lige klageadgang fordrer ændringer i den eksisterende lovgivning gennem vedtagelse af et generelt forbud mod diskrimination i alle sektorer. Endvidere påpeger instituttet, at det er hensigtsmæssigt at Ligebehandlingsnævnet får mulighed for at komme med henstillinger og anbefalinger og for at tage sager op af egen drift, idet dette er et centralt værktøj for at kaste lys over indirekte, strukturel eller institutionel diskrimination. Ligeledes bør det udstyres med mandat til at håndtere sager om multi-diskrimination dvs. sager, der rejses på baggrund af tilhør til mere end et beskyttelseskriterium,. Endelig bør Nævnet selv have mulighed for at inddrage yderligere diskriminationsfaktorer, hvis de anses relevante, selvom de ikke er påberåbt af klageren.

Med hensyn til nævnets sammensætning og udpegning mener instituttet at det vil styrke dets uafhængighed at det understreges i bemærkningerne til loven, at de udnævnte kun agerer i egen kapacitet og at det ikke bør være et ubetinget krav at hverken hele formandskabet eller nævnets øvrige medlemmer skal være henholdsvis dommere og juridisk uddannede. Derimod, mener Instituttet, er det centralt at nævnet sammensættes på en måde, der sikrer dels den nødvendige juridiske kompetence og dels inddrager konkret viden om og erfaring med diskriminationsgrundene både indenfor og udenfor arbejdsmarkedet (IMR Høringssvar 2007).

Ligestillingsnævnet

Ligestillingsnævnet forholder sig, modsat Institut for Menneskerettigheder, udelukkende til den foreslåede lovtekst og således ikke til hvorvidt sammenlægningen principielt er en god ide eller om beskyttelsesgrundlaget bør udbygges.

Høringssvaret påpeger kun mindre sproglige finesser angående det kommende nævns navn og tydelighed og konsekvens i lovtekstens forskellige paragraffer. Ligestillingsnævnet bemærker, at det ikke fremgår af bemærkningerne til lovforslaget, hvorfor det nye Nævns formand og næstformænd skal være dommere, og påpeger at lovkravet om denne sammensætning kan medvirke til at indskrænke mulighederne for at sammensætte det bedst mulige formandskab.

Ligestillingsnævnet peger endvidere på at det ikke er hensigtsmæssigt, at en sag kan genoptages hvis der fremkommer nye væsentlige oplysninger i sagen eftersom det bør efterstræbes at parterne ved, at sagen er afsluttet når afgørelsen foreligger. I Ligestillingsnævnets praksis har det været op til parterne selv at indkomme med de fornødne oplysninger inden sagens afgørelse, og derfor mener Nævnet at det er uhensigtsmæssigt at give parterne forhåbninger om at en sag kan genoptages hvis de fremkommer med mere materiale, men foreslår i stedet, at sager kan genoptages, hvis det viser sig, at Nævnet har begået en fejl i behandlingen (Ligestillingsnævnets høringssvar 2007).

Forskellen på de to høringssvar er stor idet Ligestillingsnævnets svar alene fokuserer på detaljerne i lovteksten og ikke tager stilling til forslagets politiske implikationer sådan som Institut for Menneskerettigheder gør. Dette kan skyldes, at Ligestillingsnævnet i højere grad end Klagekomiteen for Etnisk Ligebehandling er knyttet til en statslig myndighed i og med nævnets medlemmer udpeges af ligestillingsministeren og dets sekretariat rent fysisk er placeret i Ligestillingsafdelingen – ministeren for ligestillings forvaltning. Denne relativt nære kobling til stillerne af lovforslaget kan medføre, at Nævnet vælger at fokusere på forslagets form frem for dets indhold, selvom det i øvrigt agerer frit fra ministeren.

Institut for Menneskerettigheder er derimod en mere selvstændig (men dog statsligt finansieret) institution, der i højere grad end Ligestillingsklagenævnet har til opgave at skabe debat og sprede information om ligebehandling i Danmark, hvorfor det også kan siges at ligge i Instituttets mandat at udtale sig kritisk om den førte politik og nye lovforslag.

Svar fra NGO'ere

De danske NGO'er[8] alle stiller sig alle relativt positive til forslaget om et fælles ligebehandlingsklagenævn. Denne enighed adskiller sig markant fra reaktionerne i de øvrige nordiske lande, hvor repræsentanter for de forskellige diskriminationsområder har haft meget forskellige indgange til ideen om en sammenlægning

af diskriminationsgrundene. En grund til dette kan være, at Rådet for Menneskerettigheder allerede i 2004 tog initiativ til at iværksætte det tidligere nævnte *Ligebehandlingsudvalg*, hvori der sidder repræsentanter for centrale interesseorganisationer på hver af de skes diskriminationsområder og hvor man har mulighed for at drøfte fælles problemstillinger og fremme forståelsen på tværs af diskriminationsgrunde (IMR årsrapport 2003).

Særligt påfaldende er den (om end svage) tilslutning fra *Kvinderådet*, idet især interesseorganisationer på kønsområdet, traditionelt er kritiske til en sammenlægning af 'deres' område med andre, ud fra en tanke om at kønshierakiet står som fundament for og går på tværs af alle andre diskriminationsgrunde. Kvinderådet påpeger da også, at det er helt afgørende, at et fælles klagenævn for ligebehandling bliver et instrument, der formår at styrke ligestillingen mellem kvinder og mænd, og at der sikres ekspertise indenfor kønsligestilling i såvel nævnet som i dets sekretariat. Men Kvinderådet stiller sig generelt positivt til princippet om lige klageadgang for alle diskriminationsområder (Kvinderådets høringssvar 2007).

Også svarene fra de øvrige 'områder' er positive, men flere organisationer fremhæver følgende problemer:

Alle de læste høringssvar finder de midler, der er afsat til nævnet helt utilstrækkelige. Flere påpeger, at det er svært at opbygge og opretholde kompetence indenfor alle diskriminationsområder med kun to ansatte, og henviser til den markant bedre finansiering i andre lande, som har iværksat samme proces. *Amnesty International* fremhæver, at man må forvente, at sagsmængden vil stige betydeligt mere end forslaget lægger op til som følge af inklusionen af faktorerne alder og handicap, idet klagere fra disse grupper kan betegnes som ressourcestærke, og derfor må kunne forventes at i høj grad ville benytte sig af deres ret til at klage (Høringssvar Amnesty International 2007). Sammenfattende frygter mange, at Nævnets gennemslagskraft risikerer at blive beskeden, fordi det på forhånd er hæmmet af ringe ressourcer og begrænset mandat.

NGO'erne fremhæver også samstemmigt, at det ville være hensigtsmæssigt, at Nævnet får mandat (og ressourcer) til at drive udadrettet forebyggende oplysningsarbejde mod diskrimination. Mange påpeger ligeledes, at hvis kendskab til alle diskriminationsområder skal sikres, kan det vise sig problematisk at kun jurister kan udpeges til at sidde i nævnet.

Alle læste høringssvar stiller sig endvidere kritiske til, at det nye Ligebehandlingsnævn ifølge forslaget ikke får mulighed for at tage sager op på eget initiativ, idet de påpeger, at netop denne funktion er vigtig for at sætte fokus på de områ-

der, hvor diskriminationen er størst, og hvor klagere måske ikke selv har mulighed for eller overskud til selv at igangsætte klageprocessen.

Høringssvarene fra organisationer, der repræsenterer grupper, hvis ligestilling ikke er lovgivningsmæssigt beskyttet udenfor arbejdsmarkedet (*Landsforeningen for Bøsser og Lesbiske, De Samvirkende Invalideorganisationer, Islamisk-Kristent Studiecenter* samt *Ældremobiliseringen*) påpeger samstemmigt, at dette er problematisk. Derfor foreslår de, at nævnets lovgrundlag udvides til også at kunne behandle sager på baggrund af disse områder udenfor arbejdsmarkedet. Desuden fremhæver flere, at håndteringen af diskrimination på netop deres 'område' kræver særligt kendskab, og at denne kompetance bør sikres i såvel nævnet som dets sekretariat.

De Samvirkende Handicaporganisationer (DSI) og *Dokumentations- og rådgivningscenteret om racediskrimination (DRC)* fremhæver, ligesom Institut for Menneskerettigheder, at kravet om at klager skal indgives skriftlige er urimeligt og reelt udelukker en stor mængde potentielle klagere fra at få oprejsning fra diskrimination. Derfor anbefaler de, at klager også kan modtages telefonisk eller ved personligt fremmøde.

3.7. Den forestående udvikling

Ambitionen med den hurtige høringsrunde var, at kunne fremsætte lovforslag om Ligebehandlingsnævnet allerede i februar 2007. Processen blev imidlertid forsinket og beskæftigelsesministeriet fremsatte først forslaget i Folketinget i begyndelsen af 2008. Gennemførelsen af loven og etableringen af nævnet (samt nedlæggelsen af Ligestillingsnævnet og Klagekomitéen for Etnisk Ligebehandling) er en realitet fra 1. januar 2009.

Etableringen af et fælles klagenævn indebærer et paradigmeskifte i det danske arbejde mod diskrimination på to centrale punkter. For det første indebærer nyetableringen en begyndende ligebehandling af de forskellige diskriminationsområder idet der ikke vil være forskellige klageadgange afhængigt af diskriminationsårsag.

Samtidigt indebærer det ulige lovgrundlag dog en hierarkisering af grundene til diskrimination idet loven indirekte siger, at det er i orden at diskriminere handicappede, seksuelle minoriteter, ældre og yngre samt religiøse mindretal udenfor arbejdsmarkedet, mens dette ikke må ske på grund af køn eller etnicitet.

For det andet er sammenlægningen af håndteringen af de seks grunde et nybrud i den måde den danske forvaltning hidtil har organiseret anti-diskriminationsarbejdet, idet ansvaret for hver af de forskellige områder fortsat ligger uafhængigt af hinanden rundt omkring på forskellige institutioner og ministerier – eller slet ingen steder. Således ligger området køn under Ligestillingsafdelingens ansvar hvorimod race, etnisk oprindelse og religion/tro findes hos Integrationsministeriet og handicap og alder håndteres af socialministeriet. Området seksuel orientering ligger ikke under noget særligt departementalt ansvar.

Konklusion

Sammenfattende kan det hævdes, at den danske håndtering af klager over diskrimination med et fælles klagenævn styrkes markant, idet der åbnes op for en lige administrativ klageadgang for alle seks diskriminationsområder. Ligeledes må man formode, at også mulighederne for at klage på baggrund af flerdimensionel diskrimination bliver bedre, idet alle områder vil falde indenfor samme nævns kompetence og klager på baggrund af flere diskriminationsgrunde derfor vil have mulighed for at kunne blive behandlet under et.

Denne funktion fremgår dog ikke ekspliciteret af lovforslaget, men nødvendigheden af at kunne håndtere multipel diskrimination er nævnt i det ligebehandlingsdirektiv (43/EF/2000),[9] der EU-retligt ligger til grund for gennemførelse af ligebehandlingsprincippet og danner afsæt for lovforslaget. Det, der gør dette element besværligt, er, at lovgrundlaget for de forskellige områder ser forskelligt ud, hvilket indebærer at mange sager om flerdimensionel diskrimination kun kan føres på arbejdsmarkedsområdet, hvor *alle* diskriminationsgrunde er beskyttede.

For at sikre en reel lige klageadgang må lovene på samtlige områder derfor harmoniseres eller der må alternativt gennemføres et generelt diskriminationsforbud. Der er dog ingen tegn på, at nogen af disse alternativer vil blive indfriet i forbindelse med oprettelse af Ligebehandlingsnævnet.

Kilder

Primærdokumenter

- Beskæftligesesministeriet og Socialministeriet 2006: *Forslag til lov om Klagenævnet for Ligebehandling,*
- Statsministeriet (1999), *Betænkning om det fremtidige ligestillingsarbejde og dets organisering*; Betænkning nr. 1370

Høringssvar

- Amnesty International, (2007): *Vedrørende udkast til lov om Klagenævnet for Ligebe handling*
- Det Centrale Handicapråd & Center for Ligebehandling af Handicappede (2007): *Høringssvar*
- Dansk Flygtningehjælp (2007): *Høring. Forslag til lov om Klagenævnet for Ligebehandling*
- Danske Samvirkende Invalideorganisationer (DSI), (2007): *DSI's høringssvar til høring over udkast til forslag til lov om Klagenævnet for Ligebehandling*
- Dokumentations- og Rådgivningsceteret om Racediskrimination (DRC), (2007): *Høringssvar fra Dokumentations- og Rådgivningsceteret om Racediskrimination (DRC) vedr. Forslag til lov om Klagenævn for Ligebehandling,*
- ENAR-DK, (2007): *Høringssvar på Fælles klagenævn for ligebehandling*
- Foreningen for etnisk ligestilling, (2007): *Høringssvar fra Foreningen for Etnisk Ligestilling tforslag til lov om klagenævn for ligebehandling*
- Institut for Menneskerettigheder (2007): *Notat vedrørende udkast til forslag til lov om Klagenævnet for Ligebehandling*, Høringssvar
- Isalmisk-Kristent Studiecenter (ISK), (2007): Ang. Forslag til lov om Klagenævn for Ligebehandling
- Kvinderådet, (2007): *Kvinderådetshøringssvar vedr. Forslag til lov om Klagenævnet for Ligebehandling*
- Landsforeningen af Polio- Trafik- og Ulykkesskadede (PTU), (2007): *Vedr. Høringssvar vedr. Lov om klagenævn for Ligebehandling*
- Landsforeningen for bøsser og lesbiske (LBL), (2007): *Høringssvar vedr. Forslag til lov om Klagenævnet for Ligebehandling*
- Ligestillingsnævnet, (2007): *Ligestillingsnævnets svar vedr. Høring af lov om Klagenævnet for Ligebehandling,*

- Retsikkerhedsfonden, (2007): *Høring om udkast til lov om Klagenævn for ligebehandling*
- Ældremobiliseringen, (2007): *Vedrørende høring om udkast til forslag til lov om Klage nævnet for Ligebehandling*

Udredninger og betænkninger

- Institut for menneskerettigheder: *Effektiv beskyttelse mod diskrimination – om retlige og faktiske tiltag*, nr. 5, 2007 (IMR 2007)
- Institut for menneskerettigheder: *Personer med funktionsnedsættelser i Danmark,* nr. 3 2005 (IMR 2005a)
- Institut for menneskerettigheder: *Ligebehandling. Status og fremtidsperspektiver,* nr. 2, 2005 (IMR 2005)
- Nævnet for Etnisk ligestilling, (1997): Rapport om mulighederne for at skabe bedre Klageadgange for Etniske Minoriteter
- Statsministeriet (1974): *Betænkning vedrørende Kvindernes stilling i samfundet*, Betænkning nr. 715.

Årsrapporter

- Institut for menneskerettigheder (2002-2006): *Menneskeret i Danmark – en status for året*, Institut for Menneskerettigheder
- Klagekomitéen for etnisk ligebehandling: *Årsrapport 2003-2006*, Institut for menneskerettigheder
- Ligestillingsnævnets sekretariat (2001-2006): *Ligestillingsnævnets Årsrapport 2001-2006*, Ligestillingsafdeligen
- Ligestillingsrådet, (1976-1999): *Ligestillingsrådets årsberetning* 1976-1999

Love og bekendtgørelser

- Lov nr. 626 af 29 sept.1987 om forbud mod forskelsbehandling på grund af race mv. Ligebehandlingsloven
- Lov nr. 55 af 29 jan. 2001 om kompensation til handicappede i erhverv mv.
- Lov nr. 775 af 29 aug. 2001 om ligebehandling af mænd og kvinder inden for de erhvervstilknyttede sikrimingsordninger
- Lov nr. 396 af 6 juni 2002 om ændring af lov om ligestilling af kvinder og mænd

- Lov nr. 374 af 28 maj 2003 om etnisk ligebehandling
- Lov nr. 286 af 25 april 2003 om ændring af lov om ligestilling mellem kvinder og mænd
- Lov nr. 1527 af 19 dec. 2004 om ligestilling mellem kvinder og mænd.
- Lov nr. 31 af 12 jan. 2005 om forskelsbehandling på arbejdsmarkedet mv.
- Lov nr. 906 af 27 aug. 2006 om lige løn til mænd og kvinder
- Bekendtgørelse nr. 233 af 29 mar 2004 om inititativer til fremme af ligestilling

Anden litteratur og relevante udgivelser

- Andersen, Agnete, Nielsen, Ruth og Precht, Kirsten, (2005): *Ligestillingslovene med kommentarer*, bind 1, Djøf, Danmark
- Borchorst, Anette og Christina Fiig: Plads til forbedring: dansk ligestillingspolitik 1975 til 2000. Aalborg Universitetscenter. GEP working papers ; Nr. 2, 2000
- Justesen, Pia (2003): *Racisme og diskrimination – Danmark og menneskerettighederne,* Akademisk forlag A/S, Danmark
- Besæftigelsesministeriet, februar 2007, *Pressemeddelse vedrørende et nyt ligebehandlingsnævn,*
- Ligestillingsrådet, (1981-2000): Lige nu: nyt fra Ligestillingsrådet
- Ligestillingsnævnet (2004): *Fakta om Ligestillingsrådet*, pjece
- PLS Rambøll, (2002): *Evaluering af Ligestillingsklagenævnet*
- Statsministeriet, 2006: *Regeringens lovkatalog 2006*

Relevante websider

www.ligenævn.dk
www.klagekomite.dk
www.menneskeret.dk
www.lige.dk

3. DENMARK

In October 2006, the Danish Ministry of Employment, the Ministry of Social Welfare and the Integration Ministry submitted for the Government's bill list a common bill proposing the creation of a common complaints board for equal treatment (the Government 2006). The purpose of this initiative was to gather all complaints about discrimination in one board which would be common to all six grounds of discrimination covered by the legislation's discrimination ban and thus replace the two existing complaints authorities: *Ligestillingsnævnet* (the Gender Equality Board) and *Klagekomitéen for etnisk ligebehandling* (the Complaints Committee for Ethnic Equal Treatment) (the Ministry of Employment, 2007). The bill was submitted for consultation in January 2007, after which, in February 2007, the plan was to introduce the bill on the creation of this new complaints board, which should then become effective on 1 January 2008. However, the process was delayed and the bill was not introduced and passed until 2008. The act will come into force by 1 January 2009, where the Equel Treatment Board will commence its activity.

This chapter discusses the background of the bill and the general progress towards a more comprehensive complaints system for one- and multi-dimensional discrimination in Denmark. The chapter also discusses the system up till now – the Gender Equality Board and the Complaints Committee for Ethnic Equal Treatment as well as the statutory protection of potentially discriminated groups and considers the time-related and political assumptions of the common complaints authority bill – in the shape of experiences from complaints authorities in other countries and trends in the statements on the issue submitted for consultation. This study is based on public Danish documentation such as consultation documents, regulatory framework, parliamentary debates, reports, directives and statements on the issue submitted for consultation as well as similar documentation from other countries. The author has also participated in and has had access to minutes from a number of meetings in the Danish Equal Treatment Commit-

tee[1] of the Council for Human Rights where the subject of a common complaints authority was discussed, as well as in a hearing at the Danish Parliament in February 2007 on *The including society and a common complaints authority for equal treatment* arranged by the Danish Institute for Human Rights.

The construction of the chapter is chronological, introduced by a short historical summary of the central Danish legislation and the formation of the existing system. Then the history, mandate, setup and capacity of the Gender Equality Board and the Complaints Committee for Ethnic Equal Treatment, respectively, are discussed as well as the measurable "effect" of each body (concretized by the number of complaints and decisions). Furthermore, the legal protection of the other protected areas of discrimination is discussed.

On this basis, the time-related and political assumptions of the proposal to create a common complaints authority are discussed using the general discussion of advantages and disadvantages in relation to this type of organisation of the anti-discrimination work, based on experiences from other countries. The Government's bill is presented: The composition and structure of the proposed equal treatment board, its powers and estimated budget. The regulatory framework of the bill is discussed briefly. Subsequently, the reception of the bill is described – with special focus on the trends in the incoming statements – and the chapter ends with an assessment of the bill's current status and the perspective of the future work against one- and multi-dimensional discrimination.

3.1. The system up till now

The Danish legislation on equal treatment is widely based on human right and EU statutory regulation, but threads may also be drawn back to distinct Danish law such as the Danish Constitution and the Danish Criminal Code?[2] In the following, the importance of the Danish legislation will be emphasized, containing a criminal and civil protection against discrimination and opening up to different sanctions and complaints options. The civil regulation does also contain definitions of the types of discrimination covered by the protection.

Criminal law

The Danish Criminal Code contains a number of bans against discrimination. Violation of these bans may result in sanctions and penalties:

'The section on racism'

In continuation of the horrible outrages against the Jews in Germany in the 1930s, a provision in section 266b (the so-called 'section on racism') was added to the Danish Criminal Code in 1939, prohibiting threatening, insulting and degrading statements and propaganda against a group of people due to their race, colour, national or ethnic origin, faith or sexual orientation (the latter was added in connection with a revision of the code in 1971).

Act on the prohibition of differential treatment on the basis of race etc., passed in 1971 and last amended in 2000.

This act holds that no person may be discriminated on the basis of race, colour, national or ethnic origin, faith or sexual orientation in connection with service or access to public places such as means of transport, hotels, cafes, restaurants, parks and theatres.

Civil law

In addition to these criminal regulations – particularly during recent years – a number of civil acts have been emerging, to different extents protecting potentially discriminated groups in different fields. Below, the sections that have played the most central part in the legal work for equal treatment are reviewed:

The Equal Treatment Act, passed in 1989 and last amended in 2006.

The act regulates equal treatment in the labour market, e.g. in connection with employment, promotion, and dismissal and in connection with maternity leave.

Act on differential treatment in the labour market etc., passed in 1996 and last amended in 2004.

The act prohibits direct or indirect differential treatment based on race, colour, religion, political views, sexual orientation, disability, age or national, social or ethnic origin. It further holds that harassment and invitation to or instructions on differential treatment also fall within the act.

Act on compensation for disabled employees etc., passed in 1998 and last amended in 2000.
The purpose of the act is to strengthen and stimulate the equal opportunities of disabled persons in the labour market and it regulates the official compensation of the individual consequences or those defined by the surroundings of the disability in the labour market.

Act on equality between women and men, passed in 2000 and last amended in 2004.
The act holds that women and men shall be treated equally in public, general and commercial corporations and places all public authorities under an obligation to promote equality through mainstreaming[3] and lay down rules for equal representation in councils, committees and boards. The act is administered by the Gender Equality Board, among others.

Act on ethnic equal treatment, passed 2003.
The act prohibits differential treatment on the basis of race or ethnic origin and is applicable to all public and private corporations. The act is administered by the Complaints Committee for Ethnic Equal Treatment, among others.

As it appears from the above, the scope of the protection and the right to complain is not the same in the various statutory provisions: Discrimination based on *gender, race and ethnicity* is prohibited both within and outside the labour market, just as an administrative right to complain is established within these areas. For the other grounds, legislation has only been passed to protect against discrimination in the labour market and there is no administrative complaints channel.

Thus, Denmark has (similar to the other Nordic countries) chosen to piece together the national discrimination legislation from several regulatory frameworks covering different areas of society. This will result in a form of mosaic legislation where the total level of protection has to be pieced together from national, human right and EU statutory regulation, varying on the basis of discrimination cause and sector (IMR 2007). The diagram below shows the protection applicable to each grounds in the Danish legislation:

Area of protection	Area of society	Right to complain
Gender	Public administration, commercial and general corporation, labour market	The Gender Equality Board
Race and ethnic origin	Public and private corporation, public services, labour market	The Complaints Committee for Ethnic Equal Treatment
Disability	Labour market	No administrative right to complain
Age	Labour market	No administrative right to complain
Religion/faith	Labour market, public services	The Complaints Committee for Ethnic Equal Treatment (if it is a question of indirect discrimination based on ethnicity)
Sexual orientation	Labour market, public services	No administrative right to complain
Political views	Labour market	No administrative right to complain
National or social origin	Labour market	No administrative right to complain

On the basis of this, the two existing administrative complaints authorities are discussed below, both historically and organisationally, with emphasis on the Gender Equality Board, as it is the organisation of this which constitutes the basis of the bill on a common complaints board for equal treatment (cf. the press release of The Ministry of Employment of 3 October, 2006).

3.2. The Gender Equality Board

Under pressure from the women in the Social Democratic Party, prime minister Jens Otto Krag set up a women's committee in 1965 with the purpose of dealing with the changes of the feminine role and the situation of women in society. The committee existed until 1974 when prime minister Anker Jørgensen (Social Democratic Party), with reference to the international cooperation in the UN, EEC and the Nordic Council, created a national Equal Status Council (cf. Final report from *The commission regarding the status of women in society* 1974).

The council could make instructive comments on equal status issues and then operated with varying efficiency and with some turbulence until the year 2000 when the Danish Parliament passed a new Gender Equality Act (Borchorst & Fiig 2000). The new act defined that every employer, authority or organisation should treat women and men equally within public administration and commercial corporations.

Furthermore, the new Gender Equality Act implied a functional classification of the gender equality work between 1) the political-administrative, 2) the work that created debates and knowledge and 3) the legally enforcing work for gender equality. The act led to the creation of an actual *Ministry for Gender Equality* with its own secretariat – the *Department of Gender Equality*, which became responsible for the implementation of the Gender Equality Act, a *Centre of Gender Equality* with the purpose of promoting, qualifying and debating equality between women and men and of supporting the efforts to incorporate gender equality in all aspects of politics, planning and administration (the so-called mainstreaming principle) as well as the *Gender Equality Board* which was going to settle complaints against sexual discrimination (Report no. 1370 on the future gender equality work and the organisation of this, 1999). This organisation, however, was short-lived as the Centre for Gender Equality was abolished in 2002 in connection with an amendment[4] and its tasks were transferred to universities, NGOs and the Department of Gender Equality (see the notes on the Act on the Complaints Board for Equal Treatment Bill).

The Gender Equality Board was established as an impartial, unbiased and independent authority with the purpose of handling cases on differential treatment based on gender in accordance with the followings acts:

- Section 2 of the Gender Equality Act
- The Act on Equal Pay to Men and Women

- The Act on Equal Treatment of Men and Women in respect of Employment and Maternity Leave etc. and
- The Act on Equal Treatment of Men and Women in relation to the Occupational Social Security Schemes.

In connection with the establishment of the Gender Equality Board, it was emphasised that the Board should represent an improvement in relation to the hearing process of complaints in the abolished Equal Status Council based on the following points:

- The Gender Equality Board should be guaranteed more power and exposure through a clear separation of the legal complaints function from the other equality-political aspects
- The Gender Equality Board should be guaranteed increased authority by letting its decisions be final instead of instructive
- The Gender Equality Board should be above all politicization
- The Gender Equality Board should not be forced to prioritise limited resources between debate and documentation activities and the hearing of complaints
- The Board should not be forced to prioritise its resources between hearing incoming complaints and raising cases on its own accord, which it why it was not granted the powers to raise cases (report no. 1370, pp. 116-118).

Thus, the Gender Equality Board is not authorised to raise cases on its own accord or to perform influential work. Furthermore, the Board may not carry evidence by one of the parties or witnesses, which is why cases, where this is required, will be dismissed or submitted to the ordinary courts. There is no right of appeal against the decisions of the Gender Equality Board, but either party may submit the decisions to the court. The Board shall consist of three lawyers with knowledge of gender equality issues and employment law and shall have three central competences:

- Hearing of complaints about differential treatment based on gender with the possibility to make decisions on whether the legislation has been violated
- Determination and award of compensation to victims of discrimination contrary to law and
- Possibility to conduct cases before the ordinary courts if the decisions and set-

tlements of the Board are not complied with (Annual report of the Gender Equality Board 2006).

In the report on the future gender equality work and the organisation of this, the Danish Ministry of Finance, the Confederation of Danish Employers (DA), and the Danish Confederation of Trade Unions (LO) presented a note of dissent stating that they were against the creation of a separate complaints board for the handling of issues related to the violation of the equality legislation. They believed that the existing complaints options at the ordinary courts and in the industrial system were ensuring an adequate and necessary legal protection. At the time when the Gender Equality Board was created, it was thus not supported by the central organisations of the labour market (Evaluation of the Gender Equality Board, 2002).

During the first years, the Gender Equality Board settled approx. 25 cases a year and another 30 cases a year were processed, which did not lead to any settlement (annual reports 2001, 2002, 2003).

During the lifetime of the Board, 14 cases have been referred to the Legal Adviser to the Danish Government with a view to bringing them before the courts, but some of the cases, however, were settled before they went to trial (cf. Annual reports 2001-2006).

At first, the Gender Equality Board was established temporarily for a period of two years and was evaluated by PLS Rambøll in 2003. The conclusion was that the Board was competent and efficient when hearing complaints, but that it suffered from a pronounced invisibility to the public. PLS Rambøll found that this could influence the number as well as the width of the complaints that were submitted to the Board. Due to the lack of visibility, they found that the real expansion of the right to complain had had limited effect as it was mainly complainants who were members of a trade union, but who had experienced a dismissal of their case in the industrial system, that made use of the Gender Equality Board.

Based on this and on the fact that the Centre for Gender Equality had been abolished, the evaluation recommended that the Board took on more responsibility for creating a political and social debate on gender equality and thus increased its public visibility. Furthermore, it was recommended that the Board was given more powers to hear cases based on other acts than Section 2 of the Gender Equality Act as well as cases related to statutory provisions or other administrative authority. The reason for this recommendation was that the Board had

been forced to dismiss a great number of cases as they were outside its competence. Furthermore, it was recommended that the Board was given authority to raise cases on its own initiative which could also contribute to increased visibility and debate.

As a result of the evaluation, the Gender Equality Board was made permanent by statute[5] in the sessional year of the Danish Parliament 2002-2003. The explanatory notes to the act stated that it was a presumption for the continuance of the Board that it prepared a publicity strategy in order to increase the knowledge of the Board and its decisions (Annual report 2003). The strategy was presented in 2003, but it did not have any noticeable effect on the annual number of decisions in 2004. However, in 2005 and 2006 the number of submissions increased heavily to approx. 35 a year (Annual reports 2005, 2006).

3.3. The Complaints Committee for Ethnic Equal Treatment

The Act on Ethnic Equal Treatment[6] was passed as part of the implementation of the EU Council Directive 2000/43/EF on the equal treatment principle in 2003. With this act the Danish Institute for Human Rights became responsible for the functions relating to the right to complain in the directive.

The directive dictates that the member states must establish independent bodies in order to discourage discrimination based on race or ethnic origin and help victims of differential treatment getting their complaint heard. In this way the institute was given the powers to hear complaints of differential treatment based on race and ethnic origin. In order to perform this function, the institute established a Complaints Committee for Ethnic Equal Treatment.

The ban on discrimination in the directive covers both direct and indirect differential treatment. The Complaints Committee will have the possibility to initiate independent investigations of differential treatment and publish reports and submit proposals in relation to issues on differential treatment. Thus, the Complaints Committee will have more extensive powers than the Gender Equality Board, but they share three central competences:

- Hearing of complaints about differential treatment and the possibility to make decisions on whether the legislation has been violated

- Determination and award of compensation to victims of discrimination contrary to law and
- Possibility to bring cases before the ordinary courts if the decisions and settlements of the Board are not complied with.

The Complaints Committee consists of three members who are appointed by the board of the Danish Institute for Human Rights. Two of the members must have legal background and efforts must be made to have representation by both genders and to have one member in the committee of other ethnic origin than Danish.

The Complaints Committee may hear cases on its own initiative and shall have the possibility to offer mediation in cases which both parties wish to have settled out of court (e.g. if the involved parties need to continue their cooperation after the complaints procedure) or in cases which are found to have arisen due to a misunderstanding between the complainant and the defendant.

In 2005, the Complaints Committee for Ethnic Equal Treatment heard 93 complaints – 77 of these were submitted as complaints and 16 were initiated by the committee on its own accord. During the period from the summer of 2003 to December 2004, the Committee heard 81 cases, 11 of these on its own initiative (Annual reports 2003-2006).

3.4. Presumptions for the common complaints authority bill

A number of countries in and outside Europe have several years of experience with a common complaints authority within the field of discrimination. It may therefore be relevant to consider the Danish bill based on the development within this field in these countries.

The European countries, which have initiated the process, have that in common that it is a relatively new initiative (initiated within the past 12 years) and that the wish to sum up the causes of discrimination and their right to complain derive from one or several former institutions with focus on a single cause of discrimination (usually gender). In addition to the Nordic countries, this development is e.g. seen in Holland, Ireland and Belgium. There are, however, vast differences in the number of discrimination causes included in the authority of the equal treatment bodies, the powers of the bodies and the size of their capacity.

In all the countries, the integration of the grounds of discrimination is a result of an extensive debate from which you can crystallize two rather clear, but conflicting, analyses of the development.

On one hand we see the advocates who believe that the development is positive and contributes to increased focus on and active work against discrimination on all grounds. This group believes that a sum-up of all grounds will contribute to general control of the problem and to enhanced knowledge and understanding across the grounds. This is rewarding as discrimination of different subgroups is often related and thus should be controlled as a whole.

On the other hand, the critics claim that a great deal of the built-up knowledge on the special dynamics, which may have taken place within each discrimination area, will be lost when they are mixed up and that this may result in a poorer administrative procedure. Furthermore, they fear that the integration was a matter of saving costs in connection with the equal treatment work rather than really improving the conditions of the discriminated groups. Similarly, the critics believe that working against discrimination is not enough – that you cannot achieve equality and equal treatment through ”anti-discrimination”.

These two opposite interpretations of the positive and negative consequences of the development for the work against discrimination are characteristic of the debate in all the countries that have initiated a reorganisation of the area and are fundamentally relevant to have as background information when the Danish bill is up for discussion.

3.5. The present bill

As mentioned above, the background of the organisation of the common complaints authority bill, introduced by the Danish Government, is the model that forms the basis of the Gender Equality Board and also determines to give the complaints authority the powers that used to belong to the Gender Equality Board. The basis of the hearing process of discrimination cases in the new complaints authority will be the applicable civil legislation which to different extents protects the six potentially discriminated groups in different areas of society. Thus, there are *no* plans to extend the regulatory framework for the protection against discrimination or to harmonise the areas of society where each of the different groups are protected (Act on the Complaints Board for Equal Treatment Bill).

The present bill thus implies that the common complaints authority will be able to hear complaints as regards:

Gender on the basis of the Act on Equality Between Women and Men, the Act on Equal Pay to Men and Women, the Act on Equal Treatment of Men and Women in respect of Employment and Maternity Leave etc., the Act on Equal Treatment of Men and Women in relation to the Occupational Social Security Schemes and the Act on Childcare Leave.

Race or ethnic origin on the basis of the Act on Ethnic Equal Treatment and the Act on the Prohibition of Differential Treatment in the Labour Market etc.

Religion/faith, political views, sexual orientation, age, disability and national or social origin on the basis of the Act on Differential Treatment in the Labour Market etc.

The new common complaints authority may thus only hear complaints about discrimination outside the labour market on the basis of gender, race or ethnic origin. Discrimination based on one or more of the factors above may, however, only be administered within the labour market area as it is only here that the protection by the law is applicable. Furthermore, the notes on the bill specify that a complainant may only complain about differential treatment within the labour market if the complainant is not a member of a trade union or in cases where the trade union will not initiate an industrial administration of the case (Act on the Complaints Board for Equal Treatment Bill).

According to the bill, the new complaints board for equal treatment shall have the authority to dismiss cases that are not found suitable for hearing and it will be able to award financial compensation and overrule terminations of employment, just as the Gender Equality Board has the authority to do today. Furthermore, it will have the authority to bring cases before the courts at the request of the complainants if a decision by the complaints authority or a settlement has not been complied with. The Board will not have the authority to raise cases on its own initiative.

Composition

The present bill only provides general indications of the composition, structure and location of the complaints board. It appears that the rules of the composition of the Gender Equality Board must be complied with, which implies that the chairman and the two deputy chairmen of the Board must be judges and that the other nine members of the Board must have graduated in law and also have expert knowledge of the different grounds of protection. Furthermore, in accordance with the rules of the Gender Equality Act, an equal gender representation in the Board must be ensured.

According to the bill, the Board shall be organised with a secretariat to manage the administration of the individual cases and prepare the complaints for the hearing by the Board. This corresponds to the function that the secretariats of The Gender Equality Board and The Complaints Committee for Ethnic Equal Treatment have had up till now. The bill further establishes that the independence of the equal treatment body must be ensured by creating and locating it separately from a ministry just as its operation will not be subject to Government instructions.

Resources

On the basis of the annual number of cases and the number of submissions to the Gender Equality Board and the Complaints Committee for Ethnic Equal Treatment, respectively, and of a presumption about the number of complaints based on the other grounds of discrimination, the bill estimates that the Equal Treatment Board will receive approx. 250 cases for hearing a year. It is estimated at two person's work in one year for case administration and secretariat assistance. Add to this the costs of consideration for the members of the Board, website, reports, etc. which is estimated at a total annual cost of DKK 1.7m in the bill.

Information and disclosure work

The bill presumes that the information and disclosure work will still lie within the framework of the Danish Institute for Human Rights. Thus, the institute will still be in charge of the promotion of equal treatment by everyone without differential treatment based on race or ethnic origin (i.e. a continued mandate from the work in the Complaints Committee), just as it will still be authorised to ini-

tiate independent investigations of differential treatment, publish reports on differential treatment and submit proposals in relation to issues on differential treatment.

In this way, the responsibility for the hearing process of complaints is separated from the extrovert work and the risk of conflicting interests or contradictory signals will be minimised.

3.6. The reception of the bill

The Act on the Complaints Board for Equal Treatment Bill was submitted for consultation on 16 January 2007 with a two week deadline ending on 29 January 2007. Below, the primary trends in the statements on the issue submitted for consultation are reviewed, divided in a) statements from the existing administrative complaints authorities and b) statements from NGOs etc.

It is interesting to look at the statements from the existing complaints authorities as they are a strong indication of how solid the bill is estimated to be as well as an indication of whether the persons with working experience in the area estimate that a common complaints body will involve a strengthening of the work against discrimination in "their" areas and, if that is the case, why. Below the most important comments from the Danish Institute for Human Rights (on behalf of the Complaints Committee for Ethnic Equal Treatment) and the Gender Equality Board, respectively, are reviewed and compared. The statements are distinguished by being remarkably different when it comes to form and political content.

The Danish Institute for Human Rights

The Danish Institute for Human Rights, whose answer was submitted on behalf of the Complaints Committee for Ethnic Equal Treatment, initially welcomed a common complaints authority. The Institute found that an increase of the number of groups that are getting an administrative right to complain is a fine contribution to Denmark's obligation to ensure effective remedies for its citizens to recover their civil rights if these are violated, including the discrimination ban. But at the same time, the Institute points out that the unequal discrimination ban for the different potentially discriminated groups will result in a continuous-

ly unequal right to complain: Cases based on gender and race/ethnic origin may thus be raised in all areas whereas the other groups are only entitled to raise cases within the labour market. Therefore, the Institute believes that a real and equal right to complain will necessitate changes of the existing legislation through the passing of a general ban against discrimination in all sectors. Furthermore, the Institute points out that it would be expedient to allow the Equal Treatment Board to submit proposals and recommendations and to raise cases on its own accord as this is a central tool in the highlighting of indirect, structural or institutional discrimination. Similarly, it should be provided with the mandate to administer cases about multi-discrimination, i.e. cases that are raised on the basis of them belonging to more than one protection criterion. Finally, the Board should be allowed to include other discrimination factors if these are deemed relevant even though they are not initially part of the complainants claim.

With regard to the composition and appointment of the board, the Institute believes that it will strengthen its independence if it is highlighted in the explanatory notes to the act that the appointees are only acting in their own capacity and that it should not be an absolute requirement that the entire chairmanship or the other members of the board should be judges and law graduates. On the contrary, the Institute believes that it is a central factor that the board is composed in a manner ensuring the required legal competence and partly involves concrete knowledge of and experience with the causes of discrimination within and outside the labour market (Statements by the DIHR, 2007).

The Gender Equality Board

The Gender Equality Board, in contrast to the Danish Institute for Human Rights, only relates to the proposed wording of the Act and not to whether the integration is a good idea in principle or if the basis of the protection should be extended. The statement only points out minor linguistic subtleties regarding the name, distinctness and consequence of the future board in the different sections of the wording of the Act. The Gender Equality Board states that it does not appear from the notes to the bill why the chairman and deputy chairman of the new Board have to be judges and points out that the statutory requirement as to this composition may result in a reduction of the options to ensure the best possible chairmanship.

Furthermore, the Gender Equality Board points out that it is not expedient

that a case may be reopened if new, substantial information is brought to light as efforts should be made to informing the parties that the case is closed when the decision is available. In the practice of the Gender Equality Board, it has been the responsibility of the parties to submit the relevant information prior to the decision of the case and thus the Board believes that it is inexpedient to raise the hopes of the involved parties that a case may be reopened if they present more material, but instead they suggest that cases may be reopened if the Board has made a mistake during the hearing process (Statement of the Gender Equality Board, 2007).

The difference between the two statements is big as the statement of the Gender Equality Board only focuses on the details in the wording of the Act and does not take a position on the political implications of the bill as the Danish Institute for Human Rights does. This may be due to the fact that the Gender Equality Board to a greater extent than the Complaints Committee for Ethnic Equal Treatment is attached to a Government authority as the members of the Board are appointed by the Minister for Gender Equality and its secretariat is physically located in the Department of Gender Equality – the administration of the Minister for Gender Equality. This relatively close attachment to the submitter of the bill may imply that the Board chooses to focus on the form of the bill instead of its content even though it in all other aspects acts freely in relation to the Minister.

The Danish Institute for Human Rights, on the other hand, is a more independent body (even though it is financed by the Government), which to a greater extent than the Gender Equality Board serves to create debate and spread information on equal treatment in Denmark, which is why it is also included in the mandate of the Institute to make critical statements on the policies pursued and any new bills.

Statements from NGOs

Almost all Danish NGOs[7] take a sympathetic attitude to the common equal treatment board bill. This agreement differs significantly from the reactions in the other Nordic countries where representatives of the different areas of discrimination have had very different attitudes towards the idea of an integration of the causes of discrimination. A reason for this may be that the Council for Human Rights back in 2004 took the initiative to initiate the so-called Equal Treat-

ment Committee with representatives from central interest groups within each of the six grounds of discrimination and where it was possible to discuss common issues and promote understanding across the causes of discrimination (Annual report of the DIHR, 2003).

Especially striking is the (however week) support from the Women's Council in Denmark as particularly interest groups in the gender area are traditionally critical of a integration of "their" area with others based on the idea that the gender hierarchy is the foundation of and goes across all other causes of discrimination. The Women's Council is, however, pointing out that it is decisive that a common complaints board for equal treatment will become an instrument that is able to strengthen equality between women and men and that the expertise of gender equality will be ensured in the board as well as in its secretariat. But the Women's Council is generally in sympathy with the principle of the equal right to complain for all grounds of discrimination (Statement of the Women's Council in Denmark, 2007).

Also the statements from the other "areas" are positive, but several organisations highlight the following issues:

All the reviewed statements find that the funds reserved for the board are completely inadequate. Several of them point out that it will be difficult to set up and maintain the competence within all grounds of discrimination with only two employees and refer to the higher level of funding in other countries that have initiated the same process. *Amnesty International* points out that it must be expected that the number of cases will rise significantly more than what the bill suggests as a result of the inclusion of the factors of age and disability, as the complainants from these groups often have more resources and thus must be expected to use their right to complain (Statement of Amnesty International, 2007). To sum up, many of the organisations fear that the impact of the Board may be only moderate as it will be inhibited in advance due to poor resources and limited powers.

The NGOs are also unanimous in pointing out that it would be expedient if the Board is given the mandate (and resources) to conduct extrovert, preventive information work against discrimination. Many of them also point out that if knowledge of all grounds of discrimination should be ensured, it may well prove to be a problem that only lawyers may be appointed for the board.

All reviewed statements are also critical to the fact that, according to the bill, the new Equal Treatment Board will not have the authority to raise cases on its own initiative, pointing out that this function in particular is important in order

to bring the areas into focus where discrimination is at its highest and where the complainants do not have the possibility or resources to initiate the complaints process themselves.

The statements from organisations representing groups whose equality is not protected by the legislation outside the labour market (*The Danish National Association of Gays & Lesbians (LBL), Disabled Peoples Organisations Denmark (DPOD), Islamic-Christian Study Centre*, and *The Danish Association of Senior Citizens*) unanimously point out that this is a problem. Therefore they suggest that the regulatory framework of the board should be extended to also hear cases on the basis of these areas outside the labour market. Furthermore, several organisations point out that the handling of discrimination within 'their' area requires special knowledge and that this competence should be ensured in the board as well as its secretariat.

The *Disabled Peoples Organisations Denmark (DPOD)* and the *Documentation and Advice Centre on Racial Discrimination in Denmark (DRC)* point out, as did the Danish Institute for Human Rights, that the requirement stating that complaints must be submitted in writing is unfair and actually excludes a large number of potential complainants from recovering their civil rights from being discriminated. Therefore they recommend that complaints may also be submitted over the telephone or by appearing in person.

3.7. The forthcoming development

The ambition of the quick consultation was that it would be possible to introduce the bill on the Equal Treatment Board already in February 2007. However, the process was delayed and the Ministry of Employment did not introduce the bill to the Danish Parliament until the beginning of 2008. The implementation of the Act and the establishment of the board (as well as the discontinuation of the Gender Equality Board and the Complaints Committee for Ethnic Equal Treatment) will become a reality from 1 January 2009.

The establishment of a common complaints board thus implies a paradigm shift in the Danish work against discrimination in two central points. First of all, the new establishment implies a beginning equal treatment of the different grounds of discrimination as there will not be different rights to complain depending on the cause of discrimination.

At the same time, however, the unequal regulatory framework implies a hierarchical classification of the causes of discrimination as the Act indirectly states that it is alright to discriminate against disabled people, sexual minorities, older and younger people and religious minorities outside the labour market, while this is not allowed on the basis of gender or ethnicity.

Secondly, the integration of the administration of the six causes is a new departure in the way the Danish administration used to organise anti-discrimination work as the responsibility of each of the grounds is still placed independently in different institutions and ministries – or nowhere at all. Thus the area of gender falls under the *Department of Gender Equality whereas race, ethnic origin and religion/faith falls under the* Ministry of Refugee, Immigration and Integration Affairs and disability and age is administered by the Ministry of Social Welfare. The grounds of sexual orientation does not fall under any departmental responsibility.

Conclusion

To sum up, it may be asserted that the Danish handling of complaints of discrimination will be strengthened significantly with a common complaints board as it opens up to an equal administrative right to complain for all six grounds of discrimination. Similarly, it must be expected that the options to complain on the basis of multi-dimensional discrimination will be improved as all grounds will fall under the competence of the same board and it will thus be possible to hear complaints based on several causes of discrimination at once.

This function, however, does not appear explicitly from the bill, but the necessity of being able to administer multiple discrimination is mentioned in the equal treatment directive (43/EF/2000)[8] which is the EU statutory regulation of the implementation of the equal treatment principle and is the basis of the bill. What makes this element difficult is that the regulatory framework of the different areas are different which implies that many cases about multi-dimensional discrimination may only be heard for the labour market where *all* causes of discrimination are protected.

In order to ensure an equal right to complain, the Acts on all grounds must therefore be harmonised or, alternatively, a general discrimination ban must be implemented. There are, however, no signs that any of these alternatives will be met in connection with the creation of the Equal Treatment Board.

Source material

Primary documents

· The Ministry of Employment and the Ministry of Social Welfare 2006: *Act on the Complaints Board for Equal Treatment Bill*

· The Prime Minister's Office (1999), *Report on the future gender equality work and the organisation of this*; Report no. 1370

Statements on the issue submitted for consultation

· Amnesty International, (2007): *Regarding the Act on the Complaints Board for Equal Treatment Bill*

· The Danish Disability Council & The Equal Opportunities Centre for Disabled Persons (2007): *Statements on the issue submitted for consultation*

· Danish Refugee Council (2007): *Statement. The Act on the Complaints Board for Equal Treatment Bill*

· *Disabled Peoples Organisations Denmark (DPOD), (2007): DPOP's statement on the Act on the Complaints Board for Equal Treatment Bill*

· Documentation and Advice Centre on Racial Discrimination in Denmark (DRC), (2007): *Statement from the Documentation and Advice Centre on Racial Discrimination in Denmark (DRC) regarding The Act on the Complaints Board for Equal Treatment Bill*

· ENAR-DK, (2007): *Statement on Common Complaints Board for Equal Treatment*

· Committee for Ethnic Equality, (2007): *Statement from the Committee for Ethnic Equality on the Act on the Complaints Board for Equal Treatment Bill*

· The Danish Institute for Human Rights (2007): *Note on the Act on the Complaints Board for Equal Treatment Bill,* Statement

· Islamic-Christian Study Centre (ISK), (2007): *Regarding the Act on the Complaints Board for Equal Treatment Bill*

· The Women's Council in Denmark, (2007): *The statement from the Women's Council on the Act on the Complaints Board for Equal Treatment Bill*

· PTU – Danish Society of Polio and Accident Victims, (2007): *Regarding statement on the Act on the Complaints Board for Equal Treatment*

· The Danish National Association of Gays & Lesbians (LBL), (2007): *Statement on the Act on the Complaints Board for Equal Treatment Bill*

· The Gender Equality Board, (2007): *The statement of the Gender Equality Board regarding The Act on the Complaints Board for Equal Treatment*

· Retssikkerhedsfonden, (2007): *Statement on the Act on the Complaints Board for Equal Treatment Bill*
· The Danish Association of Senior Citizens, (2007): *Regarding statement on the Act on the Complaints Board for Equal Treatment Bill*

Explanations and reports

· The Danish Institute for Human Rights: *Effective protection against discrimination – on legal and real actions*, no. 5, 2007 (IMR 2007)
· The Danish Institute for Human Rights: *Persons with disabilities in Denmark*, no. 3 2005 (IMR 2005a)
· The Danish Institute for Human Rights: *Equal Treatment. Status and future prospects*, no. 2, 2005 (IMR 2005)
· Commission for Ethnic Equality, (1997): *Report on the possibility to establish more rights to complain for ethnic minorities*
· The Prime Minister's Office (1974): *Report on the status of women in society, Report no.* 715.

Annual reports

· The Danish Institute for Human Rights (2002-2006): *Human Rights in Denmark – status for the year*, The Danish Institute for Human Rights
· The Complaints Committee for Ethnic Equal Treatment: *Annual Report 2003*, The Danish Institute for Human Rights
· The secretariat of the Gender Equality Board (2001-2006): *Annual Report of the Gender Equality Board 2001-2006*, the Department of Gender Equality
· The Equal Status Council, (1976-1999): *Annual Report of the Equal Status Council 1976-1999*

Acts and consolidation acts

· Act no. 626 of 29 September 1987 on the prohibition of differential treatment on the basis of race etc.
· The Equal Treatment Act
· Act no. 55 of 29 January 2001 on compensation for disabled employees etc.
· Act no. 775 of 29 August 2001 on equal treatment of men and women in re-

lation to the occupational social security schemes
· Act no. 396 of 6 June 2002 on the amendment of the Act on equality between women and men
· Act no. 374 of 28 May 2003 on ethnic equal treatment
· Act no. 286 of 25 April 2003 on the amendment of the Act on equality between women and men
· Act no. 1527 of 19 December 2004 on equality between women and men.
· Act no. 31 of 12 January 2005 on differential treatment in the labour market etc.
· Act no. 906 of 27 August 2006 on equal pay to men and women
· Consolidated Act no. 233 of 29 March 2004 on initiatives for the promotion of gender equality

Other literature and relevant publications

· Andersen, Agnete, Nielsen, Ruth and Precht, Kirsten, (2005): *Ligestillingslovene med kommentarer*, bind 1, Djøf, Danmark (The Gender Equality Acts with comments)
· Borchorst, Anette and Christina Fiig: Plads til forbedring: dansk ligestillingspolitik 1975 til 2000. Aalborg Universitetscenter. GEP working papers ; No. 2, 2000 (Room for improvement: Danish gender equality policies 1975-2000) 2, 2000
· Justesen, Pia (2003): *Racisme og diskrimination – Danmark og menneskerettighederne,* Akademisk forlag A/S, Danmark (Racism and discrimination – Denmark and the human rights)
· The Ministry of Employment, February 2007, *Press release regarding a new equal treatment board*
· The Equal Status Council, (1981-2000): Lige nu: nyt fra Ligestillingsrådet (Right now: News from the Equal Status Council)
· The Gender Equality Board (2004): *Fakta om Ligestillingsrådet*, pjece (Facts on the Gender Equality Board, pamphlet)
· PLS Rambøll, (2002): *Evaluering af Ligestillingsklagenævnet* (Evaluation of the Gender Equality Board)
· The Prime Minister's Office, (2006): *Regeringens lovkatalog 2006* (The Government's bill list, 2006)

Relevant websites

www.ligenaevn.dk
www.klagekomite.dk
www.menneskeret.dk
www.lige.dk

4. FINLAND

4.1. Overview of the system today

General aspects

At present, the system of monitoring discrimination in Finland is complicated. The Constitution prohibits discrimination explicitly on various grounds since 1995, and there are prohibitions of discrimination in the Penal Code stemming from the same time. Of old, labour market related legislation prohibited discrimination on several grounds. Anti-discrimination law proper currently consists of two sets of legislation, the older one on gender equality and the more recent one on equality on various other grounds besides gender, both transposing EC law. There are *two groups of monitoring bodies specialised* in discrimination on two separate grounds, gender and ethnicity, with duties based on two separate pieces of legislation. Further, employment related discrimination based on ethnicity and various other prohibited grounds of discrimination is handled by the *occupational safety and health enforcement* machinery, whereas also monitoring gender based discrimination in the labour market is the task of the monitoring bodies specialised on gender discrimination. Monitoring discrimination on other grounds than gender and ethnicity outside employment is in the hands of *non-specialised authorities*, such as the Parliamentary Ombudsman of Finland and the Chancellor of Justice, and as to discrimination as a criminal offence, in the hands of the police. Although discrimination is banned on several grounds under different legal provisions, and the lists of prohibited grounds are often open-ended, there is no reference to multidimensional discrimination as such.

Åland Islands as an autonomous province has exclusive legislative competence over certain issues covered by anti-discrimination law, such as in matters relating to civil and municipal public servants in the Islands, health care, social welfare, education and certain services, whereas the Finnish state has competence over private employment and certain services, as well as criminal and procedural law. The Åland Islands have their own equality legislation, which is mostly equi-

valent to the Finnish law. The situation in the Åland Islands is not further discussed here.[10]

With the latest pieces of anti-discrimination law passed by the Finnish Parliament, the Parliament required that anti-discrimination law was to be unified so as to cover all prohibited grounds of discrimination in a similar manner. A committee was set by the Ministry of Justice under Prime Minister Matti Vanhanen's first Government to review the legislation, and the work continues under Matti Vanhanen's second Government. With the reorganisation of ministries that is underway under Vanhanen II Government, the existing institutions are also reorganised so that the institutions formerly under the Ministry of Labour are now to be transferred under the Ministry of Interior. It is yet unclear how this change is going to influence the unification project. Multidimensional discrimination is one, but only one aspect of the review of anti-discrimination law.

A terminological complication should also be mentioned. *Tasa-arvo* and *yhdenvertaisuus* both denote equality in Finnish. Tasa-arvo is used more in the context of *de facto* equality, or equality as a societal and political aim, but it was also the word chosen for the Act on Equality between Women and Men (or *Jämställdhetslagen* in Swedish). Yhdenvertaisuus has been of old used for the principle of equality in the Constitution, denoting (formal) equality before the law. Non-Discrimination Act or *yhdenvertaisuuslaki (or jämlikhetslagen* in Swedish) could thus be translated into English also as Act on Equality, but in order to avoid confusion, the translation Non-Discrimination Act is normally used. The Swedish versions of national legislation use jämställdhet/jämlikhet, which recalls Scandinavian usage, but the Finnish terms have a different connotation: whereas jämlikhet in Sweden is typically used of social equality, such as equality between classes and jämställdhet does not carry such a connotation, the Finnish connotations of the words being almost the opposite.

Institutions and their organisation

Gender equality and discrimination on the basis of sex

Compliance with the Act on Equality between Women and Men is supervised by the Ombusdman for Equality (tasa-arvovaltuutettu, jämställdhetsombudsman) and the Equality Board (tasa-arvolautakunta, jämställdhetsnämnd). These bodies were set up with an act simultaneously with the Act on Equality. The All bo-

dies involved with gender equality policies and gender discrimination are currently under the Ministry of Social Welfare and Health.

The Equality Ombudsman directs discrimination on other grounds than gender to other authorities, and there are few indications about intersectional discrimination or multiple discrimination being considered by the Office. Discrimination on the ground of sexual orientation does not lie in the field of tasks of the Equality Ombudsman. The European Court of Justice, however, has considered that the Equality directive must be extended to discrimination arising from gender assignment (P v S and Cornwall County Council, Case C-13/94). Before the Non-Discrimination Act came into force, there were some attempts to draw discrimination on the basis of sexual orientation under Act on Equality, but the Equality Ombudsman considered that she had no competence to get involved with discrimination on the basis of sexual orientation (Equality Ombudsman, opinion 13.6.2001, Dnro 45/59/00). When it comes to transsexuals, the issue was little discussed at the amendments of Act on Equality, but it should be clear in the light of the ECJ precedent that discrimination on the basis of gender assignment is to be considered as gender discrimination. Discrimination of transvestites remains uncertain in this respect. – The personnel of the Equality Ombudsman's Office is ca 10 persons.

The *Equality Board* consists of a chair and four other members, who are experts on labour and anti-discrimination law, or represent labour market organisations (or as the Act on Equality Ombudsman and Equality Board puts it, expertise on equality and working life must be represented in the Board). Women's or men's organisations have no right to been represented in the Board, although the Act on Equality has a general scope covering most areas of life, and the Board can prohibit continuation of a discriminative measure even outside employment related issues and set a conditional fine (uhkasakko, vite) to enforce its decisions. Cases can be referred to the Board by the Equality Ombudsman or by the labour market central organisations. The Board has not been very actively depended upon, as there have only been a maximum of a few cases per year, and for longer periods, none.

The *Gender Equality Unit* of the Ministry of Social Affairs and Health prepares the government's gender equality policy. In addition, the Unit co-ordinates international issues related to the European Union, the United Nations, the Council of Europe, and the Nordic Council of Ministers.

The *Council for Gender Equality* is a permanent policy body, established in

1972, with advisory or consultative status. The Council has been an actor in the gender equality politics over several issues, such as promoting women's studies and bringing violence against women to the agenda. The members of the Board represent political parties. At the present the Council has two divisions, one for research and development and another for men and media. The latter division, which was established in 1988, has concentrated on masculinity, fatherhood etc., but also to some extent on sexuality. At present, it has a member who represents Advisory Board for Ethnic Relations. Altogether, multidimensional discrimination has not been a prominent theme in the Council for Gender Equality.

Ethnic equality and discrimination on the basis of ethnicity

Discrimination on the basis of ethnic origin in other circumstances than employment is monitored by the Ombudsman for Minorities and the Discrimination Board. At the moment, these units are under the Ministry of Labour, but are to be transferred, together with units dealing with immigration, to a new ministry mainly consisting of the Ministry of Interior.

The *Ombudsman for Minorities*, besides monitoring the Non-Discrimination Act, promotes good ethnic relations in the society, enhances the position and rights of foreigners and ethnic minorities, reports on the equality of ethnic groups and takes initiative to remove discrimination, informs on discrimination based on ethnic origin, and tasks related to the Aliens Act (301/2004). These tasks were formerly assigned to the Ombudsman for Foreigners, but were made a part of the tasks of the Ombudsman for Minorities, when the latter authority was established in 2001. The Minority Ombudsman shall be notified on decisions on residence permit in cases involving international or temporary protection, refusing an alien entry to Finland, deporting an alien, or placing an alien in detention and the Ombudsman is to be given an opportunity to be heard in individual matters concerning asylum application or deportation.

The competence of the Ombudsman in monitoring the Non-discrimination Act is limited to ethnic discrimination, and even then only on issues outside the working life. The tasks of the Ombudsman are mainly consultative, and his/her powers are mainly limited to taking initiative and giving recommendations and advice. A matter concerning ethnic discrimination can be made pending through the Ombudsman, who can transfer the matter to competent authorities, and when doing so, may add his/her opinion on the matter. In this respect, the Ombudsman acts as a sort of a clearing house for discrimination matters, even when

they do not fall under his/her competence as such. In this sense, the tasks of the Ombudsman for Minorities are more general than those of the Equality Ombudsman, and can more easily encompass cases of multidimensional discrimination.

The Ombudsman can also assist a victim of ethnic discrimination or find legal aid for the person, in case the matter has significance for preventing discrimination. The Ombudsman also has right to receive information from other authorities regardless of secrecy legislation, and also information from other actors.

The resources of the Ombudsman for Minorities are limited. In 2002, the Office of the Ombudsman consisted of the Ombudsman, two officials and a secretary. The personnel increased to Ombudsman, five senior officers, a planning officer and a secretary in 2006. During the years that the Office has been in operation, an increasing share of contacts has consisted of ethnic discrimination, which made almost half of the 645 cases that the Office handled in 2006. Intervention into discrimination against the Roma in housing and services has been targeted. The Ombudsman has also supported the other authorities, the occupational safety and health inspectorates, the police and the immigrant advisory services involved in dealing with ethnic discrimination. Issues in the area of the Aliens Act, such as residence permits, asylum seekers, citizenship related matters, refusal of entry and deportation still take ca one fourth of the volume of work of the office.

The *Discrimination Board* (syrjintälautakunta, diskrimineringsnämnden)[11] has tasks in connection of ethnic discrimination. The Board can confirm a conciliation between the parties of ethnic discrimination and prohibit a measure that is discriminatory under Sections 6 and 8 of the Non-Discrimination Act, but only when the matter does not concern employment. The Board can impose a conditional fine to enforce a prohibition. A matter concerning ethnic discrimination can be brought to the Board by the victim or by the Ombudsman for Minorities. The Discrimination Board has been relatively active during the first years of its existence: in 2004-2006 the Board handled ca 100 cases. The cases have mainly concerned discrimination in public sector services: housing, social welfare, education and restaurants. (Katsaus syrjintälautakunnan toimintaan, 5). The Discrimination Board had by September 2007 prohibited ethnic discrimination in eight cases. One of the cases, concerning segregation of students in a Helsinki school so that all immigrant children were gathered to one class, was taken to the Administrative Court by the city of Helsinki. The Administrative

Court found that such segregation was discrimination, and not a positive measure undertaken in order that the linguistic skills of the immigrant children could be more easily be seen to (Syrjintälautakunnan tiedotteet 3/2007).

The Board consists of a chairperson, six members and a secretary, all nominated by the Government; the chairperson, three members and the secretary shall have competence required of a judge. The members and the secretary can be non-nationals. In practice, the members of the Board are experts and representatives of non-governmental organisations, but (as a contrast to those of the Equality Board) not labour market organisations.

The Advisory Board for Ethnic Relations (ETNO) was established in 2005 for promoting 'an equal and diverse society developed in interaction with various stakeholders'. Non-governmental organisations that represent various ethnic groups and authorities are such stakeholders. The Board arranges training, gives statements and files initiatives and proposals. Together with Regional Boards for Ethnic Relations the Board arranges a yearly forum on integrating national and regional activities for immigration policy and ethnic equality (Site of the Advisory Board for Ethnic Relations).

Other prohibited grounds of discrimination; work-related ethnic discrimination

The Non-Discrimination Act applies, besides employment, to the conditions of occupation and industry, matters of occupational support, education, membership in a labour market organisation, social and health services, social benefits, military service and housing. In both public and private employment, as well as in related activity, all prohibited grounds discrimination under the Non-discrimination Act: age, national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation and 'other personal characteristics', as well as ethnic discrimination in this respect, are supervised by *occupational safety and health authorities*. The occupational safety authorities rely on local networks of inspectors, which the Ombudsmen do not have. The powers of the occupational safety authorities are mainly consultative, but they can impose conditional fines and report cases to public prosecution. Due to having a number of prohibited grounds of discrimination to keep in mind, it should be natural to take into account situations of multidimensional discrimination. However, the main tasks of these authorities are safety issues, and the expertise that they have in anti-discrimination is not cumulative. There is no indication of the occupational safety officials targeting on multidimensional discrimination. There have been

criminal law cases on discrimination that have originated from the occupational safety authorities.

The Chancellor of Justice and the Parliamentary Ombudsman monitor compliance of laws, and also anti-discrimination law is supervised by them.

4.2. Legislation

The most important piece of legislation on discrimination is the prohibition in the Constitution. Before the amendment of the provisions on fundamental rights of 1995, the only provision on equality in the Constitution read 'Every Finnish citizen is equal (yhdenvertainen) before the law'. In its present wording, Section 6 (1) of the Constitution reads 'Everyone is equal before the law.' Section 6 (2) prohibits discrimination: 'No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.'

It is clear from the wording that both subsections protect everyone, not Finnish citizens only. The list of prohibited grounds of discrimination is non-exhaustive, so that even other grounds than the ones explicitly listed are protected. This applies, among others, to sexual orientation. The provision is thus broad in its scope. On the other hand, the provision does not make a distinction between direct and indirect discrimination, and it allows justification on the basis of 'acceptable reason' even of direct discrimination. The explicit Finnish anti-discrimination law makes that distinction, and does not allow justification of direct discrimination – and could not do so, in order to be sufficient to transpose EC anti-discrimination law. The prohibition of discrimination under Section 6 of the Constitution is often invoked in legal practice.

Section 6 (4) contains a provision on promotion of gender equality: 'Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act'.

The Constitution also contains a provision on the rights of the Saami as an indigenous people, and Roma and other groups to maintain and develop their language and culture under Section 17. Under Section 22, public authorities are to guarantee fundamental rights and human rights, which required that all au-

thorities must not only comply with the prohibition themselves but also for example that violators are brought to justice.

The Act on Equality between Women and Men, complemented with the Act on Equality Ombudsman and Equality Board is the Act referred to by the Constitution. The Act prohibits discrimination on the ground of gender. In its amended form, the Act defines discrimination in a manner that is in line with EC law, Section 7 of the Act. The definition thus distinguishes between direct and indirect discrimination, and only allows justification of indirect discrimination; harassment is prohibited as discrimination. The material scope of the Act is wide, so that very few matters (mainly private life and religious activity of the religious communities) lie outside it.

Anyone who suspects that s/he has been a victim of discrimination under the Act on Equality may request guidance and advice from the Equality Ombudsman, Section 19, Subsection 1. The Equality Ombudsman monitors the law on his/her own initiative, and gives advice to victims of discrimination. When s/he finds non-compliance, the Ombudsman 'shall provide guidance and advice', Section 19, Subsection 2. S/he can also take a case to the Equality Board; the labour market organisations also have this right, Section 20. The Board can prohibit the continuation of a violation under conditional fine, Section 21.

The remedy available to the victim of gender discrimination is compensation under the Act on Equality, under Section 11, and possibly also under other laws, mainly under Compensation Act and Employment Contract Act; all compensation claims must be taken to court. The compensation under Act on Equality only covers discrimination in working life (Section 8), retaliation by the employer against an employee who has invoked the Act (Section 8 a), discrimination at an educational institution (Section 8 b), discrimination in a labour market organisation (Section 8 c) and harassment at a working place (Section 8 d). In some cases a more substantial remedy is available. Provided that proven discrimination invalidates a decision by a public body, the victim may be installed in an office s/he has sought but been prevented from obtaining through discrimination. Many victims seek help from the Equality Ombudsman; in principle, the Ombudsman has the right to give legal aid to a victim in a court.

In practice, however, the Ombudsman has never represented a victim in a court. Instead, the Ombudsman gives an opinion on the merits of the case. Usually, the Ombudsman asks an explanation from the party that is suspected of having discriminated against the person who has contacted the Ombudsman. The

Ombudsman has the right to 'receive from any person information needed in order to supervise compliance with (the Act on Equality) and to demand that any document in the person's possession be submitted, unless the person has a legal right or obligation to refuse to give evidence or to present a document', Section 17 Subsection 2, but does not have the right to hear witnesses. On the information received, the Ombudsman gives an opinion on whether there are grounds to suspect discrimination. The facts can then be questioned in court, and the material outcome of a case is by no means certain on the basis of the opinion given by the Equality Ombudsman.

The Non-Discrimination Act prohibits discrimination on the basis of ethnic origin, age, national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation and 'other personal characteristics'. Thus, the list of prohibited grounds of discrimination is non-exhaustive. Discrimination is defined in a manner that replicates the definition used in the directives, and thus makes a distinction between direct and indirect discrimination. The scope of the Act is wide, it covers both public and private acts related to employment and self-employment, education, membership in labour unions, and on the basis of ethnic origin, in matters related to social and welfare services, welfare benefits, military service, housing and services besides those rendered between private persons, Section 2.

A victim of discrimination on the basis of age, ethnic or national origin, citizenship, religion, belief, opinion, health, disability or sexual orientation is entitled to compensation by the discriminator: an employer or the provider of the services, education or property. Here, as in compensation cases in general under Finnish law, the compensation can be reduced by taking into consideration the circumstances of the deed, of the discriminator, possible reconciliation and compensation imposed under other legislation for the same act of infringement. If reasonable, compensation is not mandatory. On the other hand, the compensation limit set under Section 9 of the Act may be exceeded, if justified by the circumstances of the case. Courts may change or ignore contractual terms that are contrary to the prohibition of discrimination, under Section 10.

The Ombudsman for Minorities and the Discrimination Board were set up by the Act on Ombudsman for Minorities and Discrimination Board. These authorities only monitor compliance under the Non-Discrimination Act in matters related to ethnic discrimination not related to working life. Occupational safety officials monitor compliance on all prohibited grounds of discrimination in wor-

king life. The provisions on the powers and duties of occupational safety and health authorities and inspectors are under the Act on Occupational Safety and Health and on Act on Enforcement and Cooperation on Occupational Safety and Health at Workplaces. The occupational safety authorities that monitor the Non-Discrimination law in working life do not have a responsibility of advice victims of discrimination, nor are they involved with monitoring gender discrimination in working life. Otherwise, the monitoring is in the hands of the authorities that monitor legality in general, mainly Parliamentary Ombudsman and Chancellor of Justice. The victims of discrimination on other grounds than gender and ethnicity outside working life must find advice and assistance from other instances than those specialised in discrimination matters.

Discrimination is further prohibited in a number of specific acts, such as the Employment Contracts Act, Chapter 2, Section 2, which refers to the Non-discrimination Act, the Civil Servant Act, Chapter 2, Section 11, the Civil Servant Act in Municipalities, Chapter 3, Section 12 and the Seaman's Act Chapter 2, Section 15 a . These provisions prohibit discrimination on various (and varying) grounds. Further, there are provisions in the Penal Code on prohibited discrimination. Penal Code, Chapter 11 Section 9 sanctions discrimination by a person in a trade or profession, public service or office, or public amusement or meeting arranger who refuses service or puts someone in an 'essentially inferior position' owing to his/her race, national or ethnic origin, colour, language, sex, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance', and Penal Code Chapter 47, Section 3 sanctions work on the basis of a long open-ended list of grounds.

Prohibitions of discrimination are thus dispersed to many pieces of legislation. The lists of prohibited grounds vary, as well as the possibility of obtaining advice and assistance. The provisions in labour related acts or the Penal Code do not define discrimination, and the procedural rules under the Penal Code do not allow the rule on burden of proof under anti-discrimination law proper, which is more favourable to the victim than in ordinary cases. While the non-exhaustive or long lists of prohibited grounds of discrimination might invite a victim of multiple simultaneous causes of discrimination to claim discrimination on several grounds, there is little evidence of that happening.

4.3. Recent developments

Antecedents

In order to understand the later development, it is useful to touch on the history of anti-discrimination law in Finland. Rather consistently, the motivation for legislation has been an international obligation that has required legislative measures. The first explicit prohibition of discrimination was Section 17 Subsection 3 of the old Employment Contract Act of 1970, which was motivated by ratification of the ILO Convention 111. The provision required that an employer treats employees equally without differentiation on the grounds of birth, religion, sex, age, political and labour union activity or any other comparable ground. The provision only prohibited discrimination in employment, not connected to access to employment. The labour market organisations were the important actors in the preparation of the provision.

The Act on Equality between Women and Men was passed in 1986 mainly in order that Finland could ratify the UN CEDAW Convention. Existing Nordic legislation influenced political discussions, and it was felt that 'it was a must to live on a par with other Nordic states' (af Schultén 2007). The drafting of the Act was done by the then Consumer Ombudsman Gerhard af Schultén, together with an administrative lawyer Ulla Lång in connection with the Council of Equality. af Schultén assumes that there were so many controversies around the matter that Prime Minister Kalevi Sorsa wanted to give the preparatory work to someone outside the ordinary law preparation machinery. After the first draft was made, the preparatory work was continued by a group of officials. The proposal was given in 1985. According to af Schultén, the proposal was very controversial, and issues of the public sector were stressed in the Act, because it was easier to receive information from the public than from the private sector (af Schultén 2007, 10-11).

The 'social partners', i.e. employers and employees unions were kept outside the first stages of drafting equality legislation. The employees' unions supported the Act, but the employers' unions were critical. The employers' organisations demanded right to participate in preparatory work, and justified the demand by referring to the ILO principle that the 'social partners' were to be heard in all law preparation involving working life. Later, it became the leading principle that all such legislation was to be prepared in tripartite cooperation. From the beginning, the Act stressed proactive measures rather than non-discrimination (Palanko-Laaka 2007, 62-63).

The Act on Equality between Women and Men has been amended several times. Many important amendments have taken place after the EEA Agreement and EC/EU membership has brought new obligations for Finland. For example, Act was amended after the Supreme Court had decided in 1992 that a dismissal on the ground of pregnancy was a violation of the Employment Contract Act, but not of the Act on Equality, because the dismissal did not take place immediately on the ground of sex (KKO: 1992:7). The decision was criticized heavily in public, and the Government soon proposed amendment. The legislative zeal was probably enhanced by the fact that the European Court of Justice had already decided by that time that discrimination on the basis of pregnancy is sex discrimination (Case C-177/88 Dekker), and as Finland had signed the EEA Agreement in 1992, the obligations of EC law were already well in sight. On the other hand, there has been political pressure for enhancing gender equality through legislation.

Such was the case of quota provisions in the Act on Equality. Originally, there was a quota provision that required that government committees, advisory boards and other corresponding bodies, as well as municipal bodies excluding municipal councils must have both men and women. Often, the provision was interpreted to mean that one women or man was sufficient to fulfil the requirement of the law. The Act was amended in 1995 so that a quota rule of 40 percent of both women and men was introduced. The discussion on quotas was heated. In the parliament discussions, the quotas were promoted by referring to the utility of the rule in drawing in all national resources to decision-making (Raevaara 2005), rather than by justifying the amendment by equal participation as a value in itself. The latest amendment in 2005 also involved both provisions that were necessary in order to implement the Directive 2002/73/EC, and provisions motivated by the politically pressing issue of mitigating the pay differentials between men and women. The new obligation in equality planning that was introduced requires a 'mapping' of the pay system used by the employer. The Swedish legislation was an inspiration and partly model for this amendment. Up till today, the Act on Equality is an exception in Finnish law in the sense that labour market related issues under the Act are supervised by the Equality Ombudsman, rather than a body related to the labour market. Even so, the members of the Equality Board have affiliation to the 'social partners', not to organisations involved in gender equality.

An Ombudsman for Foreigners was established in 1991 (446/1991) to mo-

nitor the position of foreigners and promote the cooperation between foreigners, authorities and organisations. If the Ombudsman for Foreigners noticed discrimination, s/he was to use consultative measures of prevention. The plan was to widen the tasks of the Ombudsman for Foreigners to cover ethnic discrimination.

Transposition of directives 2000/43/EC and 2000/78/EC

The preparatory work for anti-discrimination law prohibiting several grounds of discrimination was started in 1999 at the Ministry of Labour. Two working groups were set up. The one for ethnic equality consisted of the Ombudsmen for Equality and Minorities, representatives of the 'social partners', representatives from ministries and two non-governmental organisations. The preparatory work was motivated by the fact that EU law was to be expected (the relevant decisions for the directives based on Art 13 EC were made at Tampere, Finland in 1999). The two directives implementing Article 13 EC, the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC had to be transposed. The Ministry of Labour set a one-man committee to prepare a proposal on turning the Ombudsman for Foreigners into Ombudsman for discrimination. The Parliamentary Ombudsman, Chancellor of Justice and various ministries were consulted, as wee as minority and human rights organisations. The employers' organisation was not enthusiastic with the outcome, but did not oppose the proposal provided that discrimination in working life would continue to be monitored by occupational safety authorities. The labour unions were positive about the reform.

The Bill that led to the establishment of the Ombudsman for Minorities (39/2001 vp.) and estimated that the number of foreign citizens at that point was 90 000, representing 160 nationalities, and the number of 'old' minorities (Romani, Tartars, Jewish, Saami, 'old' Russians) ca 50 000. It was also noted that the attitudes towards immigrants and foreigners are negative; the Ministry of Labour had undertaken several studies in the 1990s. Attitudes of Finnish authorities had been studied at the University of Joensuu in 1999, and the most negative ones were found to be held by the border guards and the police, the most positive ones by the social workers and Swedish speaking teachers. Immigrants' experiences were studied in Helsinki, and majority of the immigrants had negative experiences.

The Bill also referred to the fact that several grounds of discrimination can

coincide. 'Although there can be several grounds of discrimination in the same case, and although there might be reason to include religion or sexual orientation into the competence of the Ombudsman', the Bill proposed a 'progress by degrees' so that ethnic discrimination would be the first ground that would be included in the competence of the Ombudsman, mainly due to economic reasons. The situation was to be reviewed after the implementation assessment of the EU began.

The Bill presumed that the Ombudsman and other authorities would cooperate. The Ombudsman should always be an authority to whom discrimination cases could be brought and then the Ombudsman should refer them further, for example to the police, the occupational safety authorities or the Equality Ombudsman. In unclear cases, if the different ground of discrimination could no be separated, the authorities should negotiate who is responsible for the case.

It was considered important that the Ombudsman for Minorities could have contact with non-governmental organisations. The Ombudsman for Minorities, occupational health authorities and the Equality Ombudsman, other authorities and various organisations should cooperate. A council should be established for the purpose; the Advisory Board for Ethnic Relations was the outcome of this proposal.

The position of the Ombudsman was to be independent, but his/her office was to be placed within a bigger unit of administration. Specific ombudsmen had not been put in connection with the Parliament ombudsman, but in connection to the branch of administration dealing with the issues in question. Because prevention of racism and promotion of good ethnic relations had been put under the Ministry of Labour in the Government regulation 1522/1995), the new Ombudsman was to be established under the Ministry of Labour. The Bill (HE 39/2001) was remitted to the Parliament's Administration Committee, which was in favour of the Bill, but considered the proposed name of the Ombudsman gave a 'negative view of the Ombudsman and his/her tasks', and proposed the name Minority Ombudsman (Submission by the Administration Committee 8/2001 vp). The Parliament passed the law on Minority Ombudsman in 2001.

By establishing a Minority Ombudsman, the legislator had not dealt with the need to expand the prohibitions on discrimination with adequate backing of sanctions and remedies. The first phase of preparatory work was done in the Ministry of labour in cooperation with labour market organisations. The Government Bill for an anti-discrimination law HE 269/2002 vp. fell through due to

the lack of time in February 2003, and a new Bill was presented to the Parliament by the new Government in September 2003 (HE 44/2003 vp.). The Government proposed a single act to implement both directives. Because there was but little time left for transposition, it was preferable to proceed by giving a provisory piece of legislation, and later take advantage of the experience gained from the new Act, and proceed to further amendments.

The Parliament remitted the Bill to the Employment and Equality Committee, which asked the Constitutional Law Committee's opinion on the Bill. The Constitutional Committee pointed out that the proposed Act touched upon many fundamental legal issues, and that the starting point of the Act could lead to significant problems of application. The Committee assumed that the Finnish legal culture would have been better served either with a law that does not create dissimilar rights to different persons and groups, or a continuation of the tradition of including equal treatment provisions systematically into pieces of legislation in respective fields of activity, as had been done till then. The aim of the legislation should be, according to the Constitutional Law Committee, that various grounds of discrimination carry equal remedies and sanctions. The Committee made several remarks on various provisions of the proposed Act. Significantly, the Committee criticized the proposed prohibition of discrimination – which was based on the model of the directives to be implemented – for differing from the prohibition of discrimination under Section 6 (2) of the Finnish Constitution. As noted before, the constitution approves of justifications even in case of direct discrimination, which the proposed Act (or the directives on which the definition of discrimination was based) does not allow. The Committee did not discuss the fact that EC law has consistently held that direct discrimination cannot be justified even by reasons that in themselves are acceptable. The Committee noted that the sanctions did not cover grounds of prohibited discrimination that fall outside the directives, but are mentioned in the Constitution.

The Employment and Equality Committee agreed with the Constitutional Law Committee about the problems in the structure of the Act, and stated that the Act would only be acceptable as a first step towards a more comprehensive and unitary anti-discrimination law. The Committee assumed that, due to its structure, the Act might prove ambiguous and difficult to apply, and the Government was required to amend it later so that the law would be based on the Finnish system of fundamental law and bring all prohibited grounds of discrimination under similar remedies and sanctions. The Committee also saw it to be pro-

blematic that the Non-Discrimination Act and Act on Equality were discussed separately, because unity of legislation was now lost.

Here the Committee also referred to the need to have unified legislation in order to deal with multiple or intersectional discrimination (moniperusteinen syrjintä). The Committee also considered that the resources aimed at monitoring discrimination were insufficient. The occupational safety authorities were to have no new resources, even though their tasks were increased. The occupational safety authorities had estimated that a new official would be needed at the three biggest local authorities. While the Employment and Equality Committee agreed with the Constitutional Law Committee about the problems in connection to different formulations of the prohibition of discrimination in various pieces of legislation, the Committee did not agree with the need to allow justification of direct discrimination in order to follow the definition of discrimination in the Constitution. The Committee proposed several changes (TyVM 7/2003 vp).

The Parliament accepted the Bill in a slightly changed form, but also made statements, according to which the Government should prepare a Bill for equality legislation, which would be based on the Finnish system of fundamental rights and an equal treatment of all grounds of discrimination, with similar remedies and sanctions, and also that the Government should provide more resources to the occupational safety authorities. The Non-discrimination Act (21/2004) came into force 1.2.2004. It did not replace the former set of prohibitions of discrimination.

In recent years, international human rights bodies have pointed out problems in the Finnish anti-discrimination law. The position of two 'old' minorities, the Sámi and the Roma, has been given specific attention, due to the fact that the level of protection of these groups in international law has developed. The Sámi is recognised as an indigenous people, a fact that gives the group specific rights. Racism and xenophobia in Finland has also been often referred to by human rights bodies. The need for a human rights institute has also been publicly discussed. The CEDAW committee has also paid attention to multiple grounds of discrimination in Finland in case of minority women.

The most recent development

The Ministry of Justice of Matti Vanhanen's first Government nominated a committee to amend Finnish equality law in January 2007. The aim was a reform

that would be in line with the scope of Section 6 of the Constitution, as well as cover all grounds of discrimination more clearly than the law does at the present. The aim was also to provide different discriminatory situations with similar remedies and sanctions. The committee is chaired by a member of the law preparation body of the Ministry of Justice. Other members represent Ministries of Foreign Affairs, Labour and Social Affairs and Health, and there are two expert members. The Committee was to take into account the specific features of the Act on Equality and Non-Discrimination Act, however. The aim is not to 'level down' the protection against discrimination given under these acts, or the obligation to promote equality that they set to various actors. (Asettamispäätös 21.1.2007).

The Committee was given a free hand as to whether to propose legislation that would be disintegrated in the fields of activity, or whether to propose a unified, single act that would cover all grounds and situations. Also, the Committee was to consider whether the supervision of fundamental and human rights should be taken as a part of the reform. The Committee decided to clarify the main lines of the reform by January 2008 in its interim report.[12a] In November 2007, a seminar on the reform was held, with representations from the Committee, Norwegian and Swedish authorities, as well as a panel representing experts, authorities and non-governmental organisations.

In a paper prepared by the Committee for the hearing of experts, problems deriving from the present state of legislation are listed. Anti-discrimination law is at present incoherent both conceptually, as to its scope and as to remedies, and availability of expert help. Positive obligations for promoting equality are different depending on the ground of discrimination, and equality planning is confined to gender and ethnic equality. Supervision is divided between many authorities, and the enforcement of the legislation is mainly concentrated on the national level. The Committee sums the situation up: 'Due to its inconsistency, the equality law can be characterised as a many-layered and difficult whole, which is not easily accessible to the non-expert' (Yhdenvertaisuuslainsäädännön uudistaminen, 8). The Committee also refers to international developments, especially to a recommendation by a committee in Sweden for unification of legislation and institutions, the unification of the Norwegian organisation, and the preparatory work going on in Denmark, as well as the unified system of the UK. The example of the British authority is mentioned for the fact that, besides discrimination, its competence covers human rights issues more in general.

The main alternatives that the Committee puts on the table are either to draft a single law that would cover all grounds of discrimination, or to continue to legislate separately for different grounds. The Committee lists reasons for and against preserving separate laws for different discrimination grounds. The grounds are different by nature, and to collect all grounds under a single law would marginalise some of them; a law that would cover all grounds would necessarily be complicated. On the other hand, a unified piece of legislation could help people to conceive discrimination as a problem, be more uniform and clear, and help to create a more comprehensive view on discrimination: it would allow for taking multidimensional discrimination more easily into account (Yhdenvertaisuuslainsäädännön uudistaminen, 12-14).

Whether the tasks connected to equality law should be divided between several authorities, or a new authority established to cover the various authorities that exist now is discussed, and three alternative given: 1) the present system is maintained in an amended form, 2) a unified discrimination and equality ombudsman is established, with a connection to one of the Ministries, or 3) a unified discrimination and equality ombudsman is established, with a connection to the Parliament (Yhdenvertaisuuslainsäädännön uudistaminen, 16).

4.4. Main actors and arguments in the development and debate

The public discussion on equality and anti-discrimination law has not been very active in Finland. Rather, the motivations behind the reforms and amendments of law have been related to international legal developments, which have set pressure to Finnish politicians and authorities. National proponents of gender and ethnic equality and various minority groups have been able to profit from this pressure, without which their political influence would be smaller. Upholding international reputation is an important motivating factor behind Finnish equality law.

In recent years, the need for better protection against ethnic discrimination has made itself felt not only as an issue to be dealt with in order to save international reputation, but also because of reasons related to a need of increasing immigration. As noted earlier, the present Government's Programme promises to promote labour-related immigration. It is the aim of the present Government to

'pursue an active, comprehensive and consistent policy with due regard to the need for labour, the often diverse background of the immigrants as well as Finland's international obligations….' (The Government's Programme, under 4.1) This aim makes better integration policies and also for more efficient anti-discrimination measures a priority.

From the start, the Finnish anti-discrimination law has developed in a context where the 'social partners' have been gatekeepers rather than a motivating force for anti-discrimination law. Generally speaking, preparatory work for anti-discrimination law has been done through tri-partite cooperation of the labour market organisations and the relevant authorities. The enforcement of anti-discrimination law has therefore been channelled to bodies where the 'social partners' are represented. In this respect, the committee set up by the Ministry of Justice represents a new opening. The committee takes its agenda from the Parliament, which required a more comprehensive reform and unification of equality law. Further, the committee seems to take it for granted that the reform should enhance the human rights and fundamental rights dimension of equality law, which sidetracks the 'social partners' from the preparatory work.

In the Finish setting, the issue of multidimensional discrimination has remained overshadowed by the agenda for enhancing protection against ethnic discrimination, as well as by what the Parliament considered as unwelcome disparity between the constitutional provision on discrimination and the recent legislative measures. There has been exceedingly little discussion on the problems that rise when several grounds of discrimination apply simultaneously. It could be said that multidimensional discrimination is a corollary rather than main argument in the recent discussion in the sense that meeting multidimensional discrimination better than today is used as an argument for unification of the authorities and legislation, rather than as an independent aim.

References

- Compensation Act: Vahingonkorvauslaki 412/1974, Skadeståndslag 412/1974
- Seamen's Act: Merimieslaki 423/1978, Sjömannalagen 423/1978
- Act on Equality between Women and Men : Laki naisten ja miesten tasa-arvosta 609/86, Lag om jämställdhet mellan kvinnor och män 609/86
- Church Act: Kirkkolaki 1054/1993, Kyrkolagen 1054/1993
- Act on State Officials: Valtion virkamieslaki 750/1994, Statsämbetsmannalag 750/1994
- Act on Equality Ombudsman and Equality Board: Laki tasa-arvovaltuutetusta ja tasaarvolauta kunnasta 610/1986, Lag om jämställdhetsombudsmannen och jämställdhetsnämnden 610/1986.
- The Constitution of Finland: Suomen perustuslaki 731/1999, Finlands constitution 731/1999
- Posted Workers Act: Laki lähetetyistä työntekijöistä 1146/1999, Lag om utstationerade arbetstagare 1146/1999
- Act on Ombudsman on Minorities and Discrimination Board: Laki vähemmistövaltuutetusta ja syrjintälautakunnasta 660/2001, Lag om minoritetsombudsmannen och diskrimineringsnämnden 660/2001
- Employment Contracts Act: Työsopimuslaki 55/2001, Arbetsavtalslag 55/2001
- Act on Occupational Safety: Työturvallisuuslaki 738/2002, Arbetarskyddslag 738/2002
- Act on Municipal Officials: Laki kunnallisista viranhaltijoista 304/2003, Lag om kommunala tjänsteinnehavare 304/2003
- Non-Discrimination Act: Yhdenvertaisuuslaki 21/2004, Lag om likabehandling 21/2004
- Aliens Act: Ulkomaalaislaki 301/2004, Utlänningslag 301/2004
- Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces: Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta 701/2006, Lag om tillsynen
  över arbetarskyddet och om arbetarskyddssamarbete på arbetsplatsen 701/2006
- Directive 2000/43/EC: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Diective 2000/78/EC: Council Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

· Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
· HE 39/2001 vp: Hallituksen esitys Eduskunnalle syrjintäasiain valtuutettua koskevaksi lainsäädännöksi /Regeringens proposition till riksdagen med förslag till lagstiftning om diskriminerginsombudsmannen RP 39/2001 rd.
· HE 44/2003 vp. Hallituksen esitys laiksi yhdenvertaisuuden turvaamisesta sekä eräiden siihen liittyvien lakien muuttamisesta/ RP 44/2003 rd. Regeringens proposition till Riksdagen med förslag till lag om tryggande av jämlikhet samt ändring av vissa lagar som har samband med den
· Perustuslakivaliokunnan lausunto 10/2003 10/2003 vp./ Grundlagsutskottets utåtande 10/2003 rd
· HE 90/2007 vp. Hallituksen esitys Eduskunnalle eräiden tehtävien siirtämistä sisäasiainministeriöön koskevaksi lainsäädännöksi Työelämä- ja tasa-arvovaliokunnan mietintö 7/2003 vp./Arbetslivs- och jämställdhetsutskottets betänkande 7/2003 rd.
· Eduskunnan vastaus 95/2003 vp/ Riksdagens svar 95/2003 rd.
· Asettamispäätös 25.1.2007, Ministry of Justice, OM 12/42/2006, OM 004.00/2007
· Yhdenvertaisuuslainsäädännön uudistaminen. Tarve, tavoitteet ja uudistamisvaihtoehdot. Muistion yhdenvertaisuustoimikunnan asiantuntijakuulemisiin 11-14.6.2007. Promemoria on the reform of equality law (with a short overview in Swedish, Sammanfattande synpunkter och preliminära ställningstaganden)
· Palanko-Laaka, Kirsti (2007), Tasa-arvo on työelämän vaikuttaja, in Tasa-arvolaki 20 vuotta-Jämställdhetslagen i Finland fyller 20 år, Yliopistopaino Helsinki
· Schultén, Gerhard af (2007), Tasa-arvosta lisäarvoa kaikille, in Tasa-arvolaki 20 vuottaJämställdhetslagen i Finland fyller 20 år, Yliopistopaino Helsinki
· Raevaara, Eeva (2005), Tasa-arvo ja muutoksen rajat. Sukupuolten tasa-arvo poliittisena ongelmana Ranskan paritè- ja Suomen kiintiökeskusteluissa, TANE Publications, Ministry for Social Affairs and Health, Council for Gender Equality, Helsinki Report for the first year of operations. Office of the Ombudsman for Minorities 2002.
http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuu-tettu/vuosikertomus2002/annual_report2002.pdf Accessed 22.9.2007

· Report of operations. Ombudsman for Minorities 2003.
http://mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/vuosikertomus2003/annual_report2003.pdf. Accessed 22.9.2007

· Ombudsman for Minorities. Annual Report 2004.
http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/vuosikertomus2004/annual_report2004.pdf

· Annual Report 2005 of the Ombudsman for Minorities.
http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/vuosikertomus2005/vuosikertomus_englanti2005.pdf. Accessed 22.9.2007

· Annual Report 2006 of the Ombudsman for Minorities.
http://www.mol.fi/mol/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/10_julkaisut/Ombudsman_For_Minorities_06.pdf. Accessed 22.9.2007

· Annual Report 2006 of the Ombudsman for Minorities.
http://www.mol.fi/mol/fi/06_tyoministerio/02_organisaatio/02_vahemmistovaltuutettu/10_julkaisut/Ombudsman_For_Minorities_06.pdf Accessed 22.9.2007
javascript:history.back();

· Katsaus syrjintälautakunnan toimintaan vuosina 2004–2006 (An overview in the activities of the Discrimination Board in 2004-2006)
http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/02_organisaatio/05_muut/syrjintalautakunta/syrjintalatakuntakatsaus.pdf . Accessed 26.9.2007

· Syrjintälautakunnan tiedotteet:
http://www.mol.fi/mol/fi/06_tyoministerio/02_organisaatio/05_muut/syrjintalautakunta/tiedotteet/index.jsp. Accessed 29.9.2007

· Site for the Advisory Board of Ethnic Relations:
http://www.mol.fi/mol/en/04_migration/02_ethnic/02_board/index.jsp

5. ICELAND

The current legal framework in Iceland does not address multidimensional discrimination and does not envisage complaints of discrimination based on an undivided combination of grounds. In general, Iceland has not adopted specific legislation to combat discrimination on grounds other than gender and limited discussion has taken place in political fora on the need for comprehensive anti-discrimination legislation. As Iceland has not adopted a multidimensional framework, this chapter will describe the Icelandic anti-discrimination framework in general. To commence, relevant legislation is mapped out, then complaints mechanisms in the field of discrimination are examined and finally the recently adopted multidimensional human rights and discrimination policies of the City of Reykjavik and the University of Iceland are discussed.

5.1. Legislation

Multidimensional discrimination currently has no remedy under Icelandic law and only very limited legislation exists prohibiting discrimination on other grounds than gender. Described below are current legal provisions setting out equality and non-discrimination.

The Constitution

The Icelandic Constitution includes a general prohibition against discrimination in Article 65 which stipulates: 'All shall be equal before the law and enjoy human rights without regard to sex, religion, opinion, national origin, race, colour, financial status, parentage and other status. Men and women shall have equal rights in every respect.'[1] A limited number of cases regarding violations of this article have been adjudicated by the Supreme Court with the provision guaranteeing equality invoked in all kinds of specific cases, with the courts broadening the interpretation of the Constitution to cover rights not expressly stipulated in it. Evidence of this trend includes a judgement of the Supreme Court of 4 June

1998, holding that provisions of the Act on Damages, to the effect that a group of injured persons with a certain level of disability would not receive compensation for non-pecuniary loss, conflicted with Article 65 of the Constitution, as well as Article 72 protecting the right to property.[2] The provision was successfully invoked in a case concerning a blind student who was deemed not to have received the necessary assistance to pursue her university studies[3] and in a judgement ruling that the State Broadcasting Service had the obligation to use sign-language in television programmes aired in relation to political campaigns for national elections.[4] In a judgement of 19 December 2000, the Supreme Court held that an Act reducing social security payments based on the income of a disabled person's spouse ran counter to Article 65 of the Constitution as well as Article 76 concerning the right to social assistance.[5] And finally, in a judgement of 3 December 1998, the Supreme Court deemed the Fisheries Management Act in conflict with Article 65 and the freedom of employment stipulated in Article 75, as regards fishing for occupational purposes.[6]

Act on the European Convention on Human Rights and Fundamental Freedoms

The European Convention on Human Rights and Fundamental Freedoms was incorporated into domestic law by way of Act nr. 62/1994. Article 14 of the Convention stipulates that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The General Penal Code

The General Penal Code provides, in Article 233a, that any person who, by mockery, slander, insult, threat or other means, publicly attacks a person or group of persons on the grounds of their nationality, colour, race, religion or sexual orientation shall be liable to a fine or imprisonment for a term not exceeding two years. Article 180 provides that denying a person service, or access to any public area or place intended for general public use, on account of that person's colour, race, ethnic origin, religion or sexual orientation is punishable by fines or imprisonment for up to six years.[7] Incidents of refusal of access to public spaces, such as night clubs, and incidents of harassment based on race and/or ethnic origin have been reported to the police but no case have been taken up in court yet. The Supreme Court has only dealt with one case regarding racial discrimination when

it fined the Vice-Chairman of a nationalist organization for having violated Article 233a with his derogatory remarks about Africans in general.[8]

The Administrative Procedures Act

The Administrative Procedures Act, in Article 11, stipulates that administrative authorities shall ensure legal harmony and equality in decisions, and that discrimination between individual parties based on views relating to, *inter alia*, race, colour, national origin, religion, political opinion, social status and family origins, is prohibited.[9]

The Primary School Act

The Primary School Act provides that the objective of study, tuition and practices in primary schools shall be such as to prevent any discrimination based on origin, sex, residence, social class, religion or disability.[10]

The Act on Equal Status and Equal Rights of Women and Men

The Act on Equal Status and Equal Rights of Women and Men (Act on Equal Status) was passed by Parliament in 2000, replacing the former Gender Equality Act of 1991.[11] The Act created a specialized institution, the Centre for Gender Equality,[12] administrated by the Ministry of Social Affairs. The Minister of Social Affairs is in charge of the implementation of gender equality legislation, but the Centre for Gender Equality is responsible for its administration. The Minister of Social Affairs also appoints an Equality Status Council and a Complaints Committee on Equal Status which means that the official equality system is now divided into three organs. The Centre for Gender Equality is a national bureau that, as mentioned above, is in charge of administering the Act, as well as providing counselling and education in the field of gender equality, for government and municipal authorities, institutions, companies, individuals and NGOs. The Centre also helps, when needed, with preparing complaints for the Complaints Committee and with the follow up of cases after the Complaints Committee has issued its opinion. The role of the Equal Status Council is to make systematic efforts to equalize the status and the right of women and men in the labour market and advise the government on suitable measures. The Complaints Committee considers complaints and issues written opinions on whether provisions of the law have been violated but the decisions of the Committee are not binding on the parties.[13]

This system for promoting gender equality has not proven as effective as

hoped, in part, because of shortcomings of the Act on Equal Status. The Act prohibits both direct and indirect discrimination but does not contain a specific definition of the concept of discrimination. The Act also stipulates that institutions and enterprises with more than 25 employees shall have a gender equality policy and adopt special provisions regarding gender equality in their employment policies but the Act does not provide for penalties for those who do not comply with its provisions. Furthermore, since the decisions of the Complaints Committee are not binding, individuals may not see any reason to bring a case before the Committee.

Because it has not had the impact expected, the Act on Equal Status is currently under review. A Review Committee was established by the Ministry for Social Affairs in 2006 with the aim to propose changes to strengthen legislation to combat gender discrimination. The Committee briefly addressed the possibility of replacing the Act on Equal Status and Equal Rights of Women and Men with a broader, multidimensional statute. The Committee rejected this option, arguing that there still remains too much to be done in the field of gender equality before it is justifiable to attempt to broaden the scope of the Act to cover multidimensional discrimination. The Committee was concerned that by amending the Act to include more grounds of discrimination attention would be deflected from gender discrimination which is still a serious problem in Iceland. It was argued that specific, focused legislation promoting gender equality was still necessary. In arguing against amending the Act to add provisions prohibiting discrimination based on grounds other than gender the Committee agreed that if the authorities wished to address multidimensional discrimination the mandate of the complaints procedure available for gender based discrimination could be amended to include competence to receive discrimination claims based on other grounds. The Ministry for Social Affairs presented a draft amendment of the Act on Equal Status based on the Revision Committee's recommendations in summer 2007. A number of organizations and institutions commented on the proposal but only the Centre for Women's and Gender Studies at the University of Iceland touched upon the issue of multidimensional discrimination.[14] The Centre called attention to the fact that each discrimination ground demands special expertise and that in Iceland there is limited knowledge in areas other than gender. As a result, subsuming minority groups at this stage into the gender equality framework might not be the most effective way to achieve equality, neither for women nor minority groups. The Centre also raised concern that by adopting

comprehensive, broad non-discrimination legislation, the still much needed focus on gender equality may become diluted. The Centre suggested that before adoption of any such legislation the impact of the multidimensional policies of the City of Reykjavik and University of Iceland should be examined. The Centre concluded that although it had in the past been positive towards multidimensional policies, it now believes that separate, specific legislation for gender equality and the different minority groups is better suited to combat discrimination.

A proposal for a new law on gender equality was presented to the Parliament in October 2007 and adopted in March 2008.[15] The proposal introduces significant improvements on the Act in force, strengthening national protection against gender discrimination considerably. Notably non-disclosure clauses (wage secrecy) will not be permitted, the powers of the Centre for Gender Equality to monitor the implementation of the law are strengthened, *i.e.* by allowing the Centre to impose fines for non-compliance, larger companies shall be required to adopt action plans to implement their gender equality policies and decisions of the Complaints Committee will be binding on parties.

Act on the Affairs of the Handicapped

The objective of the Act on the Affairs of the Handicapped, set out in Article 1, is to ensure to the handicapped equality and living conditions comparable with those of other citizens, and to provide them with conditions that enable them to lead a normal life.[16]

Act on Municipal Social Services

Article 42 contains a provision similar to the Act on the Affairs of the Handicapped stipulating that the Social Affairs Committee shall work with people with disabilities, to ensure that they are guaranteed a similar standard of living and equality comparable to that of other citizens. Provisions shall be made so that people with disabilities are enabled to live as regular a life as possible, in accordance with their ability.[17]

Act of the Affairs of the Elderly

The Act on the Affairs of the Elderly stipulates in Article 1 that, in the implementation of the law, the equal rights of elderly persons shall be guaranteed and their right to self-agency respected.[18]

Act Amending Laws relating to the Judicial Status of Homosexual Persons

The Act Amending Laws relating to the Judicial Status of Homosexual Persons amends several laws to eliminate existing discrimination relating to the judicial status of homosexual persons.[19]

Act nr. 2/1993 on the EEA Agreement
The EEA Agreement forms part of Icelandic law. Article 4 prohibits discrimination based on citizenship in relation to the provisions of the Agreement.[20]

European Union Directives
Transposition of EU Directives in relation to Icelandic law has entailed non-discrimination provisions being adopted in labour legislation such as Article 4 of Act No. 139/2003[21] banning discrimination because of temporary employment and Article 4 of Act No. 10/2004 banning discrimination because of part-time employment.[22]

5.2. Mechanisms

The European Court of Human Rights has made it clear that the protection of fundamental rights must be 'practical and effective'[23] not theoretical and illusory. In cases of discrimination, the remedial authority available in Iceland is mainly fourfold: the courts, the administrative system, the Parliamentary Ombudsman and the Complaints Committee on Equal Status.

The Courts
Every person has legal personality under Icelandic law and may initiate legal proceedings before the courts if he/she believes that his/her human rights have been violated. He/she can, *inter alia,* claim damages and compensation for non-pecuniary loss, annulment of libellous or slanderous statements, and that administrative decisions in cases of alleged discrimination can be repealed. There is no constitutional court competent to resolve disputes concerning alleged breaches of constitutionally protected human rights. However, it is an established constitutional custom that the courts are competent to assess whether laws are in agreement with constitutional provisions despite the fact that such power of review is not expressly set out in the Constitution. If the courts rule that a legal provision conflicts with the Constitution, they will disregard the provision in their judge-

ment although they do not have formal authority to invalidate laws.[24] There have been a number of cases where the courts have found laws to be in conflict with the human rights provisions of the Constitution. Article 60 of the Constitution stipulates that the courts resolve disputes concerning the extent of administrative authority; decisions of administrative authorities may be referred to the courts for invalidation. The courts cannot review the administrative discretion underlying a decision but they are competent to evaluate whether the decision was taken lawfully, *e.g.* whether the principle of equality was respected. If the administrative procedure is deemed defective the court may repeal the decision and order the authority to take the matter up again on the basis of lawful considerations.[25] The courts have time and again confirmed that the principle of equality shall rule within the administrative system. We are not aware of any multidimensional discrimination claim being brought to the courts.

The administrative system

Various decisions regarding the rights and duties of individuals are made at the administrative level. If such a decision is made at a lower level, *e.g.* by a magistrate or a committee or commission answering to a Ministry, it can be appealed to that Ministry as a higher authority. The Administrative Procedures Act No. 37/1993 entered into force on 1 January 1994. The Act applies to administrative decisions of both national and local authorities, unless specific legislation provides for more strict procedures. The law applies to decisions taken by public authorities regarding the rights and duties of individuals and other legal persons. The law aims to ensure legal certainty when such decisions are taken and contains rules as to both form and substance concerning the preparation and the taking of decisions. The law guarantees, *inter alia*, equal treatment in a legal sense, the right for parties to acquaint themselves with the process leading to the decisions and to present their views.

The Parliamentary Ombudsman

The Parliamentary Ombudsman is elected by the Icelandic Parliament (Altingi) for periods of four years and enjoys full independent in his work. The Ombudsman's role is to monitor the administrative functions of the State and municipalities and safeguard the rights of the citizens' *vis-à-vis* the administrative authorities. The Ombudsman shall make efforts to ensure that the principle of equality is observed and that administration is conducted in conformity with the law and

good administrative practice. The Ombudsman investigates administrative cases based on complaints or on his own initiative and the Ombudsman takes up cases free of charge for those who bring them. He may also examine whether laws are in conflict with the Constitution or are defective in other respects, including whether they comply with Iceland's international human rights obligations. Cases are normally concluded through an act of remedy by the authority involved, or an opinion issued by the Ombudsman as to whether the authority has by its actions infringed the law or good administrative practice. Where the actions of an authority form the object of reproach or criticism, the Ombudsman will recommend that the infringing authority make amends. If a criminal offence has taken place the Ombudsman shall notify the proper authorities. Conclusions by the Ombudsman are not legally binding on the authorities and do not automatically invalidate the disputed decision, yet the Ombudsman's conclusions are generally followed. Where a public authority does not heed a finding of the Ombudsman, the Ombudsman may recommend that the party concerned be granted legal aid in a lawsuit against the authority in question.[26]

Complaints Committee on Equal Status

The role of the Complaints Committee on Equal Status is to consider and issue in writing a substantiated opinion on whether the provisions of the Gender Equality Act have been violated. Individuals and non-governmental organizations in their own name or on behalf of their members who consider that they have been subjected to violations of this law may seek redress with the Committee; in special circumstances, the Committee is permitted to consider cases referred to it by others. Cases shall be submitted to the Committee in written form within one year from the time the alleged violation of the law was revealed, or from the time the party concerned became aware of the alleged violation. In cases where argumentation on the basis of administrative law is being sought, this respite shall start when such argumentation has been presented. A case shall be considered to have been submitted in time if a letter containing it is received by the Committee, or has been posted, before the end of this deadline. In special circumstances, the Centre for Gender Equality may request that the Complaints Committee consider a specific case. The Complaints Committee's proceedings shall, in general, be carried out by written procedure; however, the Committee may summon the parties or their representatives. The Committee's opinions are not subject to appeals to a higher authority. In cases which may be expected to

have a policy-establishing effect on the labour market in general, the Committee shall seek comments from the overall organizations of employees and their contracting parties before issuing its opinion. In cases where the Committee is of the opinion that the provisions of this law have been violated, it shall submit substantiated requests for improvements to the parties concerned.

Ombudsman for Children

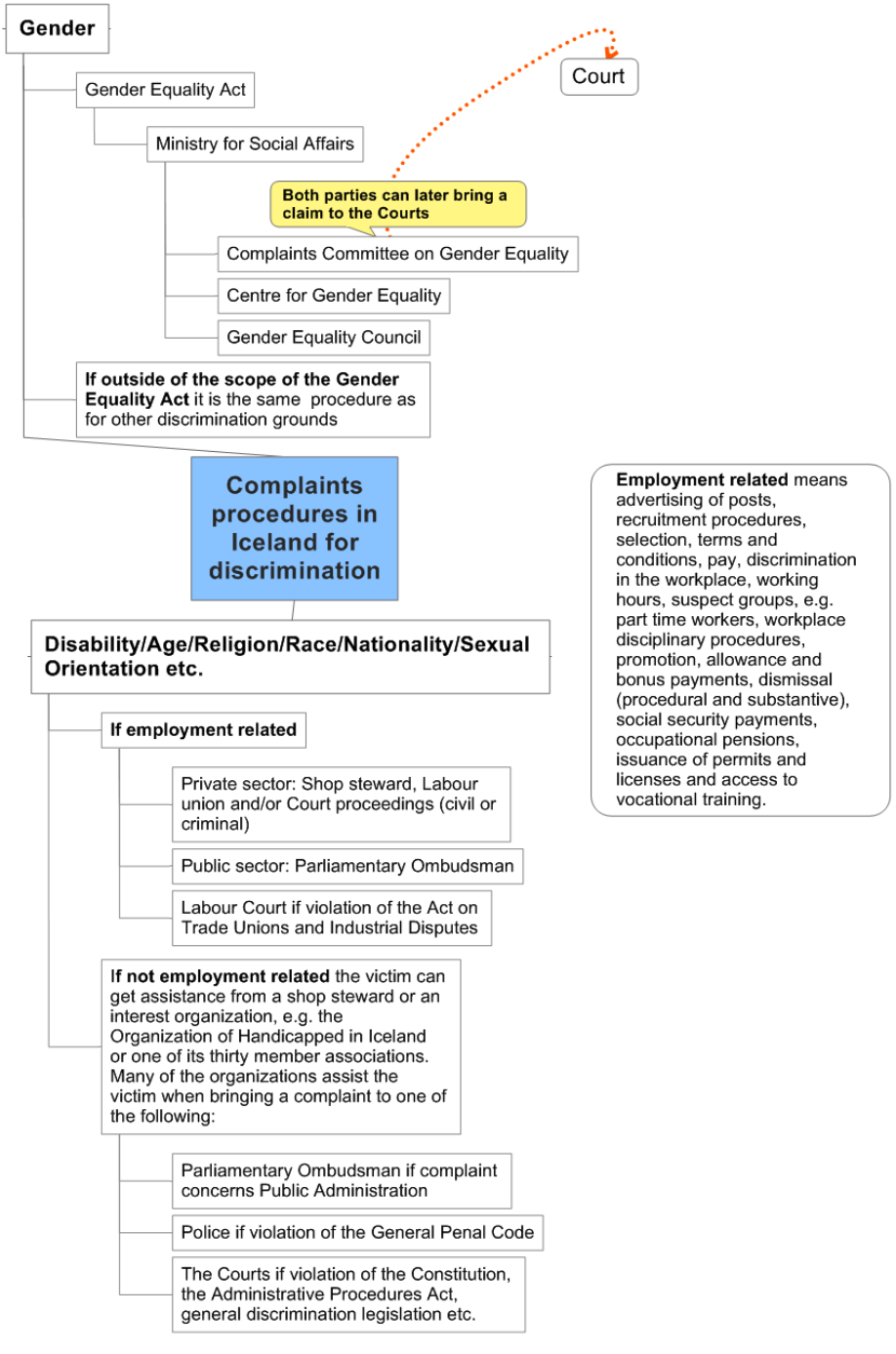
Mention should also be made of the Ombudsman for Children although it is not a remedial authority as there is no formal complaint procedure and the Ombudsman does not deal with individual cases. Nevertheless, the Ombudsman receives a number of inquiries and has been able to advise children or their parents as to courses open to them either in the administration or the courts of law. The role of the Ombudsman is to ensure that, in their dealings, public authorities, central and local alike, individuals, societies and other associations of individuals, and representatives of legal persons, give full consideration to the interests, needs and rights of children. All persons, children and adults alike, may apply to the Ombudsman, orally or in writing, for matters pertaining to children. The Ombudsman decides whether an indication warrants his/her taking up a matter. Where the Ombudsman feels that a matter gives rise to further investigation he/she will seek information from the parties. The Ombudsman can, furthermore, summon the parties concerned, or visit them in order to gather additional information. The Ombudsman has free access to all institutions which house children or deal with children in one way or another. The Ombudsman can conclude a matter by: dismissing it with or without specific instructions; dropping it at any stage; following it through with observations, recommendations, instructions and proposals for a remedy; or issuing a reasoned opinion. Conclusions by the Ombudsman in matters submitted for his/her consideration are not by law binding on the parties. Those concerned are, however, expected to heed the observations, recommendations and proposals made by the Ombudsman.[27]

Regional Offices for the Affairs of the Handicapped and the Advocates

The Act on the Affairs of the Handicapped establishes eight regional councils to: a) make recommendations to the Ministry for Social Affairs and the Regional Office on provision and coordination of services for persons with disabilities in their respective geographical area, b) monitor the provision of services and institutions established by the Act on the Affairs of the Handicapped, with the aim

of ensuring that the services are in accordance with the aim of the Act, c) review Regional Plans on the development of services for the disabled and make recommendations to the Ministry for Social Affairs, and d) safeguard the rights of persons with disabilities, to ensure, *inter alia,* that they receive the services they are entitled to. To strengthen the rights of persons with disabilities, especially those living in housing managed by the state, with the aim of protecting private life and property, the Act on the Affairs of the Handicapped establishes the position of one 'advocate' (trúnaðarmaður) in each region. The advocate monitors the situation of disabled persons in state institutions. Individuals, family members and others who feel the rights of a disabled person has been violated can bring this to the attention of the advocate who shall investigate the situation immediately and then decide whether the case shall be brought to the attention of the Regional Council. The advocate can also take up issues at his or her own initiative. The Regional Council is to ensure that cases are dealt with in accordance with the law and the advocate may assist the disabled person whilst the case is under consideration of s/he so wishes.

5.3. Complaints procedures



5.4. Multidimensional discrimination policies in Iceland

As described above, anti-discrimination policies and legislation are most prominent in the field of gender equality and the current equality law framework does not accommodate complaints of discrimination based on an undivided combination of grounds. Anti-discrimination legislation is elementary and public and political debate regarding discrimination has not reached the maturity to include advanced discussion on multidimensional discrimination. Two official bodies have taken the lead by adopting broad anti-discrimination policies where several discrimination grounds are included. These will be examined below.

The City of Reykjavik's Human Rights Policy

In 2006, the City of Reykjavik established a Committee with the function of drafting a human rights policy for the city.[28] The Committee was tasked with deciding on the scope of the policy and whether it should be multidimensional and if yes, how such a policy could be integrated with the City's policies on gender equality and multicultural issues. In its work, the Committee examined the policies of other municipalities, in Iceland and abroad, and met with experts and advocates working in the field of gender equality and the promotion of the rights of different minority groups. The Committee decided to adopt a human rights policy based on the principle of equality but when deciding whether to adopt a multidimensional one, the following pros and cons were weighed.

Pros of adopting a multidimensional policy:

- One groups' struggle can be built on by other groups.
- Understanding can be created between the groups.
- Marginalized groups become visible.
- The likelihood of a holistic vision of anti-discrimination efforts is increased as the issues of all groups are dealt with by the same body.
- Advantages for those who belong to more than one group.
- Providing information to citizens regarding their rights is simplified.
- The policy encompasses groups that would otherwise not be mentioned in the City's policy making.
- The rights of all groups are formally acknowledged, affirming the leading role of the City of Reykjavik, and sets a good example.
- Combats possible discrimination as all groups are acknowledged and are visible.

- The service to all groups becomes more systematic and the enforcement of the policy becomes easier as the work is focused on implementing one policy instead of many.

Cons of adopting a multidimensional policy:
- The policy may turn out too general and too in-concrete.
- Gender inequality may be overshadowed by other discrimination grounds.
- The discussion concerning immigrants is new and might loose momentum if immigration issues are included in a broad policy.
- Tension may arise between the groups.
- The groups may compete for resources.

The Committee eventually concluded that a multidimensional policy was the best option. The City consequently adopted an anti-discrimination policy, based on the principle of equality which aims to allow all persons to enjoy their human rights regardless of origin, nationality, skin colour, religious and political beliefs, sex, sexual orientation, age, financial situation, heritage, disability, and state of health or any other status. The policy is divided by the role of the City of Reykjavik as a government authority, as an employer, as a service provider and as a cooperative partner. As the policy is only recently adopted its implementation and effects remain to be seen.

University of Iceland Policy against Discrimination
The University of Iceland adopted a policy against discrimination in 2005. The policy prohibits discrimination based on age, disability, health, gender, sexual orientation, religion and political beliefs, ethnicity, origin, race and culture. The policy forms one of the three pillars of the University's equal rights framework. The other two consist of the programme for gender equality and the policy of the affairs of disabled people. The policy applies to University staff, students and guests as well as consultants and others employed in projects financed by non-University sources. The dean, the head of the department or the office manager or director of each administrative division is responsible for solving problems arising from an alleged act of discrimination. If there is a difference in opinion that cannot be solved at this level, the aggrieved party shall be informed about avenues of complaint. A staff member who feels that s/he has been discriminated against can approach his or her immediate superior or dean who shall seek recon-

ciliation or other solutions. Those concerned can also approach the personnel department and/or the University's Equal Opportunities Officer.

Information on claims of discrimination shall be treated confidentially. A student who feels that s/he has been discriminated against can approach the University's Equal Opportunities Officer, the student's Equal Opportunities Officer and/or the student counsellor. Those approached by an aggrieved party shall then turn to the dean of the faculty or his or her representative who will then seek reconciliation or other solutions. The superior in question can then seek the support of a mediator agreed on by both parties concerned. Should the support of a consultant not suffice to resolve matters, the aggrieved party will be informed of other avenues of complaint. Should the aggrieved party choose to file an official complaint, this should be addressed to the Ethics Committee of the University of Iceland. As of yet no complaints regarding multi-dimensional discrimination have been brought on the basis of the Policy.

Conclusion

Discussion on multidimensional discrimination in Iceland is in its infancy and clearly additional legislation is called for to combat discrimination based on other grounds than gender, *i.e.* ethnic origin, disability and religious or other belief. International human rights bodies monitoring the implementation of international conventions in Iceland have made several recommendations to Icelandic authorities in this respect. As an example, the UN Committee on the Elimination of Racial Discrimination has recommended that Iceland adopt 'comprehensive anti-discrimination legislation providing for effective remedies against racial discrimination'[29] and the CoE Commissioner for Human Rights recommends that Iceland 'review safeguards against discrimination with reference to current European practice by exploring, in particular, the extension of low-threshold complaints bodies to other areas than gender discrimination'.[30] Currently, a Committee is working under the auspices of the Ministry for Social Affairs with the aim of discussing possible transposition of two anti-discrimination Directives of the European Union into Icelandic law; the Racial Equality Directive 2000/43/EC[31] and the Employment Equality Directive 2000/78/EC.[32] Hopefully, the Directives will be transposed and the reformed Gender Equality Act adopted. These would be important steps towards a more comprehensive anti-discrimination legislation, which is imperative to ensure equality for all in Iceland.

6. NORGE

I dette kapittelet vil vi se på utviklingen av det offentlige apparatet som jobber mot diskriminering og lovverket de forvalter. Utviklingen på feltet i Norge har vært betydelig de siste årene. Fra 1.1.2006 er det opprettet et flerdimensjonalt apparat mot diskriminering, og lovgivningen er styrket eller i ferd med å styrkes for flere diskrimineringsgrunnlag. Likestillings- og diskrimineringsombudet (LDO) og Likestillings- og diskrimineringsnemnda (LDN)[43] representerer noe nytt i norsk diskrimineringspolitikk fordi man for første gang skal jobbe mot diskriminering på en rekke ulike grunnlag innen ett og samme håndhevingsapparat. Det norske systemet kan sies å være i forkant i nordisk sammenheng og vil derfor være interessant også for de andre nordiske landene.

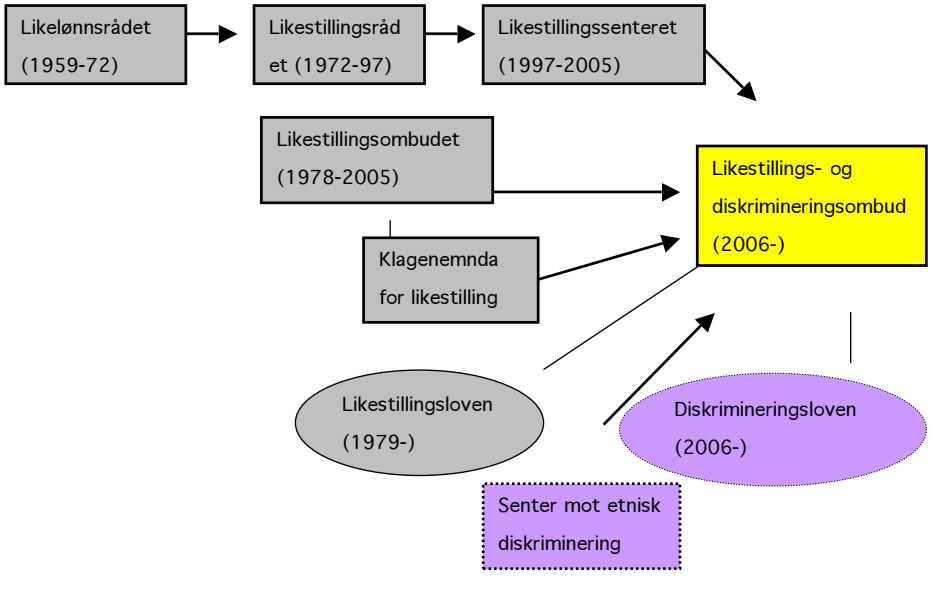
Vi kommer ikke med noen form for evaluering av det norske apparatet, men konsentrerer oss i stedet om å gi en deskriptiv beskrivelse av historien bak LDO og LDN og de politiske diskusjonene forut for opprettelsen av det nye håndhevingsapparatet. Oversikten er basert på offisielle dokumenter, som offentlige utredninger, rapporter, høringsuttalelser og stortingsdebatter (se referanseliste).[44]

Vi vil starte med å gi en kort beskrivelse av det tidligere apparatet mot diskriminering på grunnlag av kjønn og etnisitet, deretter vil vi ta for oss den politiske debatten og utviklingen av lovverk og apparat på diskrimineringsfeltet i årene 2002 til 2007, for så til slutt å oppsummere med en beskrivelse av dagens apparat og lovgivning. I gjennomgangen av den politiske utviklingen vil vi spesielt fokusere på forslaget til nytt apparat som ble utarbeidet av en tverrdepartemental arbeidsgruppe og som var gjenstand for høring i 2003. Her vil vi også gjennomgå hva ulike offentlige organer og interesseorganisasjoner på feltet mente i debatten. Diskusjonene i denne perioden illustrerer viktige problemstillinger knyttet til flerdimensjonal diskrimineringspolitikk og er derfor interessante også i dag.

6.1. Det gamle systemet

Frem til 2006 var det offentlige norske apparatet mot diskriminering delt i to. På den ene siden hadde man tre organer som jobbet for kjønnslikestilling. Disse var Likestillingsombudet, Likestillingssenteret og Klagenemnda for likestilling. I tillegg fantes Senter mot etnisk diskriminering (SMED) som jobbet mot diskriminering på grunnlag av etnisitet, trosbekjennelse, hudfarge og nasjonal opprinnelse. (BFD 2004)

Det norske kjønnslikestillingsapparatets historie går tilbake til 1959 da Likelønnsrådet ble opprettet. Likelønnsrådet hadde til hensikt å undersøke og foreslå tiltak for likelønn mellom menn og kvinner. I 1972 ble dette organet videreført og fikk et utvidet mandat, da som Likestillingsrådet. Det nye organet skulle fortsatt jobbe med likelønnsspørsmål, men nå også med likestilling og likeverd mellom menn og kvinner mer generelt. (LDO 2007b) Likestillingsrådet bidro til at det i 1979 kom både en egen likestillingslov og to nye organ, Likestillingsombudet og Klagenemnda for likestilling, som skulle forvalte denne loven. I 1997 ble Likestillingsrådet omorganisert til Likestillingssenteret. Arbeidsfordelingen mellom de tre organene forholdt seg slik at Likestillingsombudet og Klagenemnda for likestilling hadde ansvar for å håndheve likestillingsloven, mens Likestillingssenteret skulle fungere som en pådriver i samfunnsdebatten, drive utrednings- og utviklingsarbeid og være et knutepunkt mellom organisasjoner og instanser som jobbet med likestilling. (BFD 2004).



Norge fikk en egen diskrimineringslov først i 2006. Frem til da eksisterte det ingen egen lov på dette feltet. Samtidig hadde det likevel vært et offentlig apparat på dette feltet forut for innføringen av diskrimineringsloven. I 1998 opprettet myndighetene forvaltningsorganet Senter mot etnisk diskriminering (SMED) for en prøveperiode fram til regjeringen hadde lagt fram forslag til en lov mot etnisk diskriminering. Organet skulle drive rettshjelp, dokumentasjon og pådriverarbeid på diskrimineringsgrunnlagene etnisitet, trosbekjennelse, hudfarge, rase og nasjonal opprinnelse. (LDO 2007b)

6.2. Prosessen

I oktober 2002 nedsatte den norske regjeringen en tverrdepartemental arbeidsgruppe som skulle utrede muligheten for et felles håndhevingsapparat mot diskriminering på grunnlag av kjønn og etnisitet. Arbeidsgruppen hadde medlemmer fra Arbeids- og administrasjonsdepartementet, Barne- og familiedepartementet,[45] Justisdepartementet og Kommunal- og regionaldepartementet. (KRD 2003) Utviklingen var preget av påvirkning fra FN og EU, samt en rekke parallelle prosesser i Norge. Blant annet hadde det samme år blitt lagt frem en offentlig utredning hvor man foreslo et nytt apparat for diskriminering på grunnlag av etnisitet (Holgersenutvalget). Dette apparatet skulle være bygget over samme modell som apparatet for kjønnslikestilling, det vil si med et ombud, en klagenemnd og et kompetansesenter. I tillegg var det på trappene et utvalg som skulle jobbe frem forslag til å styrke funksjonshemmedes diskrimineringsvern. Dette utvalget ble utnevnt i november 2002 og ble kalt Syseutvalget. (BFD 2004)

Viktige hendelser i perioden 2000 til 2006:

2000	Holgersenutvalget	Lovutvalg nedsatt av Bondevik 1 regjeringen. Utredet forslag til nytt lovverk mot etnisk diskriminering.
2002	NOU 2002: 12	Holgersenutvalgets utredning "*NOU 2002: 12 Rettslig vern mot etnisk diskriminering"* ble presentert i juni 2002. Foreslo et nytt apparat for håndheving mot etnisk diskriminering. Apparatet skulle være treleddet, etter samme modell som det eksisterende apparatet for likestilling (ombud, senter, klagenemnd).

	Tverrdepartemental arbeidsgruppe	Kommunal- og regionaldepartementet nedsatte i oktober 2002 en tverrdepartemental arbeidsgruppe som skulle utrede spørsmålet om å etablere et felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet.
	Syseutvalget	Nedsatt for å utrede diskrimineringsvern for funksjonshemmede.
	NOU 2003: 2	Utredningen *"NOU 2003: 2 Skjerpet vern mot diskriminering i arbeidslivet"* ble lagt frem i desember 2002.
2003	Arbeidslivslov-utvalget	Utredet utvidelse av arbeidsmiljøloven til flere grupper/diskrimineringsgrunnlag.
	Evalueringer	Evalueringer av SMED og Likestillingssenteret ble utarbeidet.
	Høringsrunde	I mai 2003 la den tverrdepartementale arbeidsgruppen frem sin rapport "*Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet".* Den påfølgende høringsrunden (juni-september) avdekket delte meninger, både når det gjaldt spørsmålet om et felles apparat på tvers av diskrimineringsgrunnlagene og i spørsmålet om å kombinere rollen som lovhåndhever og pådriver.
2004	Ot. prp. nr. 34 (2004-2005) LDO og LDN formelt foreslått opprettet	I desember 2004 la regjeringen frem et formelt forslag om opprettelsen av LDO. Forslaget inneholdt følgende hovedelementer: · et felles organ for både håndhever- og pådriverrolle · skulle forvalte følgende grunnlag: kjønn, etnisitet, religion, seksuell orientering, funksjonsevne og alder · toleddet organ bestående av LDO og LDN
2005	LDO og LDN vedtatt opprettet	Opprettelsen av LDO vedtatt av Stortinget i april 2005.
	NOU 2005: 8	Syseutvalgets utredning var ferdig i mai 2005. "*NOU 2005: 8 Likeverd og tilgjengelighet – Rettslig vern mot diskriminering på grunnlag av nedsatt funksjonsevne. Bedret tilgjengelighet for alle."*
	Ombud utnevnt	Beate Gangås ble utnevnt som Likestillings- og diskrimineringsombud høsten 2005.
2006	I funksjon	LDO og LDN hadde sin første virkedag 1. januar 2006.

Den tverrdepartementale arbeidsgruppen la frem sin rapport, "*Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet"* i mai 2003. Her foreslo gruppen følgende:

- opprettelse av felles håndhevingsapparat mot diskriminering på grunnlag av kjønn og etnisitet
- apparatet skulle være todelt: førsteinstansen skulle være et tilsyn eller ombud, andreinstansen en klagenemnd
- førsteinstansen skulle ivareta både lovhåndhever- og pådriverrolle (KRD 2003)

En høringsrunde ble organisert i de påfølgende månedene (juni-september). Her fikk både de berørte organene (SMED, Likestillingsombudet og Likestillingssenteret) uttale seg, samt ulike offentlige organer og interesseorganisasjoner på feltet. (BFD 2004)

I høringsuttalelsene og i den politiske debatten rundt forslaget kom det frem en rekke ulike synspunkt og flere elementer ble diskutert. Det ble diskutert hvorvidt man ønsket et felles organ som skulle jobbe på tvers av de to diskrimineringsgrunnlagene (kjønn og etnisitet) eller om det var mer formålstjenlig med separate apparat for hvert av de to grunnlagene. Det ble også diskutert hvilke lover et slikt felles apparat skulle håndheve og muligheten for, på lengre sikt, å utvikle en felles diskrimineringslov. Et tredje viktig moment som ble diskutert var hvilke roller et felles diskrimineringsorgan skulle inneha. Som sagt hadde arbeidsgruppen foreslått at organet skulle fungere som lovhåndhever og samtidig ha en pådriverrolle. Synspunktene på hvorvidt dette var formålstjenlig var svært sprikende. Et fjerde moment som ble diskutert var hvilken juridisk myndighet organet skulle ha, det vil si hvorvidt det skulle ha mulighet til å fatte bindende vedtak. (BFD 2003, BFD 2004)

I de følgende avsnittene vil vi gi en oppsummering av debatten på de vesentligste av disse feltene, nemlig hvorvidt man ønsket et felles organ og hvilke roller dette organet skulle inneha.

Felles apparat på tvers av diskrimineringsgrunnlag

I rapporten fra 2003 foreslo den tverrdepartementale arbeidsgruppen at det skulle opprettes et felles organ til å håndheve lovene mot diskriminering for både

kjønn og etnisitet. De argumenterte for en slik løsning på bakgrunn av fem hovedargumenter (KRD 2003):

- brukervennlighet
- gjennomslagskraft
- stimulerende fagmiljø
- kompetanseoverføring
- ressursutnyttelse

Arbeidsgruppen hevdet at et felles organ ville være mer *brukervennlig* og enklere å forholde seg til for både bedrifter og individer. Bedrifter kunne da henvende seg til ett kontor for å få råd og veiledning om hvordan å fremme mangfold, eller unngå diskriminering. Også for individer mente de det var enklere å ha ett kontor å henvende seg til dersom man mente seg diskriminert og ville fremme en klagesak eller dersom man ønsket informasjon om likestilling og diskriminering. Dette gjaldt spesielt i tilfeller med multippel diskriminering (for eksempel at man blir diskriminert både som kvinne og som etnisk minoritet). (KRD 2003)

De hevdet også at et felles organ kunne få større *gjennomslagskraft* i samfunnet ettersom det ville forvalte flere diskrimineringsgrunnlag og dermed være relevant for flere samfunnsområder. (KRD 2003)

Arbeidsgruppen argumenterte videre med betydningen av å legge tilrette for et *stimulerende fagmiljø*. En større organisasjon har flere ansatte og kan basere seg på større bredde i faglig kompetanse. Ved å kunne tilby et godt fagmiljø mente de organet kunne tilrekke seg den beste arbeidskraften, noe som igjen ville styrke fagmiljøet og derigjennom organets tillit og legitimitet. (KRD 2003)

Et fjerde viktig argument var mulighetene for *kompetanseoverføring* mellom de ulike diskrimineringsgrunnlagene. Norge har lang tradisjon for offentlig arbeid for kjønnslikestilling, mens de andre feltene befinner seg mer i en startfase. I et felles organ kunne man bygge opp strategier og arbeidsmetoder basert på erfaringene fra de diskrimineringsgrunnlagene man hadde jobbet lengst med. (KRD 2003)

Det siste hovedargumentet arbeidsgruppen la vekt på i sin argumentasjon for et felles organ var mulighetene for *bedre ressursutnyttelse.* Stordriftsfordelene ved ett felles organ i stedet for mange små ville kunne gjøre at man sparte inn på både administrasjons- og driftskostnader. (KRD 2003)

I tillegg mente arbeidsgruppen at et felles organ ville bidra til "*en dypere for-*

ståelse av hvordan forskjellsbehandling kommer til uttrykk i samfunnet, og hvordan dette kan bekjempes." (KRD 2003, s.43)

Samtidig dro også arbeidsgruppen frem en del sider som de anså som ulemper ved et felles organ. For det første mente de at det var viktig at man sikret at organisasjonen fikk *spesialkompetanse* innen begge grunnlagene (kjønn og etnisitet). De hevdet videre at man risikerte å *miste fokus* på særegenhetene ved hvert av diskrimineringsgrunnlagene eller at enkelte grunnlag kunne bli mindre prioritert enn andre. (KRD 2003)

Når det gjelder organet som talerør i media var de bekymret for at organet kunne bli *tammere i sine utspill* og at det kunne være negativt at man *kun fikk en stemme i samfunnsdebatten,* i stedet for flere slik det ville vært dersom hvert grunnlag hadde sitt organ. (KRD 2003)

Arbeidsutvalget konkluderte likevel med å anbefale et felles organ som skulle jobbe mot diskriminering på bakgrunn av både kjønn og etnisitet.

> *"Gruppen mener at et felles apparat best vil imøtekomme brukernes fremtidige behov på området, og at en sammenslåing vil medføre store fordeler for tilsynsorganet. Felles organisering vil også gi det beste utgangspunktet for å fremme mangfold generelt overfor publikum."* (KRD 2003, s.44)

Kombinere lovhåndhever- og pådriverrolle

I den tverrdepartementale arbeidsgruppens rapport argumenterte de videre for at det nye organet både skulle inneha rollen som lovhåndhever og pådriver. (KRD 2003)

Med begrepet *lovhåndhever* menes det "*å avgi uttalelser i klager om brudd på lover og bestemmelser under ombudets virkeområde, og å gi råd og veiledning om dette regelverket". (LDO 2007a)*

Begrepet *pådriverrolle* derimot er mer sammensatt og inneholder i realiteten flere ulike funksjoner. Disse er (LDO 2007c):

- aktivt å påvirke samfunnet i retning av økt likestilling og mindre diskriminering
- at man skal følge samfunnsutviklingen og "*avdekke og påpeke forhold som motvirker likestilling og likebehandling"*

- holdnings- og adferdspåvirkning
- opplysnings- og informasjonsarbeid
- veiledning til ulike brukergrupper (også utover veiledning i forbindelse med lovverket)
- at man skal utvikle og formidle kompetanse og dokumentasjon knyttet til likestilling og diskriminering
- en funksjon som nettverksbygger og møtested

Arbeidsgruppen mente det ville være mange fordeler ved en slik kombinasjon av roller. De viktigste fordelene mente de ville være (KRD 2003):

- gjensidig fordeler ved å kombinere de to rollene
- ressursutnyttelse
- brukervennlighet

For det første mente de at man ville oppnå *gjensidige fordeler* ved å kombinere rollene. Autoriteten organet hadde som lovhåndhever mente de ville smitte over på organets pådriverrolle. De så også for seg at organet skulle benytte lovhåndhevingen i enkeltsaker som grunnlag for strategier i pådriverarbeidet, og at denne nærheten til enkeltsakene ville gi pådriverarbeidet ekstra troverdighet. (KRD 2003)

På samme måte som de mente at et felles organ på tvers av ulike diskrimineringsgrunnlag ville være *ressursbesparende* mente de også at det å gi organet både lovhåndhever- og pådriverrolle ville være positivt på denne måten. I tillegg til stordriftsfordelene, som også ble nevnt tidligere, så de for seg at et felles organ med begge rollene ville gjøre at man unngikk dobbeltarbeid, ressursene ble bedre samordnet og at man med en større organisasjon kunne ansette folk med et større mangfold av faglig kompetanse. (KRD 2003)

Hensynet til *brukervennlighet* var også et viktig argument for å kombinere rollene. Utvalget argumenterte for at dersom man opprettet ett organ for håndheverrollen og ett for pådriverrollen ville dette kunne føre til forvirring blant både brukere og media om hvem som gjorde hva og hvor man skulle henvende seg med ulike typer spørsmål. (KRD 2003)

De viste også til at det å samle offentlige oppgaver i et felles organ var en generell trend, både internasjonalt og i Norge, og at det inngikk i regjeringens moderniseringsprogram for offentlig sektor (KRD 2003, s.47).

Samtidig så også arbeidsgruppen at det var enkelte ulemper ved et organ som

kombinerte begge rollene. For det første mente de at det kunne oppstå situasjoner der *de to rollene kom i konflikt* med hverandre.

> *"Organet kan få et troverdighetsproblem ved at det både skal ha rollen som nøytral instans i enkeltsaker, samtidig som det skal spille en aktiv rolle som pådriver."* (KRD 2003, s.50)

De mente også at en modell som var basert på ett organ kunne være ufordelaktig i og med at man *mistet stemmer i media og samfunnsdebatt,* og at rollen som rettshjelper ville være utelukket i et lovhåndhevende organ. (KRD 2003)

Arbeidsutvalget konkluderte likevel med å anbefale et felles organ som var tillagt både en lovhåndhever- og pådriverrolle.

> *"Ved vurderingen er det særlig lagt vekt på at en slik organisering vil gi det beste utgangspunktet for å utnytte samspillet mellom tilsynsrollen og pådriverrollen, samt at det vil gi en mer effektiv utnyttelse av ressurser. Gruppen har også lagt vekt på at en samordning trolig vil gi bedre oversikt for brukerne."* (KRD 2003, s.48)

Interesseorganisasjonenes syn i debatten

Når vi leser uttalelsene som kom inn i høringsrunden i 2003 ser vi at de ulike interesseorganisasjonene hadde ulikt syn på både hvorvidt de ønsket et felles organ og hvorvidt dette organet skulle kombinere lovhåndhever- og pådriverrollen. Oppsummeringen er basert på høringsuttalelsene fra følgende organisasjoner (BFD 2003):

- Organisasjoner som jobber med etnisitet, religion, livssyn og nasjonal opprinnelse: Human-Etisk Forbund, Samarbeidsrådet for tros- og livssynssamfunn, Oslo biskop (Den Norske Kirke), MiRA-Senteret, Sametinget, Innvandrernes Landsorganisasjon, Norske Reindriftsamers Lands forbund, Antirasistisk senter, Kirkerådet, Kontakutvalget mellom innvandrere og myndigheter
- Organisasjoner som jobber med kjønn: 2 Foreldre, Norges Bygdekvinnelag, JURK, Kvinnefronten, Norges Kvinne- og Familieforbund, FOKK, KILDEN, Kvinneuniversitetet, Kvinneuniversitetet Nord, Norsk Kvinnesaksforening
- Organisasjoner som jobber med funksjonshemming: Funksjonshemmedes Fel-

lesorganisasjon, Norges Blindeforbund, Norges Handikapforbund, Norsk Forbund for Utviklingshemmede, Samarbeidsutvalget, Statens råd for Funksjonshemmede, Stopp Diskrimineringen

Det var kun en organisasjon som jobbet med seksuell legning som uttalte seg i høringen. Dette var Landsforeningen for lesbisk og homofil frigjøring.

Dersom vi sammenligner organisasjoner som jobber med kjønn med de som jobber med etnisitet, religion eller nasjonal opprinnelse (dvs tilsvarende skillet i de to tidligere apparatene) finner vi at sistnevnte organisasjoner var betydelig mer positive til opprettelsen av et felles organ.

Organisasjonene som jobber med kjønn fremhevet blant annet at de fryktet at kjønnslikestilling ville bli nedprioritert eller drukne i prioriteringen mellom de ulike diskrimineringsgrunnlagene, at kjønnslikestillingsarbeidet ville miste sin slagkraft og at hvert enkelt diskrimineringsgrunnlag ville være bedre ivaretatt i separate organer. Samtidig var det også en del av disse organisasjonene som var positive til ideen om et felles organ. Disse organisasjonene fokuserte blant annet på mulighetene til å se de ulike diskrimineringsgrunnlagene i sammenheng og å veie ulike hensyn mot hverandre. På tross av en viss uenighet kan vi likevel si at organisasjonene samlet sett (både kjønn og etnisitet etc.) var positive til et felles organ. (BFD 2003)

I spørsmålet om man skulle tillegge organet både rollen som lovhåndhever og som pådriver var organisasjonene atskillig mer uenige. Ingen av organisasjonene som jobbet med kjønn og kun to organisasjonene som jobbet med etnisitet, religion, livssyn og nasjonal opprinnelse mente at dette var en god ide. I tillegg var det en del organisasjoner som ikke tok eksplisitt stilling til spørsmålet. De fleste av disse organisasjonene var negative til et felles apparat og tok dermed heller ikke stilling til hvilke roller et slikt organ skulle inneha. (BFD 2003)

I sin helhet kan vi si at organisasjonene var atskillig mer skeptiske til ideen om å tillegge et felles organ både rollen som lovhåndhever og pådriver enn det de var til selve ideen om et felles organ. Slik sett kan vi si at organisasjonene stod samlet i sitt syn i denne saken. (BFD 2003) Samtidig var argumentene mot en kombinasjon av roller ganske ulike mellom de ulike organisasjonene.

Organisasjonene som jobber med kjønn fremhevet frykten for at kombinasjonen av roller ville føre til en nedprioriterting av pådriverrollen. Denne nedprioriteringen kunne skyldes behovet for å gjøre prioriteringer og at det i slike spørsmål ville være enklere å prioritere håndheverrollen ettersom den er mye mer

håndfast og klart definert med grunnlag i lovene. Disse organisasjonene hevdet også at en slik kombinasjon ville være vanskelig fordi rollene ville kunne komme i konflikt med hverandre. Lovene vil være mer konservative enn det pådriverarbeidet bør være. Lovene retter seg i hovedsak mot å hindre diskriminering. Pådriverarbeidet derimot bør ha som mål å oppnå full likestilling, hvilket er et atskillig mer radikalt mål enn å hindre diskriminering. Det ble fremhevet at det ville være vanskelig å kombinere en objektiv lovhåndheverrolle med en mer subjektiv og progressiv pådriverrolle. Organisasjonene på kjønnsfeltet fryktet også at et stort felles organ som skulle være både lovhåndhever og pådriver ville kunne gi et svekket fokus på hvert enkelt av de ulike grunnlagene. De var også redde for at organet ville få svekket sin kompetanse på hvert av grunnlagene. (BFD 2003)

De av organisasjonene som jobber med etnisitet, religion, livssyn og nasjonal opprinnelse som var negative til rollekombinasjonen baserte dette på argumenter som behov for ulike metoder i arbeidet med de to grunnlagene, og at det var behov for flere uavhengige organer som kunne fremme samme sak. En organisasjon mente også at behovet for å prioritere håndhevingen av den nye loven mot etnisk diskriminering i den første fasen etter at loven skulle tre i kraft ville kunne føre til at pådriverarbeidet ble nedprioritert. (BFD 2003)

Flere av organisasjonene (både på kjønns- og etnisitetsfeltet) som var negative til et felles organ argumenterte for at man i stedet kunne sikre erfaringsutveksling og samarbeid mellom de ulike uavhengige organene i apparatet gjennom samlokalisering. (BFD 2003)

Selv om denne høringsrunden i utgangspunktet kun handlet om et felles organ for grunnlagene kjønn og etnisitet var det likevel en viss åpning i arbeidsgruppens rapport for at også andre grunnlag skulle inkluderes i organets arbeid etter hvert som disse fikk egen lovgivning. Flere av organisasjonene var opptatt av betydningen av å ha et felles organ som skulle jobbe mot diskriminering på tvers av de fleste diskrimineringsgrunnlag. For eksempel fremhevet mange av livssynsorganisasjonene at religion og livssyn burde være eksplisitt nevnt i organets mandat som egne diskrimineringsgrunnlag, og ikke kun implisitt inkludert i forståelsen av etnisitet. (BFD 2003)

Organisasjoner som jobbet med funksjonshemmedes interesser eller for å hindre diskriminering på grunnlag av seksuell legning var også inkludert i høringsrunden. Disse organisasjonenes syn på arbeidsgruppens forslag var vesentlig annerledes enn det vi finner hos organisasjonene vi har redegjort for over. (BFD 2003)

Funksjonshemmedes organisasjoner sto samlet om en felles argumentasjon,

som i hovedsak gikk ut på at de ikke ønsket å ta stilling til forslaget til nytt felles organ fordi de mente det var for tidlig. Organisasjonene krevde at beslutningen skulle utsettes. De ønsket å vente på Syseutvalgets utredning av en lov mot diskriminering av funksjonshemmede og et apparat knyttet til dette feltet (se oversiktstabell tidligere i kapittelet). De mente at det ikke burde etableres et felles organ som skal håndheve flere diskrimineringsgrunnlag før hvert av de ulike grunnlagene hadde sin egen lov og man hadde hatt litt tid til å utvikle praksis rundt disse lovene. Organisasjonene fryktet at dersom et felles organ ble startet med utgangspunkt i regelverkene for kjønn og etnisitet ville det være disse grunnlagene det ville tas hensyn til i utforming av organisasjonen. Dermed ville de andre grunnlagene bare måtte tilpasse seg disse løsningene når de etter hvert fikk et eget lovverk. (BFD 2003)

I tillegg ønsket funksjonshemmedes organisasjoner en evaluering av lignende flerdimensjonale apparat i andre land (spesielt Canada), og de kom med krass kritikk av utredningens grundighet og selve arbeidsprosessen. De mente at utredningen manglet en grundig fremstilling av konsekvensene av det nye forslaget. I tillegg mente de at prosessen hadde vært forhastet, med alt for korte tidsfrister og at den hadde vært udemokratisk. De mente at de som ble berørt av det foreslåtte apparatet ikke hadde fått tilstrekkelig mulighet å uttale seg i løpet av prosessen bak utredningen. (BFD 2003)

I høringsrunden var det kun én organisasjon representert som jobbet med homofile og lesbiskes rettigheter, Landsforeningen for lesbisk og homofil frigjøring (LLH). De sluttet seg til samme kritikk som den de funksjonshemmedes organisasjoner kom med og ønsket heller ikke å ta stilling til utvalgets forslag. (BFD 2003)

Likestillingsombudet, Likestillingssenteret og SMEDs syn i debatten

De tre daværende organisasjonene som utgjorde apparatet i det offentlige likestillings- og anti-diskrimineringsarbeidet deltok også i høringsrunden med omfattende tilbakemeldinger og innspill. De tre organisasjonene hadde ulike syn på de ulike problemstillingene arbeidsgruppens rapport tok opp. Interessant nok var det heller ikke alltid sammenfallende syn hos de to organisasjonene som jobbet med kjønnslikestilling. Vi vil her redegjøre for hver av de tre organisasjonenes synspunkter i forhold til de viktigste problemstillingene.

Likestillingsombudet var mot et felles organ som skulle håndheve lovene mot diskriminering på grunnlag av etnisitet og kjønn. Samtidig var de positive til rollekombinasjon, ved å slå sammen Likestillingsombudet og Likestillingssenteret.

De mente at diskrimineringsgrunnlagene kjønn og etnisitet ville bli bedre ivaretatt hver for seg enn i et felles organ. Dette begrunnet de gjennom ulikheter i målgruppene hvor man i arbeidet med diskriminering på grunnlag av kjønn henvender seg til alle kvinner og menn i Norge, mens man i arbeid mot etnisk diskriminering har ulike minoritetsgrupper som sine målgrupper. Videre var de redde for at arbeidet med kjønn, og da spesielt pådriverrollen, ville bli svekket i et felles organ. De mente også at anti-diskrimineringsarbeidet på de to feltene var på så ulike stadier at det ville være vanskelig å jobbe med begge felt i samme organ. De påpekte også at land hvor felles lovhåndhevingsapparat allerede var etablert hadde en svakere tradisjon for arbeid med kjønnslikestilling og svakere juridisk beskyttelse på bakgrunn av kjønn, og at disse derfor vanskelig kunne brukes som idealer for en norsk omorganisering. (BFD 2003)

Når det gjaldt spørsmålet om å kombinere lovhåndhever- og pådriverrollen derimot, var de positive til dette på kjønnsfeltet. De mente det ville være formålstjenlig å slå sammen Likestillingsombudet og Likestillingssenteret til et felles organ. En slik sammenslåing mente de ville medføre en intensivering av arbeidet og spesielt en styrking av pådriverarbeidet. De argumenterte for en slik sammenslåing på bakgrunn av allerede overlappende arbeidsoppgaver, økt brukervennlighet og bedret ressursutnyttelse. (BFD 2003)

Likestillingssenteret derimot var for et felles organ på grunnlag av kjønn og etnisitet, men negative til å kombinere håndhever- og pådriverrollen.[46]

De mente at en felles lovhåndhever ville være positivt for de som hadde vært utsatt for diskriminering og som ønsket å fremme en klagesak, spesielt dersom det var snakk om multippel diskriminering. Samtidig ønsket de ikke at Likestillingssenteret eller pådriverrollen på kjønnsfeltet skulle innlemmes i et slik nytt apparat. De fryktet at spisskompetansen på kjønnslikestilling ville gå tapt i et stort, felles organ. Videre argumenterte de for at håndhever- og pådriverarbeidet har ulike målgrupper og at det er vanskelig å nå alle de ulike målgruppene gjennom et felles organ. Som lovhåndhever retter arbeidet seg først og fremst mot de som har opplevd å bli diskriminert og som ønsker å fremme en klagesak. Pådriverarbeidet derimot har et mangfold av målgrupper, blant annet folk som søker

kunnskap om likestillingsspørsmål. På samme måte mente de videre at de to rollene har ulike mål og dermed krever ulike virkemidler. Mens håndheverarbeidet dreier seg om rettigheter og lovverk retter pådriverarbeidet sitt fokus på maktstrukturer i samfunnet. De mente videre at et stort felles apparat ville gi pådriverrollen mindre handlingsrom og slik svekke dette arbeidet. De mente også at det ville være negativt om anti-diskriminerings- og likestillingsarbeidet kun hadde en stemme i media. (BFD 2003)

Senter mot etnisk diskriminering (SMED) var på sin side positive både til opprettelsen av et felles organ og til at dette organet skulle inneha både rollen som lovhåndhever og som pådriver. Samtidig fokuserte SMED på en rekke ulike forutsetninger for at de mente at et felles organ ville være formålstjenlig. De mente blant annet at et organ som skulle forvalte både kjønn og etnisitet ville kreve et sterkt fagmiljø og tilstrekkelig med ressurser. De påpekte også at det var viktig å ivareta "*de ulike grunnlagenes særegenhet og behov for kompetanseutvikling og fokus"* (BFD 2003, s.220) SMED mente også at det var viktig med en harmonisering av lovverket og at det nye håndhevingsorganet måtte tre i kraft samtidig som den nye diskrimineringsloven. (BFD 2003)

Når det gjaldt spørsmålet om å kombinere rollen som håndhever og pådriver la SMED vekt på at det var positivt med så få organer som mulig, at dette ville være den mest brukervennlige løsningen, samt at det ga muligheter for kompetanseoverføring og tverrfaglig arbeid. De mente også at et slikt felles organ ville gi et styrket fagmiljø som ville være bra for rekrutteringen og muligheten til å beholde kompetent personale over tid. (BFD 2003)

Alle de tre organene ønsket en harmonisering av de ulike lovene på feltet. De mente også at flere grunnlag burde inkluderes i et nytt felles organ. SMED nevnte her spesielt at religion burde være et eget grunnlag for det nye organet. (BFD 2003)

Alle de tre organisasjonene kom i sine uttalelser med direkte *kritikk av arbeidsgruppens rapport.* SMED var kritiske til håndteringen av rettshjelprollen og mente at dette ble for lite diskutert i rapporten. De mente videre at rapporten ga for lite svar på hvordan de ulike rollene som var foreslått tillagt organet skulle utføres i praksis.

Likestillingssenteret kritiserte rapporten for å ha for lite fokus på arbeid for *reell likestilling*. De mente at arbeidsgruppen i stedet kun snakket om anti-diskri-

mineringsarbeid. Dette mente de også gjenspeilet seg i rapportens bilde av det nye organets målgrupper. Her mente de at arbeidsgruppen hadde begrenset seg til en målgruppe, nemlig de som hadde opplevd diskriminering og som derfor ønsket å klage inn en sak for brudd på lovene. Likestillingssenteret mente at man i rapporten glemte andre sentrale målgrupper for likestillingsarbeid, som for eksempel de som ønsker relevant informasjon om likestilling eller ulike målgrupper for holdningsendring. Likestillingssenteret mente at rapporten hovedsakelig fokuserte på håndheverrollen og at det var for lite fokus på hvordan pådriverrollen skulle utføres. I tillegg til denne kritikken etterlyste de også at rapportens forslag burde vært bygget på to former for evaluering som ikke var inkludert. For det første mente de at hele det offentlige apparatet for kjønnslikestilling (BLD, Likestillingsombudet og Likestillingssenteret) burde vært evaluert, og ikke bare Likestillingssenteret. Videre savnet de også en nærmere evaluering av hvordan apparat som allerede var slått sammen i andre land fungerte. I rapporten er det redegjort for hvordan en del andre land har slått sammen sine apparat på likestillings- og anti-diskrimineringsfeltet, men ikke for hvorvidt dette har vært formålstjenlig eller ikke i de enkelte landene. (BFD 2003)

Denne kritikken ble delt av Likestillingsombudet, som etterlyste en klarere referanse til Danmark og Finland hvor disse spørsmålene også var blitt utredet. Likestillingsombudet mente videre at det var for mye fokus på hvordan det nye apparatet skulle se ut og for lite på begrunnelsene for at dette ville være gode løsninger. "*Rapporten omhandler først og fremst administrative og praktiske fordeler og lovtekniske sider ved opprettelsen av et felles organ, og dreier seg i liten grad om det faglig sett er hensiktsmessig å etablere et felles organ. Dette er en stor svakhet ved mandatet og dermed ved utredningen.*" (BFD 2003, s.126) Ombudet mente også at arbeidsgruppen hadde hatt for kort tid på seg og at organene som ble berørt av omorganiseringen ikke var blitt tilstrekkelig involvert i arbeidet. (BFD 2003)

6.3. Det nye systemet

Etter høringsrunden i 2003 fortsatte Barne- og familiedepartementet (BFD)[47] i 2004 og 2005 å videreutvikle ideen om et felles apparat. I desember 2004 la Bondevik-regjeringen formelt frem sitt forslag om opprettelse av det nye Likestillings- og diskrimineringsombudet (LDO) for Stortinget. Departementets forslag

var i hovedsak bygget over den tverrdepartementale arbeidsgruppens forslag, men med en utvidelse i forhold til hvilke diskrimineringsgrunnlag organet skulle forvalte. (BFD 2004)

Forslaget inneholdt følgende hovedelementer (BFD 2004):

- et felles organ som skulle forvalte flere grunnlag (kjønn, etnisitet, religion, seksuell orientering, funksjonsevne og alder)
- toleddet organ bestående av førsteinstansen LDO og andreinstansen LDN

Forslaget ble vedtatt av stortinget våren 2005. (Stortinget 2005a)

I 2005 ble diskrimineringsombudsloven, samt forskriften om organisasjon og virksomhet for LDO og LDN vedtatt. Alle partiene var på dette tidspunkt positive til opprettelsen av et felles organ, med unntak av Fremskrittspartiet som ikke ønsker offentlig likestillingsarbeid. I spørsmålet om hvilke roller organet skulle inneha derimot, var det større uenighet. Her mente Arbeiderpartiet (AP), Sosialistisk Venstreparti (SV) og Senterpartiet (SP), partiene som i dag utgjør landets regjering, at organet kun skulle fungere som lovhåndhever. Pådriverrollen skulle dermed holdes separat i egne organer. De tre partiene var den gang i mindretall i stortinget. Departementets forslag fikk dermed flertall og ble vedtatt i sin helhet. (Stortinget 2005c)

Høsten 2005 utnevnte barne- og familieminister Laila Dåvøy Beate Gangås til Norges første likestillings- og diskrimineringsombud. Beate Gangås er utdannet jurist og kom til ombudsjobben fra politiet hvor hun hadde vært politimester siden 2001. LDO hadde sin første virkedag 1. Januar 2006. (www.ldo.no)

LDO er organisert i fire ulike avdelinger; juridisk avdeling, samfunnsavdelingen, kommunikasjonsavdelingen og administrasjonsavdelingen. De to fagavdelingene (juridisk og samfunn) jobber begge på tvers av de ulike diskrimineringsgrunnlagene. (www.ldo.no)

LDO håndhever følgende lover (www.ldo.no):

- Likestillingsloven
- Diskrimineringsloven
- Arbeidsmiljølovens likebehandlingskapittel
- Ikke-diskrimineringsbestemmelsene i boliglovene

Lovgrunnlaget gir de ulike diskrimineringsgrunnlagene ulik grad av beskyttelse. Kjønn, etnisitet, nasjonal opprinnelse, religion, livssyn, avstamning, hudfarge og språk har en sterk beskyttelse fordi de er innbefattet i enten likestillingsloven eller den nye diskrimineringsloven som trådte i kraft 1. januar 2006. Disse to lovene gjelder på alle samfunnsområder, med unntak av interne forhold i religiøse samfunn. Arbeidsmiljøloven og boliglovene derimot, gir kun beskyttelse i hhv. arbeidsliv og boligsektoren. Arbeidsmiljøloven forbyr diskriminering på grunn av politisk syn, medlemskap i arbeidstakerorganisasjoner, seksuell orientering, funksjonshemming og alder. Boliglovenes diskrimineringsforbud beskytter mot diskriminering på grunn av homofil orientering. (www.ldo.no)

Syseutvalget avga sin utredning til Justis- og politidepartementet i mai 2005 (JD 2005). Utvalget foreslo at det ble opprettet en egen lov mot diskriminering på grunnlag av nedsatt funksjonsevne og at denne loven skulle gjelde for alle samfunnsområder, med unntak av "*valg og handlinger som er en naturlig del av familielivet eller er av personlig karakter*" (JD 2005, s.27). Utvalget foreslo også at denne loven skulle håndheves av Likestillings- og diskrimineringsombudet (JD 2005). Arbeids- og inkluderingsdepartementet (AID) jobber nå med oppfølgingen av Syseutvalgets forslag. Departementet planlegger å fremme forslag til en ny diskriminerings- og tilgjengelighetslov for personer med nedsatt funksjonsevne for Stortinget ved årsskiftet 2007/2008. (AID 2007b)

1. juni 2007 nedsatte regjeringen det såkalte diskrimineringslovutvalget, som skal utrede en samlet lov mot diskriminering, grunnlovsvern mot diskriminering og ratifisering av tilleggsprotokoll nr. 12 til den europeiske menneskerettskonvensjonen. Utvalgets medlemmer er i hovedsak jurister, jussprofessorer og forskere. I utvalgets mandat argumenterer regjeringen for at en felles diskrimineringslov vil gjøre diskrimineringsvernet mer helhetlig og dermed styrket. Man ser på denne måten for seg at en felles diskrimineringslov på tvers av de ulike diskrimineringsgrunnlagene vil gi skjerpet vern for hvert enkelt av grunnlagene. (BLD 2007a) Utvalget skal både vurdere sammenslåing av dagens ulike lover på diskrimineringsområdet, samtidig som de skal utrede hvilke andre diskrimineringsgrunnlag som også skal inkluderes i den nye loven. De skal også ta stilling til hvorvidt listen over diskrimineringsgrunnlag som loven skal dekke skal være uttømmende eller ikke. (Stortinget, 2006c) Utvalget skal avgi sin innstilling innen 1. juli 2009. (BLD 2007a)

Konklusjoner

I dette kapittelet har vi sett på utviklingen av det norske apparatet som jobber mot diskriminering og hvordan dette har utviklet seg i retning av å bli mer flerdimensjonalt. Vi har også sett på viktige ledd i historien bak det nye apparatet og de debattene som gikk rundt opprettelsen av et felles likestillings- og diskrimineringsombud. Debattene illustrerer fortsatt i dag viktige problemstillinger knyttet til flerdimensjonal diskrimineringspolitikk.

Likevel er det slik at det norske systemet kun kan karakteriseres som delvis flerdimensjonalt. Når det gjelder selve apparatet som jobber med diskriminering kan dette karakteriseres som flerdimensjonalt gjennom LDOs mandat. Samtidig finner vi at andre deler av det politiske apparatet ikke er flerdimensjonalt. Dette gjelder for eksempel departementenes arbeid, hvor ansvaret for politikken rundt de ulike diskrimineringsgrunnlagene er spredt på flere departement. For eksempel har Barne- og likestillingsdepartementet hovedansvar for kjønnslikestilling og likestilling basert på seksuell legning, mens det i hovedsak er Arbeids- og inkluderingsdepartementet som har ansvaret for innvandrings- og asylpolitikken og same- og minoritetspolitikken (www.regjeringen.no).

Det finnes heller foreløpig ingen enhetlig, flerdimensjonal diskrimineringslov. Selv om dagens diskrimineringslov dekker mer enn ett diskrimineringsgrunnlag er lovgivningen på diskrimineringsfeltet fremdeles spredd på en rekke ulike lover, som redegjort for i dette kapittelet.

Lovgivningen er likevel under stadig utvikling, en utvikling som ser ut til å gå i retning av et mer flerdimensjonalt lovverk. Man kan se for seg en slik utvikling ender i en av to alternative modeller;

- Ved en harmonisering av lovene for hvert av diskrimineringsgrunnlagene. Dette innebærer både at grunnlag som per i dag ikke har beskyttelse får dette og at hver av de ulike lovene gir beskyttelse på samme måte og i samme utstrekning.
- Ved å opprette en felles diskrimineringslov for alle diskrimineringsgrunnlag, som erstatter lovene som i dag finnes på enkelte grunnlag.

Det regjeringsutnevnte diskrimineringslovutvalgets mandat peker mot en utvikling i retning av alternativ B. "*Det er en prioritert oppgave for regjeringen å styrke diskrimineringsvernet i norsk lovgivning. På sikt er det behov for en samlet lov mot diskriminering. Det vil gi et mer helhetlig og derigjennom styrket diskrimineringsvern, sier arbeids- og inkluderingsminister Bjarne Håkon Hanssen.*" (BLD 2007a)

En evaluering av LDO er planlagt i 2008 (BLD 2006b). Evalueringen vil kunne gi viktige svar på hvorvidt skeptikerne til et flerdimensjonalt apparat hadde rett i sin kritikk eller ikke.

Det er også verd å påpeke at verken begrepet *flerdimensjonal* eller det beslektede begrepet *interseksjonalitet* ikke er nevnt i de politiske diskusjonene som inngikk i prosessen bak LDO. Dette gjelder både for regjeringens, den tverrdepartementale arbeidsgruppens og organisasjonenes argumentasjon for og mot et nytt apparat og lovverk. Dette ser vi for eksempel dersom vi søker etter offisielle dokumenter i stortingets og regjeringens webbaserte arkiver (www.stortinget.no og www.regjeringen.no). Begrepet *interseksjonalitet* ble først tatt i bruk etter at det nye organet (LDO) kom i drift i 2006, og har etter dette fått et større fokus i den norske debatten. Begrepet *flerdimensjonal* derimot har ikke vært så vanlig å bruke i diskusjoner knyttet til det norske systemet.

Kilder

"Besl.O.nr.69 (2004-2005) Lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)", Stortinget, 2005a, www.stortinget.no/beso/beso-200405-069.html

"Dokument nr. 8:66 (2005-2006) Forslag fra stortingsrepresentantene Erna Solberg, Andre? Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag", Stortinget, 2006a, www.stortinget.no/dok8/2005/pdf/dok8-200506-066.pdf

"Faglig frihet eller politisk frigang? En evaluering av Likestillingssenteret", Statskonsult, 2003

"Fakta om Likestillings- og diskrimineringsombudet", Likestillings- og diskrimineringsombudet (LDO), 2007a, www.ldo.no/TopMenu/Om-ombudet2/Fakta-om-Likestillings—og-diskrimineringsombudet/

"Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet. Rapport fra tverrdepartemental arbeidsgruppe", Kommunal- og regionaldepartementet (KRD), 2003, www.regjeringen.no/nb/dep/aid/dok/rapporter_planer/rapporter/2003/Felles-handhevingsapparat-for-diskriminering-pa-grunnlag-av-kjonn-og-etnisitet.html?id=105939

"Forskrift om organisasjon og virksomhet for Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda", Barne- og likestillingsdepartementet (BLD), 2006a, www.regjeringen.no/nb/dep/bld/dok/lover_regler/forskrifter/2006/Forskrift-om-organisasjon-og-virksomhet-for-Likestillings-og-diskrimineringsombudet-og-Likestillings.html?id=92611

"Historien bak Likestillings- og diskrimineringsombudet", Likestillings- og diskrimineringsombudet (LDO), 2007b, www.ldo.no/TopMenu/Om-ombudet2/Historien-bak-Likestilings—og-diskrimineringsombudet/

"Høringsuttalelser til rapport om felles apparat for håndheving av diskriminering på grunnlag av kjønn og etnisitet", Barne- og familiedepartementet (BFD), 2003

"Implementation of the convention on the elimination of all forms of discrimination against women (CEDAW). Norway's seventh periodic report", Barne- og likestillingsdepartementet (BLD), 2006b,
www.regjeringen.no/upload/kilde/bld/rap/2006/0004/ddd/word/297365-7th_cedaw_report_15_september_2_-med_forside.doc

"Innst. O. Nr. 71 (2004-2005) Innstilling fra familie-, kultur og administrasjonskomiteen om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)", Stortinget, 2005b,
www.stortinget.no/inno/2004/inno-200405-071.html

"Innst.S.nr.54 (2006-2007) Innstilling fra justiskomiteen om forslag fra stortingsrepresentantene Erna Solberg, André Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag", Stortinget, 2006b,
www.stortinget.no/inns/2006/inns-200607-054.html

"Mandat for Likestillings og diskrimineringsombudet", Likestillings- og diskrimineringsombudet (LDO), 2007c, www.ldo.no/TopMenu/Om-ombudet2/Mandat-for-Likestillings—og-diskrimineringsombudet-/

"Mandat for utvalg som skal utrede en samlet lov mot diskriminering, grunnlovsvern mot diskriminering og ratifisering av tilleggsprotokoll nr. 12 til den europeiske menneskerettskonvensjonen (EMK)", Barne- og likestillingsdepartementet (BLD), 2007a

"NOU 2002: 12 – Rettslig vern mot etnisk diskriminering", Utredning fra utvalg oppnevnt ved kongelig resolusjon av 3. mars 2000. Kommunal- og regionaldepartementet (KRD) 2002, www.regjeringen.no/nb/dep/aid/dok/NOUer/2002/NOU-2002-12.html?id=145418

"NOU 2003: 2 – Skjerpet vern mot diskriminering i arbeidslivet", Arbeids- og administrasjonsdepartementet (AID), 2002,
www.regjeringen.no/nb/dep/fad/dok/NOUer/2003/NOU-2003-2.html?id=118232

"NOU 2005: 8 Likeverd og tilgjengelighet – Rettslig vern mot diskriminering på grunnlag av nedsatt funksjonsevne. Bedret tilgjengelighet for alle", Justis- og politidepartementet (JD), 2005, www.regjeringen.no/Rpub/NOU/20052005/008/PDFS/NOU200520050008000DDDPDFS.pdf

"Nytt diskrimineringslovutvalg skal samle lover mot diskriminering", pressemelding nr 63, Arbeids- og inkluderingsdepartementet (AID), 2007b, www.regjeringen.no/nb/dep/aid/pressesenter/pressemeldinger/2007/63.html?id=469622

"Odelstinget Møte mandag den 25. April kl 12.32 2005. Sak nr.1 Innstilling fra familie-, kultur og administrasjonskomiteen om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven) (Inst.O.nr.71 (2004-2005), jf. OT.prpr.nr.34 (2004-2005))", Stortinget, 2005c, www.stortinget.no/otid/2004/o050425-01.html

"Ot.prp. nr.34 (2004-2005) Om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)", Barne- og familiedepartementet (BFD), 2004, www.regjeringen.no/nb/dep/bld/dok/regpubl/otprp/20042005/Otprp-nr-34-2004-2005-.html?id=395328

"SMED underveis. En prosessevaluering av Senter mot etnisk diskriminering." Norsk institutt for by- og regionforskning og Institutt for kriminologi og rettssosiologi ved Universitetet i Oslo, 2003, www.regjeringen.no/upload/kilde/krd/rap/2003/0017/ddd/pdfv/199465-smed_irsrapp75.pdf

"Stortinget Møte mandag den 18. Desember 2006 kl 10 2006. Sak nr. 15 Innstilling fra justiskomiteen om forslag fra stortingsrepresentantene Erna, Solberg, André Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag (Innst.S.nr.54 (2006-2007), jf. Dok.nr.8:66 (2005-2006)", Stortinget, 2006c, www.stortinget.no/inns/2006/inns-200607-054.html

Relevante nettsider

- Arbeids- og inkluderingsdepartementet: www.regjeringen.no/nb/dep/aid
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- Likestillings- og diskrimineringsombudet: www.ldo.no
- Likestillings- og diskrimineringsnemnda: www.diskrimineringsnemnda.no
- Regjeringen: www.regjeringen.no
- Stortinget: www.stortinget.no

6. NORWAY

In this chapter we will discuss the development of the public apparatus working against discrimination and the code they administer. There has been a significant progress in this area in Norway during the past couple of years. On 1 January 2006, a multi-dimensional apparatus against discrimination was established and the legislation has been enhanced or is about to be enhanced for more discrimination bases. The Equality and Anti-discrimination Ombud (LDO) and The Norwegian Equality Tribunal (LDN)[1] are representing something new in the Norwegian discrimination policies because this is the first time efforts are made to work against discrimination based on a range of different causes within the same enforcement body. The Norwegian system must be said to be at the foreground compared to the other Nordic countries and will therefore be interesting to them as well.

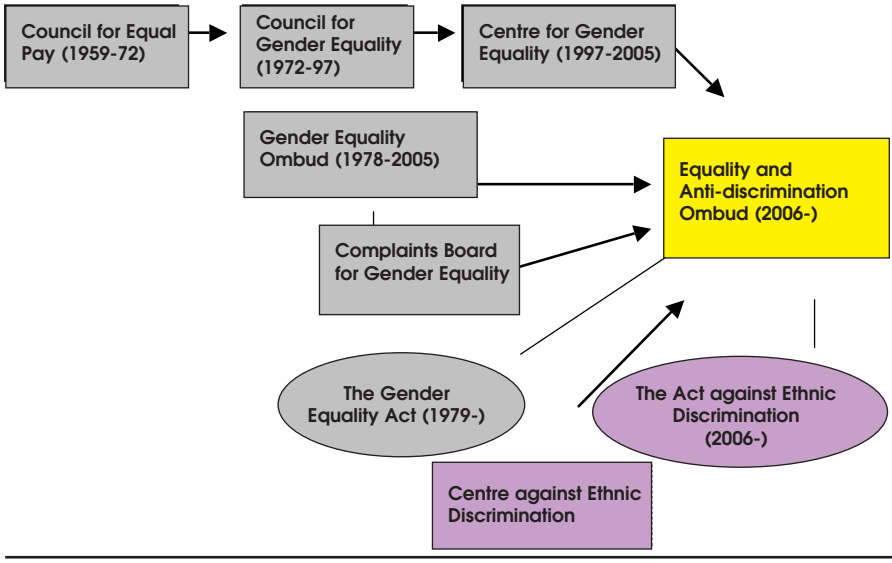
We will not present an evaluation of the Norwegian apparatus, but will instead concentrate on giving a thorough description of the history of LDO and LDN and the political discussions which came prior to the creation of the new enforcement body. The survey is based on official documents such as public analyses, reports, statements on the issues submitted for consultation and debates in the Norwegian Parliament (Stortinget) (see reference list).[2]

We will start by giving a short description of the former apparatus against discrimination based on gender and ethnicity, then we will review the political debate and the development of the code and apparatus within the area of discrimination in the years 2002 to 2007, summing up the chapter with a description of the current apparatus and legislation. In the analysis of the political development, we will in particular focus on the bill proposing a new apparatus which was prepared by a cross-departmental working committee and which was submitted for consultation in 2003. Here we will also analyse the opinions of the different public agencies and interest groups in the debate. The discussions during this period illustrate the important problems with multi-dimensional discrimination policies and are therefore also interesting today.

6.1. The old system

Until 2006, the public Norwegian apparatus against discrimination was split in two. On one hand there were three agencies working for gender equality. These were the Gender Equality Ombud, the Centre for Gender Equality and the Complaints Board for Gender Equality. On the other hand, there was the Centre against Ethnic Discrimination (SMED) which was working against discrimination based on ethnicity, faith, skin colour and national origin. (BFD 2004)

The history of the Norwegian gender equality body goes back to 1959 when the Council for Equal Pay was established. The purpose of the Council for Equal Pay was to investigate and propose initiatives for equal pay between men and women. In 1972, this body was carried on and received an expanded mandate, then as the Council for Gender Equality. The purpose of the new body was still to work with equal pay issues, but now also with gender equality and equal status between men and women in general. (LDO 2007b). The Council for Gender Equality contributed to the creation of the Norwegian Gender Equality Act in 1979 and of two new bodies, the Gender Equality Ombud and the Complaints Commission for Gender Equality, which was going to administer this act. In 1997, the Council for Gender Equality was reorganised into the Centre for Gender Equality. The division of the work between the three bodies was structured so that the Gender Equality Ombud and the Complaints Commission for Gender Equality were responsible for enforcing the Gender Equality Act whereas the Centre for Gender Equality should function as an instigator in the public debate, conduct analyses and innovation work and be the centre between organisations and bodies working with gender equality. (BFD 2004).



Norway did not get its own Act against Ethnic Discrimination until 2006. Up till then there was no separate act on this field. At the same time, there had still been a public apparatus in this field prior to the implementation of the Act against Ethnic Discrimination. In 1998, the authorities established the administrative body, Centre against Ethnic Discrimination (SMED) for a trial period until the Government had submitted a bill against ethnic discrimination. The body was to provide legal aid, documentation and act as instigator for the discrimination grounds of ethnicity, faith, skin colour, race and national origin. (LDO 2007b)

6.2. The process

In October 2002, the Norwegian Government appointed a cross-departmental working committee to analyse the possibility of a common enforcement body against discrimination based on gender and ethnicity. The working committee had members from the Ministry of Labour and Government Administration, the Ministry of Children and Families[3], the Ministry of Justice and the Ministry of Local Government and Regional Development. (KRD 2003). The development was influenced by the UN and EU as well as a number of parallel processes in Norway. For instance, a public analysis had been published that year which proposed a new body against discrimination based on ethnicity (the Holgersen Committee). This body should be set up after the same model as the body for gender equality, i.e. with an ombud, a complaints board and a competence centre. In addition to this, there were plans of a committee which should work out a proposal to strengthen the protection against discrimination for disabled persons. This committee was appointed in 2002 and was called the Syse Committee. (BFD 2004)

Important events 2000-2006:

2000	The Holgersen Committee	Law committee appointed by the Bondevik I Government. Proposed bill for new act against ethnic discrimination.
2002	NOU 2002: 12	The analysis of the Holgersen Committee *"NOU 2002: 12 Rettslig vern mot etnisk*

		diskriminering" (Legal protection against ethnic discrimination) was presented in June 2002. Proposes a new enforcement body against ethnic discrimination. The body was to be trinomial, based on the same model as the existing body for gender equality (ombud, centre, complaints board).
	Cross-departmental working committee	In October 2002, the Ministry of Local Government and Regional Development appointed a cross-departmental working committee to analyse the issue of establishing a common enforcement body for discrimination based on gender and ethnicity.
	The Syse Committee	Appointed to analyse protection against discrimination for the disabled.
	NOU 2003: 2	The analysis *"NOU 2003: 2 Skjerpet vern mot diskriminering i arbeidslivet"* (Increased protection against discrimination in working life) was presented in December 2002.
2003	Working Life Committee	Analysed the extension of the Working Environment Act to more groups/discrimination grounds.
	Evaluations	Evaluations of the Centre against Ethnic Discrimination and Centre for Gender Equality were prepared.
	Consultation	In May 2003, the cross-departmental working committee presented its report *"Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet"* (Common enforcement body for discrimination based on gender and ethnicity). The subsequent consultation period (June-September) revealed different opinions, both on the issue of a common body across the discrimination grounds and on the issue of combining the role as law enforcer and instigator.

2004	Bill no. 34 (2004-2005) Formal proposition on the creation of LDO and LDN	In December 2004, the Government submitted a bill on the creation of the Equality and Anti-discrimination Ombud (LDO). The bill included the following main elements: · A common body to act as enforcer as well as instigator · Should administer the following grounds: gender, ethnicity, religion, sexual orientation, disability and age · Binomial body consisting of LDO and LDN
2005	Passage of the bill on LDO and LDN	The bill on the establishment of LDO was passed in the Norwegian Parliament in April 2005.
	NOU 2005: 8	The analysis of the Syse Committee was completed in May 2005. *"NOU 2005: 8 Likeverd og tilgjengelighet – Rettslig vern mot diskriminering på grunnlag av nedsatt funksjonsevne. Bedret tilgjengelighet for alle."* (Equality and accessibility – legal protection against discrimination based on disability. Improved accessibility for all)
	Appointment of the Ombud	Beate Gangås became Norway's first Equality and Anti-Discrimination Ombud in the autumn of 2005.
2006	In operation	LDO and LDN had their first day of operation on 1 January 2006.

In May 2003, the cross-departmental working committee presented its report *"Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet"* (Common enforcement body for discrimination based on gender and ethnicity). In this the committee suggested the following:

- Creation of a common enforcement body against discrimination based on gender and ethnicity
- The body should be in two parts: The first instance should be a supervisory body or an ombud, the second instance a complaints board

- The first instance should handle both the law enforcement and the instigator role (KRD 2003)

A consultation procedure was initiated in the following months (June-September). Here all the affected bodies (the Centre against Ethnic Discrimination, the Gender Equality Ombud and the Centre for Gender Equality) were heard as well as different public bodies and interest groups within this field. (BFD 2004)

The statements and the political debate regarding the bill revealed a number of different opinions and different elements were discussed. It was discussed whether a common body to work across the two discrimination grounds (gender and ethnicity) was desired or if it was more expedient with separate bodies for each of the two grounds. It was also discussed which acts a possible common body should enforce and the possibility of, in the long run, to develop a common discrimination act. A third, important factor that was discussed was the roles which should be included in a common discrimination body. As mentioned before, the working committee had suggested that the body should act as law enforcer and instigator at the same time. The opinions on the expedience of this were very different. A fourth factor that was discussed was the extent of legal competence to be assigned to the body, i.e. to what extent it would be possible for it to make binding decisions. (BFD 2003, BFD 2004)

In the following sections, we will present a summary of the debate in the most important areas: whether a common body is desired and which roles this body should include.

A common body across discrimination grounds

In the report from 2003, the cross-departmental working committee proposed that a common body should be established in order to enforce the acts against discrimination based on both gender and ethnicity. They argued for this solution on the basis of five main arguments (KRD 2003):

- user-friendliness
- impact
- stimulating expert environment
- transfer of competence
- deployment of resources

The working committee claimed that a common body would be more *user-friendly* and simple to relate to for businesses as well as individuals. Businesses could then apply to just one office for advice and guidance on how to promote multiplicity or avoid discrimination. They believed that it would also be easier for individuals to have one office to apply to if you felt discriminated against and wanted to submit a complaint or if you wanted information on gender equality and discrimination. This in particular applied to cases with multiple discrimination (e.g. if you are discriminated against both as a woman and as an ethnic minority). (KRD 2003)

They also claimed that a common body would have more *impact* in society as it would administer more discrimination grounds and thus be relevant to several areas of society. (KRD 2003)

Furthermore, the working committee argued that it was important to set the basis of a *stimulating expert environment*. A larger organisation has more employees and will be able to rest on a wider expert competence. By offering a good expert environment, they believed that the body would be able to attract the best staff, which again would enhance the expert environment and thus the reliance in and legitimacy of the body. (KRD 2003)

A fourth, important argument was the possibility of a *transfer of competence* between the different discrimination grounds. Norway has a long tradition of public work for gender equality whereas some of the other areas are still in their initial phase. In a common body, you could set up strategies and working methods based on experiences from the discrimination grounds you had worked with the longest time. (KRD 2003)

The last main argument that was emphasised by the working committee in its argumentation for a common body was the possibility of *better deployment of resources*. The economies of scope connected with having a common body instead of many small ones would make it possible to cut the administration as well as the operating costs. (KRD 2003)

In addition to this, the working committee believed that a common body would contribute to a *"deeper understanding of how differential treatment is expressed in society and how this may be combated"* (KRD 2003, p. 43)

At the same time, the working committee also pointed out a number of disadvantages by having a common body. First of all, they believed that it was important to ensure that the body was granted a *special competence* within both grounds (gender and ethnicity). They also claimed that you could risk *loosing*

focus on the characteristics of each of the discrimination grounds or that some of the individual grounds would be given a lower priority than others. (KRD 2003)

When it came to the body as a speaker in the media, they worried that the body would be *less outspoken* and that it could be a negative thing that it *only had one voice in the public debate* instead of several as it would have been if each of the grounds had its own body. (KRD 2003)

The working committee still concluded that a common body to work against discrimination based on both gender and ethnicity was recommendable.

> *"The group believes that a common body would best meet the future requirements of the users within this area and that an integration would imply great advantages to the supervisory authority. A common organisation would also provide the best background in order to promote multiplicity in general towards the public."* (KRD 2003, p. 44)

Combination of the law enforcer and instigator roles

In the report by the cross-departmental working committee, the committee argued that the new body should have both a law enforcer and instigator role. (KRD 2003)

The concept of *law enforcer* means to *"make statements in connection with complaints about breach of acts and provisions falling within the competence of the ombud and to give advice and guidance on these rules". (LDO 2007a)*

However, the concept of *instigator* is more complex and actually includes several different functions. These are (LDO 2007c):

- to actively influence society towards increased gender equality and less discrimination
- to follow the sociological tendency and *"uncover and direct attention to circumstances that are opposing gender equality and equal treatment".*
- influence of attitudes and behaviour
- informative work
- guidance for different user groups (also in addition to guidance in relation to the code)

- preparation and presentation of competence and documentation related to gender equality and discrimination
- to function as networking facility and meeting place

The working committee believed that there would be many advantages related to this combination of roles. They estimated the most important advantages to be (KRD 2003):

- mutual advantages by combining the two roles
- deployment of resources
- user-friendliness

First of all, they believed that *mutual advantages* would be achived by combining the roles. The authority of the body as law enforcer would in their opinion influence the instigator role of the body. They also visualized that the body would use the law enforcement in individual cases as the basis of strategies in the instigator work and that this proximity to the individual case would give the work as instigator more credibility. (KRD 2003)

In the same way as they believed that a common body across different discrimination grounds would *save resources*, they also believed that by giving the body a law enforcement role as well as an instigator role this would also save resources. In addition to the economies of scope, which was also mentioned earlier, they visualized that a common body with both roles would result in an elimination of duplicated work, the resources would be better coordinated and in a large organisation you could hire people with a greater variety of expert competence. (KRD 2003)

The regard for *user-friendliness* was also an important argument for combining the roles. The committee argued that if separate bodies for the law enforcement role and the instigator role were established, this would lead to confusion among the users and the media in relation to who was doing what and where to direct different types of questions. (KRD 2003)

They also referred to the fact that the issue of integrating public responsibilities in a common body was a general trend, both internationally and in Norway, and that it was part of the Government's modernization programme for the public sector (KRD 2003, p. 47).

At the same time, the working committee also acknowledged that there were

a few disadvantages by combining both roles. First of all, they believed that situations could arise where the *two roles would experience a clash of interests*.

> *"The body may have a credibility problem by both having to assume the role as a neutral body in individual cases and to play an active role as instigator at the same time"* (KRD 2003, p. 50).

They also believed that a model based on one body would be unfavourable because it could *lose its voice in the media and public debates* and that the role as a provider of legal aid would be impossible in a law enforcing body. (KRD 2003)

The working committee still concluded that it would recommend a common body with a law enforcer as well as an instigator role.

> *"In this assessment, importance is attached to the fact that this organisation will provide the best starting point in order to use the correlation between the supervisory role and the instigator role and that it will provide a more effective deployment of the resources. The committee has also attached importance to the fact that an integration would probably give the users a better overview."* (KRD 2003, p. 48)

The opinion of the interest groups in the debate

When we read the incoming statements from the consultation procedure in 2003, we find that the different interest groups had different views on whether they wanted a common body and whether this body should combine the law enforcer and instigator roles. This sum-up is based on the statements from the following organisations (BFD 2003):

- Organisations working with ethnicity, religion, philosophies of life, and national origin: The Norwegian Humanist Association, The Council for Religious and Life Stance Communities in Norway, The bishop of Oslo (Church of Norway), The Saami Parliament, The Immigrants National Organisation, Saami Reindeer Herders' Association of Norway, The Antiracist Center in Norway, Church of Norway National Council, The Contact Committee between immigrants and authorities
- Organisations working with gender: Joint Custody Association of Norway, The

Norwegian Society of Rural Women, JURK, Women's Front of Norway, The Norwegian Women and Family Association, the Association of Women in Science in Norway (FOKK), KILDEN, the Women's University, the Women's University North, The Norwegian Association for Women's Rights

- Organisations working with disability: Norwegian Federation of Organisations of Disabled People (FFO), The Norwegian Association of the Blind and Partially Sighted – NABP, The Norwegian Association of Disabled, NFU, Samarbeidsutvalget, the Norwegian State Council on Disability, the association Stop Discrimination

There was only one organisation working with sexual orientation which would make a statement in the consultation procedure. This was The Norwegian National Association of Lesbian and Gay Liberation (LLH).

When we compare the organisations working with gender to those who work with ethnicity, religion or national origin (i.e. the areas that used to be separated in the two former bodies), we find that the latter were far more in sympathy with the idea of a common body.

The organisations working with gender pointed out that they feared that gender equality would get lower priority or drown in the prioritising of the different discrimination grounds, that the gender equality work would lose impact and that each discrimination ground would be better administered in separate bodies. At the same time, it was also some of these organisations that were in sympathy with the idea of a common body. These organisations e.g. focused on the possibility of viewing these different discrimination grounds as a whole and of balancing different considerations with each other. Despite a certain degree of disagreement, we may still say that the organisations as a whole (both gender, ethnicity, etc.) were in sympathy with the idea of a common body. (BFD 2003)

In connection with the issue of whether the body should be granted both the law enforcer role and the instigator role, the organisations agreed to an even higher extent. None of the organisations working with gender and only two of the organisations working with ethnicity, religion, philosophies of life and national origin thought that this was a good idea. In addition to this, many organisations did not take an explicit position on this issue. Most of these organisations did not have sympathy with a common body and did therefore not take a position on the roles included in any such a body. (BFD 2003)

As a whole, we can say that the organisations were far more sceptical towards

the idea of granting a common body the roles as both law enforcer and instigator than they were towards the idea of a common body. In this light, we can say that the organisations agreed on this. (BFD 2003) At the same time, the arguments against a combination of roles were very different between the different organisations.

The organisations working with gender pointed out the fear that a combination of the roles would lead to a lower priority of the instigator role. This lower priority could be the result of a need to prioritise and it would then be easier to prioritise the law enforcer role as this is much more firmly and clearly defined by the legislation. The organisations also claimed that this kind of combination would be difficult as the roles might come in conflict with each other. The acts would be more conservative than what the instigator work should be. The acts are primarily aimed at preventing discrimination. The instigator work, however, should have as its goal to achieve full gender equality which is a much more radical goal than preventing discrimination. It was pointed out that it would be difficult to combine an objective law enforcer role and a more subjective and progressive instigator role. The organisations in the gender area also feared that a large common body which should act both as law enforcer and instigator would result in a weakened focus on each of the different grounds. They also feared that the body would have weaker competence within each of these grounds. (BFD 2003)

Those organisations working with ethnicity, religion philosophies of life and national origin which were not in sympathy with the combination of the roles based this view on arguments such as the need for different methods in the work with the two grounds and the need for more independent bodies which could promote the same case. One organisation also believed that the need to prioritise the law enforcement of the new act against ethnic discrimination in the first phase after the act had become effective would result in a low priority of the instigator work. (BFD 2003)

Several organisations (both within the gender and ethnicity area), which were not in sympathy with the common body, argued that you could instead ensure the exchange of experiences and cooperation between the different independent bodies through joint localization. (BFD 2003)

Even if this consultation basically only dealt with a common body for the grounds of gender and ethnicity, there was still an opening in the report of the working committee to also let other grounds be included in the work of the body when each of these got their own legislation. Many of the organisations were pre-

occupied with the significance of having a common body to work against discrimination across most of the discrimination grounds. E.g. many of the philosophy of life organisations pointed out that religion and philosophies of life should be mentioned more specifically in the mandate of the body as a discrimination grounds in its own right and not just implicitly included in the interpretation of the concept of ethnicity. (BFD 2003)

Organisations working with the interests of disabled persons or working to prevent discrimination based on sexual orientation were also invited to participate in the consultation. The opinion of these organisations of the working committee's proposal was very different than what we see from the organisations above. (BFD 2003)

The organisations working with disability were unanimous in their argumentation which in the main was about not wanting to take a position to a new common body because they felt it was too soon. The organisations demanded that the decision should be postponed. They wanted to wait for the Syse Committee's analysis of an act against discrimination of disabled persons and a body connected to this field (see the outline earlier in this chapter). They believed that a common body to enforce several discrimination grounds should not be established until each of the different grounds had their own act and there had been time to put these acts into practice. The organisations feared that if a common body was created with gender and ethnicity as its legal background, these would be the grounds that would be considered in the structure of the organisation. In this way, the other grounds would just have to adapt to these solutions when they got their own code. (BFD 2003)

In addition to this, the organisations working with disability wanted an evaluation of similar multi-dimensional bodies in other countries (especially Canada) and they were harsh in their criticism of the depth and working process of the analysis. They felt that the analysis lacked a thorough presentation of the consequences of the new bill. In addition to this, the believed that the process had been too hasty, with very short time-limits and that it had been undemocratic. They believed that the people being affected by the proposed body had not had enough opportunities to express their opinions during the analysis process. (BFD 2003)

During the consultation procedure, only one organisation, which was working with the rights of homosexuals and lesbians was represented, The Norwegian National Association of Lesbian and Gay Liberation (LLH). They adopted the

same criticism that came from the organisations working with disability and they did not wish to take a position on the bill by the committee either. (BFD 2003)

The opinion of the Gender Equality Ombud, the Centre for Gender Equality and the Centre against Ethnic Discrimination in the debate

The three former organisations that used to constitute the body in the public gender equality and anti-discrimination work did also participate in the consultation procedure with comprehensive statements and input. The three organisations had different opinions of the different problems which were discussed in the report of the working committee. Interestingly enough, the two organisations working with gender equality did not always have the same opinion. In the following, we will discuss the opinions of each of the three organisations in relation to the most important issues.

The Gender Equality Ombud was against a common body to enforce the acts against discrimination based on ethnicity and gender. At the same time, they were in sympathy with the combination of roles by integrating the Gender Equality Ombud and the Centre for Gender Equality.

They believed that the discrimination grounds of gender and ethnicity would be better administered separately than in a common body. They based this opinion on the fact that it was different target groups where you in the work with discrimination based on gender appeal to all women and men in Norway, whereas you in the work against ethnic discrimination have different minorities as target groups. Furthermore, they feared that the gender equality work, and in particular the instigator role, would be weakened in a common body. They also believed that the anti-discrimination work in the two areas were at very different stages which would make it difficult to work with both areas in the same body. They also pointed out that the countries where a common law enforcement body had already been established did not have as long a tradition of working with gender equality and had a weaker legal protection on the basis of gender and that these could therefore not very well be used as ideals for a Norwegian reorganisation. (BFD 2003)

On the other hand, when it came to the issue of combining the law enforcer and instigator role, they were in sympathy with this in the gender area. They be-

lieved that it would be expedient to integrate the Gender Equality Ombud with the Centre for Gender Equality as a common body. They believed that this kind of integration would result in an intensification of the work and particularly a strengthening of the instigator work. They argued in favour of the integration on the basis of already overlapping tasks, increased user-friendliness and improved deployment of resources. (BFD 2003)

The Centre for Gender Equality, however, was for a common body based on gender and ethnicity, but was not in sympathy with a combination of the enforcer and instigator roles.[4]

They believed that a common law enforcer would be positive for those who had been victims of discrimination and who wished to file a complaint, particularly if it was a question of multiple discrimination. At the same time, they did not wish for the Centre for Gender Equality or the instigator role for the gender area to be integrated in a new body like this. They feared that the main competence of the gender equality work would be lost in a big, common body. Furthermore, they argued that the enforcement and instigator work have different target groups and that it is difficult to reach all the different target groups through one common body. As law enforcer, the work is first and foremost directed a those people who have experienced discrimination and wish to file a complaint. The instigator work, however, have multiple target groups, e.g. people who seek knowledge of gender equality issues. Furthermore, they believed that the two roles have different goals and therefore require different means. While the enforcement work is about rights and codes, the instigator work is focusing on power structures in society. They also believed that a large common body would give the instigator role less scope to act and thus impair this work. In addition to this, they believed that it would be negative if the anti-discrimination and gender equality work only had one voice in the media. (BFD 2003)

As for the *Centre against Ethnic Discrimination* (SMED) they were very much in sympathy with the creation of a common body as well as the fact that this body should include both the role as law enforcer and as instigator. At the same time, SMED focused on a number of different reasons why they believed that a common body would be expedient. E.g. they believed that a body to administer both gender and ethnicity would require a strong expert environment and adequate resources. They pointed out that it was important to handle *"the characteristics of*

the different grounds as well as the need for competence development and focus" (BFD 2003, p. 220). SMED also believed that it was important to harmonise the codes and that the new law enforcement body should take effect at the same time as the new discrimination act. (BFD 2003)

With regard to the issue of combining the role of enforcer and instigator, SMED emphasised the importance of having as few bodies as possible and that this would be the most user-friendly solution and would provide the option of the transfer of competence and cross-disciplinary work. They also believed that a common body would provide a fortified expert environment which would be good for the recruiting of and the option to keep a competent staff over time. (BFD 2003)

All three bodies wanted a harmonisation of the different acts within the area. They also believed that more grounds should be included in a new, common body. In particular, SMED mentioned here that religion should be a separate base in the new body. (BFD 2003)

All three organisations presented a sharp *criticism of the report of the working committee*. SMED was critical of the handling of the legal aid role and believed that this received too little attention in the report. They also believed that the report did not describe thoroughly enough how the different roles, which it proposed the body should administer, should be put into practice.

The Centre for Gender Equality criticised the report for having too little focus on the work with *real gender equality*. They believed that the working committee only discussed the anti-discrimination work. They believed that this was reflected in the report's image of the target groups of the new body. Here they believed that the working committee had narrowed down the target group into people who had experienced discrimination and thus wanted to complain about a breach of the acts. The Centre for Gender Equality believed that the report forgot other central target groups of the gender equality work, e.g. those who required relevant information on gender equality, or different target groups for change of attitude. The Gender Equality Centre believed that the report mainly focused on the enforcer role and there was too little focus on how the instigator role should be put into practice. In addition to the criticism, they also believed that the report's proposal lacked two kinds of analysis that were not included. First of all, they believed that the entire public system for gender equality (the Ministry of Children and Equality, the Gender Equality Ombud and the Centre

for Gender Equality) should has been evaluated and not just the Centre for Gender Equality. Furthermore, they also needed a more thorough evaluation of how the bodies which were already integrated in other countries worked. In the report, it is discussed how other countries have integrated their gender equality and anti-discrimination bodies, but not whether this has been expedient or not in the individual countries. (BFD 2003)

This criticism was also shared by the Gender Equality Ombud which needed a clearer reference to Denmark and Finland where these issues had also been analysed. The Gender Equality Ombud also believed that there was too much focus on how the new body should look and too little on the arguments why this would be a good solution. *"First of all, the report deals with the administrative and practical advantages and technical issues with regard to the establishment of a common body, and to a minor extent deals with the question of whether it is expedient to establish a common body from a professional point of view. This is a major weakness in relation to this mandate and thus to the analysis."* (BFD 2003, p. 126) The Ombud also believed that the working committee had had too little time and that the bodies affected by the reorganisation had not been sufficiently involved in the work. (BFD 2003)

6.3. The new system

After the consultation procedure in 2003, the Ministry of Children and Families (BFD)[5] continued the further development of the idea of a common body in 2004 and 2005. In December 2004, the Bondevik Government officially introduced its bill on the establishment of a new Equality and Anti-discrimination Ombud (LDO) to the Norwegian Parliament. The Ministry's bill was mainly built on the proposal of the cross-departmental working committee, but was extended in relation to which discrimination grounds the body should administer. (BFD 2004)

The bill included the following main elements (BFD 2004):

- A common body to administer several grounds (gender, ethnicity, religion, sexual orientation, disability and age)
- Binomial body consisting of the first instance, LDO, and the second instance, LDN

The bill was passed by the Norwegian Parliament in the spring of 2005 (Stortinget 2005a)

In 2005, The Anti-Discrimination Ombud Act and the regulations regarding the organisation and activities of the LDO and LDN were passed. At this time, all parties were in sympathy with the creation of a common body, with the exception of the Progress Party which does not want public gender equality work. With regard to the question of which roles the body should have, however, there were very different opinions. Here the Norwegian Labour Party (AP), The Socialist Left Party of Norway and the Centre Party (SP), the parties that constitute the Government today, believed that the body should only act as law enforcer. The instigator role should thus be separated in different bodies. The three parties were a minority in the Parliament at that time. The Ministry's bill received the majority of the votes and was passed in full. (Stortinget 2005c)

In the autumn of 2005, the Minister for Children and Families, Laila Dåvøy, appointed Beate Gangås the first Equality and Anti-Discrimination Ombud in Norway. Beate Gangås is a law graduate and came into the job as ombudsman directly from the police where she had been chief constable since 2001. LDO had its first day of operation on 1 January 2006. (www.ldo.no)

LDO is organised in four different departments: the legal department, the social department, the communications department and the administration department. The two specialist departments (the legal and social departments) are both working across the different discrimination grounds. (www.ldo.no)

LDO is enforcing the following acts (www.ldo.no):

- The Gender Equality Act
- The Act against Ethnic Discrimination
- The equal treatment part of the Working Environment Act
- The provisions on non-discrimination in the housing acts

The regulatory framework will give the different discrimination grounds different degrees of protection. Gender, ethnicity, national origin, religion, philosophies of life, descent, skin colour and language have a high degree of protection as they are included in the Gender Equality Act or the new Act against Ethnic Discrimination which came into force on 1 January 2006. These two acts apply to all areas of society with the exception of internal circumstances in religious

communities. The Working Environment Act and the housing acts, on the other hand, only provide protection in the working life and housing sector, respectively. The Working Environment Act prohibits discrimination based on political views, membership of employee organisations, sexual orientation, disability and age. The discrimination ban of the housing acts protects against discrimination based on homophile orientation. (www.ldo.no)

The Syse Committee presented its analysis to the Ministry of Justice and the Police in May 2005 (JD 2005). The committee proposed that a separate act against discrimination based on disability should be established and that this act should apply to all areas of society with the exception of *"choices and actions that are a natural part of the family life or are of personal character"* (JD 2005, p. 27). The Committee proposed that this act should also be enforced by the Equality and Anti-discrimination Ombud (JD 2005). The Ministry of Labour and Social Inclusion (AID) is now working with the follow-up on the proposal of the Syse Committee. The Ministry now plans to introduce a bill for a new discrimination and accessibility act for persons with disabilities to the Norwegian Parliament at the turn of the year 2007/2008. (AID 2007b)

1. June 2007, the Government set up the co-called discrimination act committee, which is going to analyse a joint act against discrimination, a constitutional protection against discrimination and a ratification of additional protocol no. 12 to the European Convention on Human Rights. The members of the committee are mainly lawyers, law professors and researchers. In the committee's mandate, the Government argues that a common discrimination act would make the protection against discrimination more comprehensive and thus strengthened. In this way they visualize a common discrimination acts across the different discrimination grounds being able to provide an increased protection for each of the grounds. (BLD 2007a). The Committee will access the integration of the different current acts within the discrimination area and at the same time analyse the other discrimination grounds which may also be included in the new act. It will also come to a decision on whether the list of discrimination grounds covered by the law should be exhaustive or not. (Stortinget, 2006c). The Committee has to submit its recommendation before 1 July 2009 (BLD 2007a).

Conclusions

In this chapter we have discussed the development of the Norwegian apparatus working against discrimination and how this has evolved in a more multi-dimensional direction. We have also looked at the more important aspects of the history behind the new apparatus and the debates in connection with the establishment of a common gender equality and anti-discrimination ombud. The debates continue to illustrate the important issues related to a multi-dimensional discrimination policy.

Still, the Norwegian system may only be characterised as partly multi-dimensional. When it comes to the apparatus actually working with discrimination, this may be characterised as multi-dimensional through the mandate of LDO. At the same time we find that other parts of the political system are not multi-dimensional. E.g. this applies to the work of the ministries where the responsibility for the policies of the different discrimination grounds is spread across several ministries. E.g. the Ministry of Children and Equality have chief responsibility for gender equality and equality based on sexual orientation, whereas the Ministry of Labour and Social Inclusion are responsible for the immigration and asylum policies and for the Saami and minority policies (www.regjeringen.no).

So far, there is no unified multi-dimensional discrimination act, either. Even if the current discrimination act covers more than one discrimination grounds, the legislation in the discrimination area is still spread across a number of different acts, as discussed in this chapter.

Still, the legislation is in process, a process which seems to move in the direction of a more multi-dimensional set of codes. You may visualize that this kind of process will end up with one of the two alternative models:

- A harmonisation of the acts for each of the discrimination grounds. This will imply that grounds which are currently not protected will become protected and that the different acts will provide protection in the same way and to the same extent.
- The creation of a common discrimination act for all discrimination grounds which will replace the acts covering the different grounds today.

The mandate of the discrimination act committee appointed by the Government points to a development in the direction of alternative B. *"It is a priority of the Government to strengthen the protection against discrimination in the Norwegian*

legislation. In the long term it will be necessary with a common act against discrimination. It will make the protection against discrimination more comprehensive and thus strengthened, says the Minister of Labour and Social Inclusion, Bjarne Håkon Hanssen." (BLD 2007a)

An evaluation of LDO is planned for 2008 (BLD 2006b). The evaluation will provide some important answers as to whether the sceptics of a multi-dimensional apparatus were right in their criticism or not.

It is also worth pointing out that neither the concept of *multi-dimensional* nor the related concept of intersectionality was mentioned in the political discussions included in the process behind LDO. This applies to the argumentation of the Government, the cross-departmental working committee and the organisations for and against a new apparatus and set of codes. We can see this if we look for official documents in the web archives of the Parliament and the Government (www.stortinget.no and www.regjeringen.no). The concept of *intersectionality* was not used until the new body (LDO) began operating in 2006 and it has then received more focus in the debate in Norway. The concept of multi-dimensional, however, has not been used so much in discussions related to the Norwegian system.

Source material

"Besl.O.nr.69 (2004-2005) Lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)" (Act on the Equality and Anti-discrimination Ombud and the Equality Tribunal (the Anti-discrimination Ombud Act), Stortinget, 2005a, www.stortinget.no/beso/beso-200405-069.html

"Dokument nr. 8:66 (2005-2006) Forslag fra stortingsrepresentantene Erna Solberg, Andre? Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag" (Proposal on the general and overall legislation as for discrimination regardless of grounds), Stortinget, 2006a, www.stortinget.no/dok8/2005/pdf/dok8-200506-066.pdf

"Faglig frihet eller politisk frigang? En evaluering av Likestillingssenteret" (Professional freedom or political clearance? An evaluation of the Centre for Gender Equality), Statskonsult, 2003

"Fakta om Likestillings- og diskrimineringsombudet" (Facts on the Equality and Anti-discrimination Ombud), The Equality and Anti-discrimination Ombud (LDO), 2007a, www.ldo.no/TopMenu/Om-ombudet2/Fakta-om-Likestillings—og-diskrimineringsombudet/

"Felles håndhevingsapparat for diskriminering på grunnlag av kjønn og etnisitet. Rapport fra tverrdepartemental arbeidsgruppe", (Common enforcement body for discrimination based on gender and ethnicity. Report from the cross-departmental working committee) The Ministry of Local Government and Regional Development (KRD), 2003, www.regjeringen.no/nb/dep/aid/dok/rapporter_planer/rapporter/2003/Felles-handhevingsapparat-for-diskriminering-pa-grunnlag-av-kjonn-og-etnisitet.html?id=105939

"Forskrift om organisasjon og virksomhet for Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda" (Rules on the organisation and activities of the Equality and Anti-discrimination Ombud and The Norwegian Equality Tribunal), The Ministry of Children and Equality (BLD), 2006a, www.regjeringen.no/nb/dep/bld/dok/lover_regler/forskrifter/2006/Forskrift-om-organisasjon-og-virksomhet-for-Likestillings-og-diskrimineringsombudet-og-Likestillings.html?id=92611

"*Historien bak Likestillings- og diskrimineringsombudet",* (The history of the Equality and Anti-discrimination Ombud) The Equality and Anti-discrimination Ombud (LDO), 2007b, www.ldo.no/TopMenu/Om-ombudet2/Historien-bak-Likestilings—og-diskrimineringsombudet/

"Høringsuttalelser til rapport om felles apparat for håndheving av diskriminering på grunnlag av kjønn og etnisitet" (Statements on the report about a common apparatus for the enforcement of discrimination based on gender and ethnicity), The Ministry of Children and Families (BFD), 2003

"Implementation of the convention on the elimination of all forms of discrimination against women (CEDAW). Norway's seventh periodic report", The Ministry of Children and Equality (BLD), 2006b, www.regjeringen.no/upload/kilde/bld/rap/2006/0004/ddd/word/297365-7th_cedaw_report_15_september_2_-med_forside.doc

"Innst. O. Nr. 71 (2004-2005) Innstilling fra familie-, kultur og administrasjonskomiteen om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)", (Recommendation from the Family, Culture and Administration Committee for act on the Equality and Anti-discrimination Ombud and the Norwegian Equality Tribunal (The Anti-Discrimination Ombud Act)) Stortinget, 2005b, www.stortinget.no/inno/2004/inno-200405-071.html

"Innst.S.nr.54 (2006-2007) Innstilling fra justiskomiteen om forslag fra stortingsrepresentantene Erna Solberg, André Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag", (Recommendation from the Justice Committee for the proposal on the general and overall legislation as for discrimination regardless of grounds) Stortinget, 2006b, www.stortinget.no/inns/2006/inns-200607-054.html

"Mandat for Likestillings- og diskrimineringsombudet" (Mandate of the Equality and Anti-discrimination Ombud), The Equality and Anti-discrimination Ombud (LDO), 2007c, www.ldo.no/TopMenu/Om-ombudet2/Mandat-for-Likestillings—og-diskrimineringsombudet-/

"Mandat for utvalg som skal utrede en samlet lov mot diskriminering, grunnlovsvern mot diskriminering og ratifisering av tilleggsprotokoll nr. 12 til den europeiske menneskerettskonvensjonen (EMK)" (Mandate of the committee to analyse a common act against discrimination, a constitutional protection against discrimination and the ratification of additional protocol no. 12 to the European Convention on Human Rights), The Ministry of Children and Equality (BLD), 2007a

"NOU 2002: 12 – Rettslig vern mot etnisk diskriminering" (Legal protection against ethnic discrimination), Analysis from committee named by royal decree of 3 March 2000. The Ministry of Local Government and Regional Development (KRD) 2002, www.regjeringen.no/nb/dep/aid/dok/NOUer/2002/NOU-2002-12.html?id=145418

"NOU 2003: 2 – Skjerpet vern mot diskriminering i arbeidslivet" (Increased protection against discrimination in working life), The Ministry of Labour and Government Administration (AID), 2002, www.regjeringen.no/nb/dep/fad/dok/NOUer/2003/NOU-2003-2.html?id=118232

"NOU 2005: 8 Likeverd og tilgjengelighet – Rettslig vern mot diskriminering på grunnlag av nedsatt funksjonsevne. Bedret tilgjengelighet for alle" (Equality and accessibility – legal protection against discrimination based on disability. Improved accessibility for all), The Ministry of Justice and the Police (JD), 2005, www.regjeringen.no/Rpub/NOU/20052005/008/PDFS/NOU200520050008000DDDPDFS.pdf

"Nytt diskrimineringslovutvalg skal samle lover mot diskriminering" (New discrimination act committee to merge acts against discrimination), Press release no. 63, The Ministry of Labour and Social Inclusion (AID), 2007b, www.regjeringen.no/nb/dep/aid/pressesenter/pressemeldinger/2007/63.html?id=469622

"Odelstinget Møte mandag den 25. April kl 12.32 2005. Sak nr.1 Innstilling fra familie-, kultur og administrasjonskomiteen om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven) (Inst.O.nr.71 (2004-2005), jf. OT.prpr.nr.34 (2004-2005))" (Meeting in the Odelsting, Monday 25 April 2005, at 12.32. Case no. 1 Recommendation from the Family, Culture and Administration Committee for act on the Equality and Anti-discrimination Ombud and the Norwegian Equality Tribunal (The Anti-Discrimination Ombud Act)) Stortinget, 2005c, www.stortinget.no/otid/2004/o050425-01.html

"Ot.prp. nr.34 (2004-2005) Om lov om Likestillings- og diskrimineringsombudet og Likestillings- og diskrimineringsnemnda (diskrimineringsombudsloven)" (Regarding the act on the Equality and Anti-discrimination Ombud and the Norwegian Equality Tribunal (The Anti-Discrimination Ombud Act)), The Ministry of Children and Families (BFD), 2004, www.regjeringen.no/nb/dep/bld/dok/regpubl/otprp/20042005/Otprp-nr-34-2004-2005-.html?id=395328

"SMED underveis. En prosessevaluering av Senter mot etnisk diskriminering." (SMED on the way. A process evaluation of the Centre against Ethnic Discrimination) Norwegian Institute for Urban and Regional Research and the Department of Criminology and Sociology of Law at the University of Oslo, 2003, www.regjeringen.no/upload/kilde/krd/rap/2003/0017/ddd/pdfv/199465-smed_irsrapp75.pdf

"Stortinget Møte mandag den 18. Desember 2006 kl 10 2006. Sak nr. 15 Innstilling fra justiskomiteen om forslag fra stortingsrepresentantene Erna, Solberg, André Oktay Dahl og Olemic Thommessen om generell og overordnet lovgivning hva angår diskriminering uavhengig av grunnlag (Innst.S.nr.54 (2006-2007), jf. Dok.nr.8:66 (2005-2006)" (Meeting in Stortinget, Monday 18 December 2006, at 10.00. Case no. 15 Recommendation from the Justice Committee for the proposal on the general and overall legislation as for discrimination regardless of grounds), Stortinget, 2006c, www.stortinget.no/inns/2006/inns-200607-054.html

Relevant web pages

The Ministry of Labour and Social Inclusion – www.regjeringen.no/nb/dep/aid
The Ministry of Children and Equality – www.regjeringen.no/nb/dep/bld
The Equality and Anti-discrimination Ombud – www.ldo.no
The Norwegian Equality Tribunal – www.diskrimineringsnemnda.no
The Government – www.regjeringen.no
The Norwegian Parliament (Stortinget) – www.stortinget.no

7. SVERIGE

I 2002 tilsatte integrationsminister Mona Sahlin en parlamentarisk funderet 'Diskrimineringskommitte' som fik til opgave at gøre status over den svenske lovgivning på diskriminationsområdet og fremlægge forslag til hvordan beskyttelsen af udsatte grupper kunne forbedres og implementeringen af loven styrkes (Dir. 2002:11). Komiteen afleverede i 2004 sin første del-udredning *Ett utvigdat skydd mot könsdiskriminering (SOU 2004:55)* og den 24. februar 2006 blev den samlede udredning *En sammanhållen diskrimineringslagstiftning (SOU 2006:22)* overleveret til daværende Jämställdhetsminister Jens Orback. Den nye minister for jämställdhet Nyamko Sabuni fremlægger lovforslag til en samlet diskrimineringslovgivning Ett starkare skydd mot diskriminering[48a] til Riksdagen i begyndelsen af 2008 og forslaget vedtages den 4. juni 2008. Dette kapitel gennemgår den aktuelle status i svensk diskriminationspolitik, udredningens konklusioner og modtagelse samt udstikker perspektiver for den fremtidige organisering af ligestillings- og ligebehandlingsarbejdet i Sverige. Det er opbygget kronologisk og indledes derfor med en gennemgang af det hidtidige system med fire separate ombudsinstitutioner[48] og lokale antidiskriminationsbureauer samt en overordnet redegørelse for den aktuelle lovbeskyttelse af potentielt diskriminationsramte grupper i Sverige. Herefter gennemgås Diskrimineringskomiteens udrednings konklusioner og anbefalinger og dens modtagelse i ombudsinstitutionerne såvel som i interesseorganisationerne diskuteres. Til sidst beskrives den forestående udvikling på området og perspektiver i forhold til forenklet klageadgang ved flerdimensionel diskrimination udstikkes.

Kapitlet er baseret på officiel dokumentation som høringsforslag, lovgrundlag, Riksdagsdebatter, rapporter, direktiv og høringssvar. Forfatteren har endvidere deltaget i et stort antal seminarier, høringer og debatter om udredningen og den fremtidige organisering af ligebehandlingsarbejdet, som har været arrangeret af forskellige interesseorganisationer rundt omkring i Sverige 2005-2007.

7.1. Det hidtidige system

Udviklingen af den svenske ligestillings- og ligebehandlingspolitik går tilbage til 1970'erne. I denne del af rapporten trækkes et rids over denne udviklings historie ud fra hver af de fire ombudsinstitutioners ressortområder og hver ombudsmands mandat, ressourcer og effekt gennemgås. Kapitlet afsluttes med en skematisk oversigt over de love, der i dag beskytter på de forskellige områder.

JämO

Sverige har længe været et land, der var kendt for sit vidtgående og proaktive arbejde for ligestilling mellem kønnene (se fx. Borchorst & Dahlerup 2003). Nøglen til udviklingen i det svenske ligestillingsarbejde er kvindebevægelsen, som historisk og aktuelt har haft succes med at mobilisere og samles om grundlæggende fælles krav og dermed i nogle tilfælde kunne udfordre magten (dvs. konservative magthavere). En vigtig bidragende årsag til bevægelsens fremgange har været muligheden for at bygge på erfaringer fra andre lande og kunne bidrage til disse internationale erfaringer. Der er således tale om ikke bare en svensk, men en international kvindebevægelse, der har medvirket til at ligestillingsarbejdet er blevet ført på såvel græsrods- forsker- og politikerniveau samtidigt og sikret et samspil mellem disse fronter. Et eksempel på dette samspil ses i den relativt hurtige proces fra Sveriges indledende arbejde med og senere ratificering af FNs Kvindekommission (CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women) til kravet om og gennemførelsen af den svenske Ligestillingslov (SOU 1978:38).

Ligestillingsloven blev vedtaget i 1979 og indeholdt forbud mod diskrimination på grund af køn i arbejdslivet og gav ret til kompensation ved diskrimination samt stillede krav om aktive indsatser for at fremme ligestillingen på alle arbejdspladser. 1. Juli 1980 blev også *Jämställdhetsombudsmannen (JämO)* åbnet som institution, der skulle føre tilsyn med loven og tage imod anmeldelser om kønsdiskriminering, sexchikane og chikane på grund af klager over kønsdiskrimination i arbejdslivet og på videregående uddannelser. I takt med at loven ændredes og kravene til arbejdsgiverne om først udvikling af særlige ligestillingsplaner og siden hen også om kønsopdelte lønoversigter trappedes op, øgede også JämOs beføjelser, og blandt andet tilsynet med disse planer kom unde ombudsmandens ressort. I 2004 kom Diskrimineringskommittéen med sin første delbetænkning *Ett utvigdad skydd mot könsdiskriminering (SOU 2004:55)* hvori man foreslår en revision af de ligestillingsrelevante love, således at det sikres, at diskri-

mination på grund er køn også er forbudt på samtlige af de områder hvor forbuddet mod diskrimination på grund af race/etnisk oprindelse råder – det vil sige også udenfor arbejdsmarkedet og videregående uddannelser. Herudover ligger det under JämOs mandat at gennemføre oplysnings- og informationskampagner samt at tilbyde undervisning og (videre)uddannelse i ligestilling samt at afgive høringssvar og/eller sikre, at et ligestillingsperspektiv fremkommer når forslag om samfunds- eller lovforandringer sendes i høring (JämO 2006).

Fra sin start havde JämO omkring 100 diskriminationsanmeldelser om året og antallet er siden da steget støt til 171 i 2005. Også sekretariatet har siden opstarten med fem ansatte ekspanderet i takt med de tilkommende ansvarsområder og tæller i dag 35 ansatte. I 2007 har JämO et budget på 28 mio sek (årsrapport 2006).

DO

Sverige ratificerede i 1968 FN konventionen om afskaffelse af alle former for racediskrimination (CERD), og i den første svenske rapport til CERD-komiteen[49] fastslås det, at racediskrimination er i strid med svensk lov, hvorfor man ikke anså det nødvendigt med en specifik lovgivning på området. Dog havde man indført paragraf 16:8 og 16:8 A i straffeloven (om 'Hets mot folkgrupp' og 'olaga diskriminering') og indført en regulering 7:4 i trykkeloven som fastslog at hetz mod befolkningsgrupper skulle kunne udgør et trykkefrihedsbrud (SOU 2005:56). I 1978 tilsattes den første diskriminationsudredning i Sverige og i 1983 fremkom den med sin rapport, der blandt andet indeholdt et forslag om et arbejdsretligt lovforbud mod etisk diskrimination i arbejdslivet modelleret efter samme princip som ligestillingsloven (SOU 1983:18). I Regeringens proposition fandt man dog fortsat ikke, at det var nødvendigt med en lov på arbejdsmarkedet, men man valgte at tilsætte en *Ombudsmand mot etnisk diskrimininering (DO)* og et nævn mod etnisk diskrimination. Det blev i den forbindelse diskuteret om tilsynet med diskrimination på grund af etnisk oprindelse skulle placeres under JämO – altså en udvigelse af JämOs mandat i retning af en mere flerdimensionel diskriminationsforståelse, men på grund af det ulige lovgrundlag på de to områder, besluttedes det, at have to separate ombudsinstitutioner (SOU 2005:56). DOs beføjelser var oprindelig heller ikke lige så vidtgående som JämOs.

Efter påtale fra FNs racediskriminationskomite i 1983, 1986, 1989 og 1991 tilsattes endnu en udredning (SOU 1992:96) som i 1992 præsenterede et forslag til lov mod etnisk diskrimination i arbejdslivet. Denne lov mødte dog kritik i

høringssvarene og i 1997 kom endnu en udredning (SOU 1997:174) som lagde grunden til den lovbeskyttelse der findes på området i dag og som blandt andet tæller krav om aktive indsatser, individuel kompensation, forbud mod indirekte diskrimination. Loven trådte i kraft i 1999, hvor lignende love angående diskriminationsområderne funktionsnedsættelse og seksuel orientering også blev vedtagne (propostition 1997/98:177)

I 2001 kom loven om ligebehandling af studenter på videregående uddannelser,[50] der beskytter alle 5 områder og som følge af to EU-direktiv,[51] der pålagde alle medlemslande at styrke minimumbeskyttelsen mod diskrimination, kom i 2003 en ny lov,[52] som gælder på en lang række områder også udenfor arbejdsmarkedet. I takt med disse love er DOs mandat blevet forøget og i 2006 havde DO et budget på 31 mio sek og et sekretariat med omkring 35 medarbejdere. Ligesom JämO varetager DO såvel individuelle klagesager (ca 65 per år) som undervisning, debat og informationsspredning, opfølgning på kravet om aktive indsatser og høringssvar mv. (DO årsredovisning 2006).

HO[53]

Den svenske handicappolitik har til stor del sin baggrund i to store udredninger, dels den Socialpolitiska kommitteen, dels Handikapputredningen fra 1965. I sin betænkning *Social omvårdnad av handikappade* (SOU 1964:43) formulerede den socialpolitiske komité nogle grundlæggende principper, der udgik fra et mere miljørelateret handicapbegreb end tidligere. Princippet var/er at handicap i stor udstrækning er en følge af samfundets utilpassede indretning, og at handicap derfor kan elimineres ved at forandre samfundet og gøre det mere tilgængeligt. Dermed gjordes handicapproblematikken meget mere politisk end tidligere, og i betænkningen lagdes der vægt på, at der skal tage hensyn til handicappede overalt i samfundet – i byplanlægninger, boligbyggeri, uddannelsesvæsenet, arbejdsmarkedet, socialpolitikken og i kulturlivet (SOU 1964:43). Den socialpolitiske komité fremlagde forslag på, hvordan ansvaret for denne omorganisering af samfundet kunne fordeles mellem stat, amter og kommuner og betonede at tilgængelighed og hjælp til mennesker med funktionsnedsættelser skal betragtes som rettigheder (SOU 1991:46).

Handicapudredningen som kom året efter havde til opgave at undersøge i hvor stor udstrækning stat, amter og kommuner havde gennemført de indsatser som den socialpolitiske komité havde foreslået, og udredningen medførte, at der blev indført boligtilpasning, kommunale handicapråd, statsbidrag til transport-

tjenester mv. I takt med velfærdssamfundets opbygning tilkom også flere rettigheder og støtteindsatser som f.eks. invalidepension og målet for arbejdet blev at bryde segregationen mellem mennesker med og uden funktionsnedsættelse og tilstræbe et så 'normalt' liv som muligt for alle borgere. Dette ses blandt andet i integrationspropositionen fra 1978,[54] hvori det fremgår at alle skoler skal kunne undervise alle børn og i arbejdsmiljøloven fra 1977,[55] der fastslog, at arbejdspladser skal være tilpassede til menneskers forskellige forudsætninger (HO 2004).

I 1991 fremlagdes en ny handicapudredning *Handikapp – Välfärd – Rättvisa (SOU 1991:46)*, der konstaterede, at der var omfattende mangler i støtten til personer med funktionsnedsættelse og foreslog en ny rettighedslov (1993:389) med blandt andet ret til personlig assistance og økonomisk kompensation for assistance. I sin slutbetænkning *Ett Samhälle för alla (SOU 1992:52)* foreslog Handicapudredningen, at der indføres en lovfæstet beskyttelse mod diskrimination og at der skulle indrettes en Handicapombudsmand. Regeringen valgte i 1994 at nøjes med at indrette Handikappombudsmannen (HO), der herefter virkede ombudsindstans uden tilsyn over nogle specifikke love frem til 1999 hvor lagen (1999:132) om förbud mot diskriminering i arbetslivet på grund av funktionshinder trådte i kraft. Siden tilkom som nævnt tidligere lagen om likabehandling av studenter i högskolan, och lagen om förbud mot diskriminering. I 2000 antog Riksdagen Regeringens proposition *Från patient till medborgare – en nationell handlingsplan för handikappolitiken,*[56] der bygger på FNs standardregler og fastslår, at et handicapperspektiv skal mainstreames i alle politiske beslutninger, og at det er hele samfundets fælles ansvar at sørge for at funktionsnedsatte er ligeværdige borgere og ikke diskrimineres.

Som en af indsatserne i handlingsplanen blev der indrettet et nationalt Tilgængelighedscenter under HO, der fremtager retningslinjer for hvordan handlingsplanen skal implementeres og følger op på fremgange. HO havde i 2006 sammenlagt et budget på ca 14 mio sek og 16 ansatte på sekretariatet. I 2006 indkom 524 anmeldelser til myndigheden (HO årsrapport 2006).

HomO

I forbindelse med vedtagelse af de tre diskriminationslove i 1999 blev det også vedtaget, at indrette en Ombudsmand mod diskrimination på grund af seksuel orientering.[57] Den påbegyndte sit arbejde 2000 og har som sin opgave at modvirke homofobi og arbejde for, at diskrimination på grund af seksuel orientering ikke

skal forekomme på noget område i det svenske samfund. HomOs mandat udspringer af Lagen om förbud mot diskriminering i arbetslivet på grund av sexuell läggning og af ligeværdsprincippet i FNs Menneskerettighedserklæring. HomO skal gennem rådgivning og på andre relevante måder arbejde for at mennesker, der bliver diskriminerede på grund af deres seksuelle orientering kan anvende og udnytte sine rettigheder. HomO skal endvidere foreslå og rådgive Regeringen om lovgivning og andre relevante aktiviteter, der kan bidrage til at modvirke homofobien og diskriminationen i samfundet. Endvidere skal HomO bidrage til samfundsdebatten og uddanne og informere offentligheden om homofobi og diskrimination samt overvåge den internationelle udvikling på sit område (HomO 2005).

I 2006 var myndighedens budget på 9 mio sek og der var 11 ansatte. I 2006 indkom 45 anmeldelser til HomO og 11 sager togs op på egen hånd (HomO rapport 2006).

BO

Foruden de fire ombudsmænd mod diskrimination er der i Sverige en Barnombudsmand, der varetager børns og unges interesser og har et årligt anslag på 17 mio sek samt førte i 2006 1361 sager på vegne af børn eller unge (www.bo.se).

Lokale antidiskriminationsbureauer

Rundt omkring i Sverige findes der 19 lokale antidiskrimineringsbureauer (adb'er), som tilbyder støtte og rådgivning til personer, der er blevet udsatte for forskelsbehandling på grund af en af de fem beskyttelsesområder. Bureauerne er selvstændige og drives alle frivilligt og varierer derfor i kapacitet og kundskab, men kan som udgangspunkt hjælpe til i sager på alle lovdækkede områder. Alle antidiskrimineringsbuerauer får midler fra Integrationsverket (SOU 2005:56).

Som det fremgår af ovenstående er omfanget af beskyttelse mod diskrimination på de forskellige områder relativt lige i Sverige i dag. Det der adskiller de forskellige områder er hvor vidtgående kravene om aktive indsatser er – i forhold til seksuel orientering har arbejdsgiveren kun pligt til at iværksætte aktive indsatser, hvis han/hun er bekendt med at diskrimination pågår, hvorimod der på kønsområdet er krav om både ligestillingsplaner og lønoversigter mv for alle arbejdsgivere med mere end 10 ansatte.

I lighed med de øvrige nordiske lande har Sverige hidtil sammenstukket den

nationale diskriminationslovgivning af flere lovgrundlag, der dækker forskellige grupper og samfundsområder. Disse love sammenfattes nedenfor i en skematisk opstilling:

Beskyttelses-område	Lovgivning	Samfunds-område	Klageadgang
Køn	Jämställdhets lagen[58]	Arbejdslivet	Jämställdhets-ombudsmannen (JämO) (tilsyn via Jämställdhets-nämden)
Etnisk oprindelse, religion, tro	Lagen om åtgärdar mot diskriminering i arbetslivet på grund av etnisk tillhörighet, religion eller annan trosuppfattning[59]	Arbejdslivet	Ombudsmannen mot diskriminering (DO) (tilsyn via Nämnden mot diskriminering)
Handikap	Lagen om förbud mot diskriminering i arbetslivet på grund av funktionshinder[60]	Arbejdsmarkedet	Handikappom-budsmannen (HO)
Seksuel orientering	Lagen om förbud mot diskriminering i arbetslivet på grund av sexuell läggning[61]	Arbejdsmarkedet	Ombudsmannen mot diskriminering på grund av sexuell läggning (HomO)
Køn, etnisk oprindelse, religion, tro, handicap og seksuel orientering	Lagen om lika-behandling av studenter i högskolan[62]	Videregående uddannelser	JämO, DO, HO, HomO
	Lag om förbud mot diskriminering[63]	Arbejdsmarkeds-politisk virksomhed, formidling af arbejde, tildeling af nærings-brev, medlemskab i fagfore-ninger, vare- og tjenesteydelser, boligområdet, sociale ydelser mv. sundhedsvæsenet	JämO, DO, HO, HomO

Lagen om förbud mot diskriminering och annan kränkande behandling av barn och elever[64]	Uddannelse	JämO, DO, HO, HomO (tilsyn via Skolverket)

Handlingsplan og delegation for menneskerettigheder

Foruden lovgivningen og ombudmandsinstitutionernes arbejde vedtog Riksdagen den 14 marts 2006 *En nationell handlingsplan för de mänskliga rättighetarna 2006-2009*, som et led i arbejdet med at sikre at menneskerettighederne overholdes i landet. Forinden var en handlingsplan for 2002-2004 blevet evalueret og eftersom erfaringerne var positive blev arbejdet intensiveret med den nye handlingsplan. Fokus ligger på indsatser mod alle former for diskrimination og handlingsplanen behandler endvidere en række rettighedsspørgsmål. Af de over 100 forslag er følgende nogle af de mere konkrete:

- Nedsættelse af en delegation for menneskerettigheder, der har til opgave at øge kendskabet til menneskerettighederne og forbedre arbejdet for at fremme rettighederne i Sverige. Delegationen skal støtte statslige myndigheder, kommuner og amter i deres arbejde for at sikre rettighederne og sprede information og kendskab til menneskerettigheder i offentligheden. Den skal desuden komme med indstillinger til Regeringen om indsatser der bør foretages for at sikre at menneskerettighederne respekteres i Sverige.
- Fastsættelse af antidiskriminationsklausuler i myndigheders køb, salg og samarbejde med private og offentlige samarbejdspartnere.
- Håndbog om menneskerettigheder i den kommunale virksomhed
- Indsatser for at styrke romaers situation i Sverige

Handlingsplanen henviser endvidere til, at arbejdet mod diskrimination står foran mulige store forandringer og at en fælles lov mod diskrimination på alle områder vil styrke sikringen af menneskerettighederne i Sverige.

Med dette som baggrund gennemgås herefter Diskrimineringskommitteens udredning og dens konklusioner forholdes til ovenstående beskrivelse af den aktuelle situation i Sverige.

7.2. Diskriminationskomiteens konklusioner

Som nævnt i indledningen tilsatte integrationsminister Mona Sahlin i 2002 Diskrimineringskommitteen for at udrede, hvorvidt og hvordan en fælles lovmæssig beskyttelse mod diskrimination kunne udformes og hvordan tilsynet ved en lovændring kunne styrkes og gøres mere effektivt. I det følgende gennemgås konklusionerne i komiteens to udredninger *Ett udvigdat skydd mot könsdiskriminering (SOU 2004:55)* og *En Sammanhållen diskrimineringslagstiftning (SOU 2006:55).*

Ett utvidgad skydd mot könsdiskriminering

I maj 2004 fremlagde komiteen sin delbetænkning, der havde til formål at undersøge hvilke yderligere indsatser Sverige burde iværksætte for at leve op til fire EU-direktiv om kønsdiskrimination:

- Ligebehandlingsdirektivet 76/207
- Direktivet om social tryghed 79/7
- Direktivet om bevægelsesfrihed 86/613 samt
- Direktivet om ligestilling mellem kvinder og mænd i forbindelse med adgang til og levering af varer og tjenesteydelser 2004/113

Endvidere udredtes hvorvidt lovgivning om diskrimination på grund af køn skulle indføres på områder udenfor arbejdsmarkedet og videregående uddannelser. Ændringerne som blev foreslået i udredningen omfattede en revision af Ligestillingsloven, således at beskyttelsen på arbejdsmarkedet blev større, men fastholdt en åbning for positiv særbehandling på grund af køn i tilfælde hvor målet er at fremme lige muligheder for alle uanset køn. Endvidere foreslås det at diskriminationsgrunden køn lægges til i den eksisterende Lov om forbud mod diskrimination. Disse ændringer blev gennemført i juli 2005.

En sammanhållen diskrimineringslagstiftning

Udredningen fremlægger komiteens forslag til en skærpet og fælles lovgivning mod diskrimination og til en ny fælles ombudsmandsinstitution. Da udredningen er meget omfattende gennemgås her kun de mest centrale konklusioner.

Forslaget til en ny lovgivning mod diskrimination

Komiteen forslår en ny fælles lov der indfører et generelt diskriminationsforbud – *Lagen om förbud och andra åtgärdar mot diskriminering*, hvormed den tidligere lovregulering på området ophæves. Den beskyttelse som disse love hidtil har givet, fastholdes dog ved, at den nye lov efter forslaget skal gælde på alle samfundsområder og loven foreslås opdelt i kapitler, der fastslår forbuddet i hver enkelt sektor og opstiller de forpligtelser, som forbuddet medfører. Herved kan der tages højde for de særlige forhold, der kan have indflydelse på gennemførelse og håndhævelse af diskriminationsforbuddet i hver enkelt sektor. De sektorer, der er udpeget som relevante og som hidtil har været reguleret af eksisterende love er: arbejdslivet, dele af uddannelsessystemet, arbejdsmarkedspolitisk virksomhed, opstart eller forvaltning af handelsvirksomhed, medlemskab i foreninger og organisationer, vare- og tjenesteydelser, boligmarkedet, socialtjenesten og socialforsikringssystemet, arbejdsløshedsforsikring, helse- og sygeplejesystemet og med hensyn til statslig studiestøtte. Herudover foreslås diskriminationsforbuddet endvidere gælde på følgende nye områder:

- Uddannelsessystemet i sin helhed
- Almene sammenkomster og offentlige arrangementer
- Værne- og civilpligten samt
- Offentlig ansættelse eller offentlige opgaver.

Endvidere foreslås det, at privatpersoner forbydes at diskriminere når de køber, sælger eller formidler varer, tjenester eller boliger til offentligheden.

I lovforslaget foreslås endvidere en forøgelse af beskyttede kategorier idet diskrimination skal være forbud på grund af køn, *kønsidentitet*, etnisk tilhørsforhold, religion eller anden trosopfattelse, funktionsnedsættelse, seksuel orientering og *alder*. Således foreslås beskyttelsen med tilføjelsen af kategorien 'kønsidentitet' ekspanderet til også at omfatte alle former for transpersoner.[65] Et diskriminationsforbud på grund af alder er også nyt, men her skal beskyttelsen ifølge forslaget kun gælde i arbejdslivet samt i nogle dele af uddannelsesvæsenet. Endvidere foreslås at også juridiske personer som firmaer eller foreninger er omfattede af lovens beskyttelse på de områder, hvor dette er nødvendigt. Hidtil har kun fysiske personer været beskyttet af diskriminationslovgivningen.

En ny fælles ombudsmandsinstitution

Komiteen foreslår, at de nuværende fire svenske ombundsmandsinstitutioner slås sammen til en fælles myndighed; *Ombudsmannen mot diskriminering*, som skal fungere på grundlag af og holde tilsyn med den nye lov. Den anbefales at Barnombudsmannen (BO) fortsat fungerer selvstændigt.

Mulighed for positiv særbehandling

Positiv særbehandling på grund af etnisk tilhør foreslås være tilladt i arbejdslivet og fortsat, som det hidtil har været, indenfor arbejdsmarkedspolitisk virksomhed. Positiv særbehandling på grund af køn foreslås være tilladt i forbindelse med videregående studier og I arbejdsmarkedspolitisk virksomhed samt som hidtil i arbejdslivet og i spørgsmål om medlemskab i arbejdstager-, arbejdsgiver- og brancheorganisationer.

Øgede krav om aktive indsatser mod diskrimination

Udredningen foreslår at et antal krav om aktive indsatser for at fremme ligestilling og ligebehandling skal iværksættes i arbejdslivet, på uddannelsesområdet og indenfor værne- og civilpligten. Endvidere foreslås en særlig indsats for at beskytte personer med funktionsnedsættelser mod bristende tilgængelighed på visse samfundsområder. Det skal således klassifiseres som diskrimination at ikke initiere *rimelige* indsatser for øget tilgængelighed. Endvidere skal det ansvar som i dag pålægger arbejdsgivere at initiere støtte- og anpasningsindsatser for personer med funktionsnedsættelse fortsat gælde med den nye lov.

Ressourcer og mandat

Diskrimineringskommitteen slår i udredningen fast at de foreslåede ændringer primært har til formål at styrke beskyttelsen mod diskrimination og dermed ikke sigter mod en effektivisering, der har omkostningsreduktion i ligebehandlingsarbejdet for øje. Tværtimod anser komiteen, at der må tilføjes væsentlige ressourcer udover det sammenlagte budget for de fire eksisterende ombudsmænd til en ny fælles ombudsinstitution, hvis den skal kunne fungere effektivt. Dette beror dels på at der tilkommer nye diskriminationsgrunde og nye områder hvorpå forbuddet gælder og skal håndhæves, og dels på at det vil kræve en massiv informations- og uddannelsesindsats at omstille såvel offentligheden som de ansatte på ombudsinstitutionens nye mandat.

7.3. Høringssvar

Udredningen *En sammanslagen diskrimineringslagstiftning* sendtes i høring til 149 høringsberettigede organisationer, juridiske instanser og myndigheder, hvoraf 118 svarede. Endvidere svarede 27 ikke-inviterede organisationer. Den følgende gennemgang vil fremlægge de generelle tendenser i svarene dels på baggrund af kommentarerne fra de eksisterende ombudsinstitutioner og dels tendenserne i svarene fra interesseorganisationer og juridiske eksperter indenfor de diskriminationsområder, der foreslås indbefattet af loven. Mange høringssvar er meget lovtekniske og ekstensive, men i denne gennemgang lægges vægten ved de overordnede tilkendegivelser om fordele og ulemper ved fælles lov og ombudsinstitution samt ved særlige relevante bemærkninger.

Ombudsmannen mot diskriminering på grund av sexuell läggning (HomO)

HomO er overordnet positiv til forslaget om en sammenlagt diskriminationslov på såvel arbejdsmarkedet som de øvrige samfundsområder og til at tilsynet med denne lov skal føres af en samlet ombudsmandsmyndighed, der omfatter samtlige diskriminationsområder. HomO mener, at dette vil medvirke til at give en mere effektiv beskyttelse mod diskrimination og et bedre samordnet tilsyn med de aktive indsatser mod diskrimination, som loven kræver. Endvidere fremhæver HomO at en samlet lov og ombudsmand vil gøre klageadgangen lettere for det individ, der udsættes for diskkrimination og særligt, hvis den diskriminerende handling kan bero på mere end en diskriminationsgrund. Således opfatter HomO, at en samlet lov og ombudsmand understreger, at samfundet anser, at al diskrimination er uacceptabelt uanset grund. Dog er det vigtigt, at der i sammenlægningen af ombudsinstitutionen sikres fortsatte specialistkundskaber om hvert af de inkluderede områder og at dette fremgår af sagsbehandlingen.

Men herudover kritiserer HomO komiteens forslag for at være inkonsekvent udformet og efterlyser et ikke-udtømmende diskriminationsbegreb, således at andre områder end de foreslåede vil kunne beskyttes af loven, hvis det bliver nødvendigt.

HomO deler heller ikke opfattelsen, at det skal være muligt at tillempe positiv særbehandling på grund af etnicitet, da man ikke finder det dokumenteret, at muligheden for positiv særbehandling på kønsområdet har haft positiv effekt. Således mener man ikke, at det er hensigtsmæssigt at bifalde den afståelse fra ligebehandlingsprincippet, som positiv særbehandling reelt er.

Ombudsmannen mot etnisk diskriminering (DO)

DO er ligesom HomO grundlæggende positiv til forslaget om en fælles lov og ombudsmand mod diskrimination på de syv områder. Også her fremhæves at en enslydende og fælles lov for alle diskriminationsgrunde og på arbejdsmarkedet såvel som alle andre områder principielt vil kunne medvirke til en lettere klageadgang for både de som diskrimineres og de, der risikerer at blive udsat, ligesom accepten af og forståelsen for lovens formål vil øge med en mere lettilgængelig lov. Men DO kritiserer komiteen for ikke at have lykkedes med sin opgave: at foreslå en sammenhængende og heldækkende lov mod diskrimination, idet ombudsmanden finder, at lovforslaget er uoverskueligt og splittet og derfor kan gøre at loven bliver svær at tillempe i praksis. DO tilslutter sig forslaget om positiv særbehandling på grund af etnicitet og om at også juridiske personer kan beskyttes af loven, men mener ikke, at denne beskyttelse kun skal gælde på visse områder.

Handikappombudsmannen (HO)

HO støtter også forslaget om en fælles lov mod diskrimination og hilser det særligt velkomment, at det foreslås, at beskyttelsen øges for personer med nedsat funktionalitet. Særlig vægt lægges på at der i forslaget åbnes op for, at manglende tilgængelighed under visse forudsætninger kan defineres som diskrimination. HO støtter også forslaget om, at de fire ombudsmænd slås sammen til en fælles myndighed, men fremhæver, at det er problematisk, at denne myndighed ikke bliver frit stillet fra Regeringen. HO anser, at det ansvar for de forebyggende aktiviteter, som myndigheden foreslås forvalte, reelt vil komme til at handle om at virkeliggøre Regeringens politik og dermed knægte ombudsinstitutionens selvstændighed. HO mener, at den nye ombudsmand i stedet bør have til opgave at undersøge, hvorvidt konventioner om menneskerettigheder og diskriminationslovene efterleves og informere offentligheden om sine resultater. HO påpeger, at hvis ikke ombudsmanden mod diskrimination gives denne funktion vil Sverige have svært ved at leve op til den nye FN-konvention om rettigheder for personer med funktionsnedsættelse, fordi der i dag ikke eksisterer et selvstændigt organ, der undersøger hvorvidt menneskerettighederne efterleves i Sverige (som konventionen kræver). Endvidere påpeger HO, at den øgede beskyttelse af funktionsnedsatte, som komiteen foreslår, ikke er konsekvent, idet den kun foreslås gælde på arbejdsmarkedet. HO er enig i, at det skal klassificeres som diskrimina-

tion at ikke iværksætte rimelige foranstaltninger for tilgængelighed, men mener at denne forpligtigelse må gælde på alle områder.[66] HO anser sålede at funktionsnedsættelse skal ligestilles med de andre diskriminaitionsgrunde og dermed også rangere under straffelovens paragraf om 'olaga diskriminering'.[67]

Jämställdhetsombudsmannen (JämO)

JämO afviser modsat de øvrige ombudsmænd både forslaget om en fælles lov mod diskrimination og en fælles ombudsinstitution. JämO anser i stedet at alle love, der vedrører forbud mod kønsdiskrimination og bestemmelser om aktive indsatser for at fremme ligestillingen mellem kvinder og mænd bør samles i en fælles lov, hvori også bestemmelser angående den nye diskriminationsgrund kønsidentitet bør indgå. JämO bør således fortsat bestå som selvstændig myndighed og føre tilsyn over denne fælles ligestillingslov. JämO mener desuden, at positiv særbehandling på grund af køn bør kunne tillempes, så snart der er anledning til at antage, at det bidrager til at påskynde opnåelsen af reel ligestilling mellem kvinder og mænd.

Denne afvigende holdning i forhold til de andre ombudsmænd er i høringssvaret begrundet med, at JämOs arbejde adskiller sig fra de øvrige ombudsinstitutioners arbejde ved dels at arbejde mod (køns)diskriminering, men dels også for reel ligestilling i det svenske samfund, hvilket de øvrige ombudsmænd ikke, ifølge JämO, har under sit mandat. JämO fremhæver, at arbejde mod diskrimination ikke er nok for at nå målet – rigtig fremdrift i arbejdet kræver også tydelige, skarpe og sanktionerede krav om aktive indsatser på alle samfundsniveauer og JämO frygter, at netop kønsligestillingen vil blive underprioriteret med en samlet diskrimineringsombudsmand, da fokus her sandsynligvis vil være på at få indsatserne for de øvrige 'kategorier' op på samme niveau som ligestillingsarbejdet.

JämO forholder sig således ikke til hvorvidt en fælles lovgivning og/eller ombudsmand på de øvrige foreslåede områder er efterstræbelsesværdigt, men nævner denne model (to love og ombudsinsitutioner – en for kønsligestilling og en mod diskrimination af minoriteter) som en mulig organisering, som burde have været udredt af komiteen. Vedtages forslaget fremhæver JämO at der findes et antal love,[68] der hidtil har fundets for at beskytte minoriteter, men som med en sammenlægning også bør udviges til at omfatte diskrimination på grund af køn og beskytte grupperne mænd og kvinder.

Barneombudsmannen (BO)

BO er grundlæggende positiv til Diskrimineringskommittens forslag til en sammenlagt diskriminationslovgivning og en fælles ombudsmand, men konstaterer, at komiteen ikke har anlagt et børne- og ungdomsperspektiv i udredningen, hvilket beklages, eftersom børn og unge berøres af alle diskriminationsgrunde. Desuden beklages det, at aldersdiskrimination kun indbefattes delvist i lovforslaget idet BO mener, at et barn skal have mulighed for at få oprejsning, hvis det mener, at det har være udsat for umotiveret særbehandling på grund af sin alder, og at den fælles diskriminationsombudsmand bør kunne føre sådanne sager. BO deler også opfattelsen, at Barnombudsmannen skal bestå som selvstændig myndighed og ikke sammenlægges med de øvrige ombudsinstitutioner.

Tendenser i høringssvar fra interesseorganisationerne[69]

Tendensen fra ombudsmændene kan også siges at være gældende i interesseorganisationernes svar, hvor særligt kvindeorganisationerne markerer sig som modstandere af forslaget. NGO'er på de øvrige områder istemmer i det store hele med grundforslagene; en fælles lov og en sammenlægning af ombudsinstitutionerne. Der er dog variationer i tilfredsheden med det konkrete forslag, og flere peger på områder eller diskriminationsgrunde, der burde have været inkluderet i lovforslaget, men overordnet er alle enige om at en sammenlægning er den rigtige udvikling. Dette gælder dog ikke kvindeorganisationerne, der alle afviser udredningen helt og kræver at en ny komité tilsættes og pålægges at gennemføre en konsekvent kønsanalyse af sit forslag inden det fremsættes. Sveriges Kvinnolobby fremfører at det oplysende og forebyggende arbejde som JämO har varetaget med en sammenlægning risikerer at stå tilbage for individuelle klagesager, hvilket Lobbyen ikke ønsker.

Tendenser i svar fra juridiske eksperter[70]

De juridiske eksperter udtaler sig ikke direkte for eller imod de udredningens forslag til fælles diskriminationslov og ombudsmandsinstitution, men påpeger ud fra sine forskellige perspektiver svagheder og styrker i det forslag til lov og lovregulering, som udredningen lægger frem. Særligt forslaget om mulighed for positiv særbehandling på grund af etnisk oprindelse diskuteres og tendensen i svarene er, at hvis forslaget gennemføres skal det følges af en bestemmelse, som angi-

ver, i hvilke udstrækning og i hvilke tilfælde det kan være relevant (se fx. Justitiekanslarens remiss). Endvidere fremfører Brottsoffermyndigheten at det bør overvejes om ikke det skal være muligt at udkræve erstatning som følge af ulovlig diskrimination (Brottsoffermyndighetens remiss).

7.4. Den forestående udvikling

Efter planerne skal den fælles Ombudsmand mot Diskriminering påbegynde sit arbejde 1. januar 2009.

Arbejdet med at gøre ligebehandlingspolitikken flerdimensionel står således overfor et nybrud i Sverige. Hidtil har politikken såvel på departementalt som på ombudsmandsniveau været, at samle kompetencerne indenfor hvert af de specifikke diskriminationsområder på et sted og her udvikle kundskaben både internt og eksternt. Der har givetvis været et samarbejde mellem de forskellige institutioner og de fire ombudsmænd har kontinuerligt haft møder hvor sager af fælles interesse kunne diskuteres, men alle diskriminationssager har trods dette skulle fordeles mellem hvert ombud, også selvom der reelt kunne være tale om at mere end en diskriminationsfaktor kunne være relevant. I det hidtidige arbejde for ligestilling og antidiskrimination i Sverige har indgået et krav om, at begge perspektiver skulle mainstreames i al offentlig virksomhed. Således har alle ombudsmænd – foruden sit kerneområde – haft til opgave, at vurdere og rapportere, på hvilke måder arbejdet mod diskrimination på de øvrige områder kunne forbedres internt i organisationen. Dette har dog primært været i forhold til institutionens egen organisering og interne arbejde og er i mindre grad blevet afspeljet i den udadrettede virksomhed. Med den nye Regering (fra september 2006) omorganiseredes arbejdet mod diskrimination på departementalt niveau idet ligestillings- og integrationsministeriet blev slået sammen til et fælles departement, som også har ansvaret for HBT-spørgsmål.[71] Ansvaret for diskrimination på grund af alder og handicap ligger hos socialministeren.

En ny fælles lov mod diskrimination vil givetvis sikre et lige og fælles lovgrundlag for alle diskriminationsområder, men eftersom de forskellige love der i dag regulerer hver af de fire diskriminationsfaktorer stort set også dækker de samme områder i dag, er det nye med loven i højere grad at den foreslår at diskriminationsforbuddet skal gælde på nye områder og styrker kravene om aktive indsatser.

Den sammenlagte ombudsinstitution bliver derimod en nyskabelse som vil

kunne bidrage til øget opmærksomhed omkring flerdimensionel diskrimination og større koordination og effektivitet i behandlingen af sager af denne karakter. Man må formode, at de mange kompetencer, der med forslaget samles under samme institution vil kunne gavne hinanden og medvirke til en kundskabsforøgelse for alle involverede. Dog fastholdes det i mange høringssvar, at den specifikke kompetence på hvert enkelt område skal sikres også i den nye myndighed, således at den bliver både bred og spids. Hvis dette lykkes og hvis forslaget går igennem må man forvente, at den svenske diskriminationspolitik fremover vil blive mere flerdimensionel end hidtil.

Konklusioner og perspektiver

Sammenfattende kan det konstateres, at der ikke råder enighed om hvilken vej den forestående udvikling af diskriminationspolitikken i Sverige skal tage. En majoritet af høringssvarene og ombudsmændene fortaler for en fælles organisering for alle diskriminationsområder, mens de, der primært arbejder for kønsligestilling anser at dette arbejde bør bedrives selvstændigt og mere kraftfuldt end de øvrige områder, idet denne ulighed ses som grundlæggende for de øvrige diskriminationsområder, fordi '*...diskriminering av kvinnor skiljer sig från de övriga diskrimineringsgrunderna eftersom kvinnor inte är en minoritet och eftersom kvinnor återfinns i övriga diskrimineringskategorier'* (citat: Sveriges Kvinnolobbys remisssvar). Det er i den forbindelse vigtigt at medregne, at kampen for ligestilling og dens forkæmpere nyder stor legitimitet i Sverige og at dette synspunkt derfor ikke kan siges at være marginaliseret, men tværtimod står på lige fod med det modsatte – at kampen for ligebehandling drives bedst ved en fælles indsats.

Denne uenighed kan få den positive effekt at der vil være stor opmærksomhed på hvordan en eventuel ny Ombudsmand håndterer arbejdet med ligestilling og sandsynligvis blive stillet krav om et dokumenteret fokus på køn i alle sager – hvilket videre kan bidrage til, at opmærksomheden på flere dimensioner i alle diskriminationssager øges. På den anden side er kritikken fra kvindeorganisationerne relevant, idet det samlet set kan være svært at løfte arven fra fire så markante institutioner som JämO, HomO, HO og DO i en samlet enhed og det er tænkeligt, at netop ligestillingsindsatserne, som har fået relativt stor opmærksomhed i Sverige, kan risikere at miste sin privilegerede position i forhold til de øvrige områder ved en sammenlægning.

Kilder

Statens Offentliga Utredningar

- SOU 1964:43, *Social omvårdnad av handikappade,,* Regeringskansliet, Stockholm
- SOU 1983:18, *Lag mot etnisk diskriminering i arbetslivet,* Regeringskansliet, Stockholm
- SOU 1991:46, *Handikapp – Välfärd – Rättvisa,* Regeringskansliet, Stockholm
- SOU 1992:52, *Ett samhälle för alla*, Regeringskansliet, Stockholm
- SOU 1992:96, *Förbud mot etnisk diskriminering i arbetslivet,* Regeringskansliet, Stockholm
- SOU 1997:174, *Räkna med mångfald! Förslag till lag mot etnisk diskriminering i arbetslivet mm.,* Regeringskansliet, Stockholm
- SOU 2004:55, *Ett utvigdad skydd mot könsdiskriminering,* Regeringskansliet, Stockholm
- SOU 2005:56, *Det blågula glashuset*, Regeringskansliet, Stockholm
- SOU 2006:22, *En sammanhållen diskrimineringslagstiftning,* Regeringskansliet, Stockholm

Propositioner

- Propostion 1997 98:177: *Ny lag om åtgärder mot etnisk diskriminering i arbetslivet*
- Proposition 1999/2000:79, bet. 1999/2000:SoU14 *Från patient till medborgare – en nationell handlingsplan för handikappolitiken*

Regeringens sammanställningar

- *Remisssammanställning över SOU 2006:22 En sammanhållen diskrimineringslagstiftning*

Direktiv

- Dir. 2002:11 om tilsättelse av Diskrimineringskommitteen
- Dir. 2006:27 om inrättandet av Delegationen för mänskliga rättigheter i Sverige

Skrivelser

- Regeringen (2005): *En nationell handlingsplan för de mänskliga rättigheterna 2006-2010*, skr. 2005/06:95

Litteratur

· Borchorst, Anette og Dahlerup, Drude (2003): Ligestilling – hvad er problemet? S. 9-28, i Borchorst, Anette og Dahlerup, Drude (2003): *Ligestillingspolitik som diskurs og praksis*, Forlaget Samfundslitteratur, Århus

Andet materiale

JämO

· Jämställdhetsombudsmannen (1999-2006): *JämO årsredovisning 1999-2006*, Stockholm

DO

· Ombudsmannen mot diskriminering (2003-2006): *DO årsredovisning 2003-2006*, Stockholm

HO

· Handikappombudsmannen (2000): *Tillgänglighet för alla, HO årsrapport 2000*, Stockholm
· Handikappombudsmannen (2001): *Tänk tillgängligt, HO årsrapport 2001,* Stockholm
· Handikappombudsmannen (2002): *Skydda mot diskriminering, HO årsrapport 2002*, Stockholm
· Handikappombudsmannen (2003): *Från ord till handling, HO årsrapport 2003*, Stockholm
· Handikappombudsmannen (2004): *På väg mot ett samhälle för alla, HO årsrapport 004*, Stockholm
· Handikappombudsmannen (2005-2006): *HO årsrapport 2005-2006*, Stockholm
· Handikappombudsmannen (2004), *Diskriminering och tillgänglighet,- rapport till Diskrimineringskommitteen,* HO, Stockholm

HomO

· Ombudsmannen mot diskriminering på grund av sexuell läggning (2001-2006): *Rapport 2001-2006*, HomO, Stockholm

· Ombudsmannen mot diskriminering på grund av sexuell läggning (2007): *För Männskliga Rättigheter. Mot Diskriminering och Homofobi*, brochure HomO, Stockholm

BO

· BarnOmbudsmannen (2006): *BO årsredovisning 2006*, BO, Stockholm

7. SWEDEN

In 2002, the Swedish Minister for Democracy and Integration, Mona Sahlin, established a parliamentary-based "Discrimination Committee" with the purpose of making an appraisal of the Swedish legislation in the area of discrimination and submit a proposal as to how the protection of exposed groups could be improved and the implementation of the law could be strengthened (Dir. 2002:11). In 2004, the Committee submitted its first partial report *Ett utvidgat skydd mot könsdiskriminering (SOU 2004:55)* (An expanded protection against sexual discrimination) and on 24 February 2006, the aggregate report *En sammanhållen diskrimineringslagstiftning (SOU 2006:22)* (A unified discrimination legislation) was submitted to the then Minister of Gender Equality, Jens Orback. The new Minister of Gender Equality, Nyamko Sabuni, will introduce a bill for a joint discrimination legislation *Increased Protection against Discrimination*[1] to the Swedish Parliament in the beginning of 2008, which will be passed on 4 June 2008. This chapter discusses the current status of the Swedish discrimination policies, the conclusions and reception of the report and does also set out the perspectives of the future organisation of the gender equality and equal treatment work in Sweden. The construction of the chapter is chronological and is therefore introduced with a review of the system up till now with four separate ombudsman institutions[1] and local anti-discrimination agencies as well as a general account of the current statutory protection of potentially discriminated groups in Sweden. Then the conclusions and recommendations in the report of the Discrimination Committee as well as its reception in the ombudsman institutions and the interest groups are discussed. Finally, the forthcoming development in the area, including the current status of the bill in the legislation process and perspectives in relation to a simplified right to complain about multi-dimensional discrimination, is set out.

The chapter is based on official documentation such as consultation documents, regulatory framework, parliamentary debates, reports, directives and statements on the issue submitted for consultation. Furthermore, the author has

participated in a large number of seminars, consultations and debates on the report and the future organisation of the equal treatment work, which has been organised by different interest groups all over Sweden in 2005-2007.

7.1. The system up till now

The development of the Swedish gender equality and equal treatment policies goes back to the 1970s. In this part of the report, an outline is made of the history of this development based on each of the four ombudsman institutions' competence areas and the powers, resources and effects of each ombudsman is discussed. The chapter ends with a schematic outline of the acts that are protecting the different areas today.

The Equal Opportunities Ombudsman (JämO)

Sweden has long been a country known for its extensive and proactive work for gender equality (e.g. see Borchorst & Dahlerup 2003). The key to the development in the Swedish gender equality work is the Women's Rights Movement which historically and currently has been successful in mobilising and agreeing on general common demands and thus in some cases also being able to challenge those in power (i.e. the conservative establishment). An important contributory cause for the progress of the movement has been the opportunity to build on experiences from other countries and to contribute to these internal experiences. In this way, it is not only a Swedish, but an international Women's Rights Movement that has contributed to the gender equality work being conducted at grassroots, researcher and politician level at the same time and ensuring a correlation between these fronts. An example of this correlation was found in the relatively fast process from Sweden's initial work with and later on ratification of the UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to the requirement and implementation of the Swedish Equal Opportunities Act (SOU 1978:38).

The Equal Opportunities Act was passed in 1979 and included a ban against discrimination based on gender in working life and the right to compensation for discrimination as well as a requirement for active initiatives to promote gender equality in all workplaces. On 1 July 1980, *The Equal Opportunities Ombudsman*

(JämO) was established as the institution to administer the Act and receive complaints about sexual discrimination, sexual harassment and harassments based on complaints about sexual discrimination in working life and the institutions for further and higher education. As the law was changed and the requirements of the employers for the development of special gender equality plans and later on also for gender-based salary surveys escalated, the powers of the Equal Opportunities Ombudsman also increased and the administration of these plans became subject to the competence of the ombudsman. In 2004, the Discrimination Committee submitted its first partial report *Ett utvidgat skydd mot könsdiskriminering (SOU 2004:55)* (An expanded protection against sexual discrimination) where is was proposed to revise the equality-relevant acts in order to ensure that discrimination based on gender would also apply to the same areas as the ban against discrimination based on race/ethnic origin – i.e. also outside the labour market and institutions for further and higher education. In addition to this, the Equal Opportunities Ombudsman is responsible for implementing informational campaigns and providing instruction and (further) training in gender equality and presenting statements on the issues submitted for consultation and/or ensuring that a gender equality perspective is brought forward when proposals for social changes or amendments to the acts are submitted for consultation (the Equal Opportunities Ombudsman, 2006).

From the beginning, the Equal Opportunities Ombudsman had about 100 complaints about discrimination a year and the number has increased steadily ever since to 171 in 2005. Also the secretariat has since the start-up with five employees expanded concurrently with the additional fields of responsibility and does now have 35 employees. In 2007, the budget of the Equal Opportunities Ombudsman was SEK 28m (Annual Report, 2006).

The Ombudsman against Ethnic Discrimination (DO)

In 1968, Sweden ratified the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and in the first Swedish report to the CERD Committee[2] it is established that racial discrimination is against Swedish law which is why it was not deemed necessary to have special legislation within this field. However, sections 16:8 and 16:8 A in the Swedish Criminal Code had been added (on 'persecution of minorities' and 'unlawful discrimination') and regulation 7:4 had been added to the Freedom of the Press Act to establish that perse-

cution of minorities should be regarded as an offence against the freedom of the press (SOU 2005:56). In 1978, the first discrimination analysis was conducted in Sweden and in 1983 it submitted its report which included proposals for an employment law ban on ethnic discrimination in working life modelled after the same principle as the Equal Opportunities Act (SOU 1983:18). In the Government's bill, however, an act governing the labour market was still not deemed necessary, but it was decided to establish an *Ombudsman against ethnic discrimination (DO)* and a commission against ethnic discrimination. In this connection, it was discussed whether the supervision of discrimination based on ethnic origin should be placed under the Equal Opportunities Ombudsman – meaning an extension of the authority of the Equal Opportunities Ombudsman in the direction of a more multi-dimensional approach to discrimination, but due to the unequal regulatory framework of the two areas, it was decided to have two separate ombudsman institutions (SOU 2005:56). Originally, the powers of the Ombudsman against ethnic discrimination were not as extensive as those of the Equal Opportunities Ombudsman.

Following protests from the UN Racial Discrimination Committee in 1983, 1986, 1989 and 1991, yet another analysis was initiated (SOU 1992:96) which in 1992 introduced a bill on ethnic discrimination in working life. This act, however, was heavily criticized in the statements on the issue and in 1997 a new analysis was conducted (SOU 1997:174) which laid the groundwork for the current statutory protection of the area and which includes demands for active efforts, individual compensation and ban against indirect discrimination. The Act came into force in 1999 when similar acts on discrimination, disability and sexual orientation were also passed (Bill 1997/98:177)

In 2001 came the Act on equal treatment of students in institutions for further and higher education,[3] which is protecting all five areas, and as a result of two EU directives[4] directing all member countries to strengthen the minimum protection against discrimination, a new act[5] was passed in 2003, which is applying to a wide range of areas also outside the labour market. In connection with these acts, the authority of the Ombudsman against ethnic discrimination has been extended and in 2006 the Ombudsman against ethnic discrimination had a budget of SEK 31m and a secretariat with approx. 35 employees. Just like the Equal Opportunities Ombudsman, the Ombudsman against ethnic discrimination hears individual complaints (approx. 65 a year) and also conducts teaching activities, debates and communication of information, follow-up on the require-

ment for active initiatives and statements on issues submitted for consultation etc. (DO årsredovisning 2006 – the annual accounts of the Ombudsman against ethnic discrimination).

The Swedish Disability Ombudsman (HO)[6]

The Swedish disability policies are based on two major analyses, partly the Socio-political Committee and partly the Disability Analysis from 1965. In its report *Social omvårdnad av handikappade* (SOU 1964:43) (Social care of disabled persons), the Socio-political Committee formulated some basic principles that originate from a more environment-related disability concept than before. The principle was/is that disability to a wide extent is a result of the unadjusted structure of society and that disability may therefore be eliminated by changing society and making it more accessible. In this way, the disability issue became much more political than before and the report emphasised the need for consideration of disabled persons in all areas of society – in city planning, house building, the education system, labour market, social policies and the cultural life (SOU 1964:43) The Socio-political Committee submitted a proposal for the distribution of the responsibility for this reorganisation of society between the central government, regions and municipalities and stressed that accessibility and help for people with disabilities should be regarded as rights (SOU 1991:46).

The purpose of the Disability Analysis, which was published one year later, was to investigate the extent of the implementation by the central government, the regions and municipalities of the initiatives suggested by the Socio-political Committee, and the analysis resulted in the introduction of housing adaption, local authority disability councils, Government subsidies for transport services etc. Along with the setup of the welfare society, more rights and support initiatives were also introduced, such as disability pension, and the object of the work was to break down the segregation between people with and without disabilities and to make efforts to let all citizens have as 'normal' lives as possible. E.g. this appears from the integration proposition from 1978[7] which states that all schools must be able to teach all children and in the Working Environment Act from 1977,[8] which stated that workplaces should be adapted to people with different requirements (HO 2004 - The Swedish Disability Ombudsman, 2004).

In 1991, a new disability analysis, *Handikapp – Välfärd – Rättvisa (SOU 1991:46)* (Disability – Welfare – Justice) was submitted, which observed that there

were comprehensive deficiencies in the support for persons with disabilities and thus proposed a new rights act (1993:389) which included the right to personal assistance and financial compensation for assistance. In its final report *Ett Samhälle för alla (SOU 1992:52)* (A society for all), the Disability Analysis proposed that a statutory protection against discrimination should be implemented and that a Disability Ombudsman should be organised. In 1994, the Government chose to only organise the Disability Ombudsman (HO) which should then function as the ombudsman authority without supervision of specific acts until 1999, when the Prohibition of Discrimination in Working Life of People with Disability Act (1999:132) came into force. As mentioned earlier, it was followed by the Equal Treatment of Students at Universities Act and the Prohibition of Discrimination Act. In 2000, the Swedish Parliament passed the Govervement's bill *Från patient till medborgare – en nationell handlingsplan för handikappolitiken*[9] (From patient to citizen – a national action plan for the disability policies) which is based on the UN uniform rules and dictates that a disability perspective should be mainstreamed in all political decisions and that it is the common responsibility of all of society to make sure that disabled persons are equal citizens and are not discriminated.

As one of the initiatives in the action plan, a national Accessibility Centre was organised under the Disability Ombudsman to point out guidelines for the implementation of the action plan and to follow up on the progress. In 2006, the Disability Ombudsman had a total budget of approx. SEK 14m and 16 employees in the secretariat. In 2006, 524 complaints were filed with the authority (Annual Report of the Disability Ombudsman, 2006).

The Ombudsman against Discrimination on Grounds of Sexual Orientation (HomO)

In connection with the passing of the three discrimination acts in 1999, it was also decided to organise an Ombudsman against discrimination on grounds of sexual orientation.[10] It started working in 2000 and its general assignment is to counteract homophobia and work to ensure that discrimination on grounds of sexual orientation will not occur in any areas of Swedish society. The authority of the Ombudsman against Discrimination on grounds of Sexual Orientation originates from the Sexual Discrimination (Employment) Act and from the equality principle in the UN Declaration of Human Rights. The Ombudsman

against Discrimination on grounds of Sexual Orientation shall through counselling and other relevant methods work to ensure that people who are being discriminated on the basis of their sexual orientation can apply and make use of their rights. Furthermore, the Ombudsman against Discrimination on grounds of Sexual Orientation shall suggest and advise the Government on legislation and other relevant activities which may contribute to counteracting the homophobia and discrimination in society. The Ombudsman against Discrimination on grounds of sexual orientation shall also contribute to the public debate and educate and inform the public on homophobia and discrimination and monitor the international development within its area (HomO 2005 - The Ombudsman against Discrimination on grounds of Sexual Orientation, 2005).

In 2006 the budget of this authority was SEK 9m and there were 11 employees. In 2006, the Ombudsman against Discrimination on grounds of Sexual Orientation received 45 complaints and raised 11 on its own accord (Report from the Ombudsman against Discrimination on grounds of Sexual Orientation, 2006).

The Children's Ombudsman (BO)

In addition to the four ombudsmen against discrimination, Sweden has a Children's Ombudsman which attends to the interests of children and young people. The institution has an annual grant of SEK 17m and heard 1361 cases on behalf of children or young people in 2006 (www.bo.se).

Local anti-discrimination agencies

In Sweden there are 19 local anti-discrimination agencies (adb) which offer support and advice to persons who have been victims of differential treatment based on one of the five areas of protection. The agencies are independent and are run by volunteers and therefore vary in terms of capacity and knowledge, but they may generally help with cases within all areas covered by legislation. All discrimination agencies receive funds from the Integration Office (SOU 2005:56).

As it appears from the above, the scope of the protection against discrimination in the different areas is relatively equal in Sweden today. The different areas are separated on the basis of how extensive the requirement are for active initiatives – in connection with sexual orientation, the employer is only required to

start active initiatives if he/she has knowledge of ongoing discrimination, whereas the gender area requires gender equality plans and gender-based salary surveys for all employers with more than 10 employes.

Similar to the other Nordic countries, up till now, Sweden has pieced together the national discrimination legislation from several regulatory frameworks covering different groups and areas of society. These acts are summarised below in a schematic outline:

Area of protection	Legislation	Area of society	Right to complain
Gender	Jämställdhetslagen[11] (The Equal Opportunities Act)	Working life	The Equal Opportunities Ombudsman (JämO) (supervision via the Equal Opportunities Commission)
Ethnic origin, religion, faith	The Law on Measures Against Ethnic Discrimination in Working Life[12]	Working life	The Ombudsman against ethnic discrimination (DO) (supervision via the Commission against Discrimination)
Disability	The Prohibition of Discrimination in Working Life of People with Disability Act[13]	Labour market	The Disability Ombudsman (HO)
Sexual orientation	The Sexual Discrimination (Employment) Act[14]	Labour market	The Ombudsman against Discrimination on grounds of Sexual Orientation (HomO)
Gender, ethnic origin, religion, disability and sexual orientation	The Equal Treatment of Students at Universities Act[15]	Institutions for further and higher education	JämO, DO, HO, HomO

The Prohibition of Discrimination Act[16]	Labour market political activities, communication of work, assignment of trade licence, union membership, goods and services, housing, social benefits, etc. health services	JämO, DO, HO, HomO
Discrimination and Other Degrading Treatment of Children and Pupils Act[17]	Education	JämO, DO, HO, HomO (supervision via The Swedish National Agency for Education)

Action plan and delegation for human rights

In addition to the legislation and the work of the ombudsman institutions, the Swedish Parliament adopted *En nationell handlingsplan för de mänskliga rättighetarna 2006-2009* (A national action plan for human rights) on 14 March 2006 as a part of the work to ensure the compliance with the human rights in the country. Previously, an action plan for 2002-2004 had been evaluated and as the experiences were positive, the work was intensified with this new action plan. There is focus on the initiatives against all forms of discrimination and the action plan also deals with a range of human rights issues. Of the more than 100 suggestions, here are some of the more concrete ones:

- The establishment of a delegation for human rights with the task of increasing knowledge of human rights and improving the work to enhance rights in Sweden. The delegation will support government authorities, local authorities and regions in their work to ensure rights and spread information on and knowledge of human rights in public. Furthermore, it will submit proposals to the Government on initiatives which should be performed to ensure the compliance with human rights in Sweden.
- Provision of anti-discrimination clauses in the purchase, sale and cooperation of the authorities with private and public cooperation partners.
- Handbook on human rights in the local government activities

· Initiatives to enhance the situation of the Roma in Sweden

Furthermore, the action plan refers to the fact that the work against discrimination may face great changes and that a common act on discrimination in all areas will enhance the protection of human rights in Sweden.

On this basis, the analysis of the Discrimination Committee is discussed and its conclusions are related to the description above of the current situation in Sweden.

7.2. The conclusions of the discrimination committee

As mentioned in the introduction, the Swedish Minister for Democracy and Integration, Mona Sahlin, established the Discrimination Committee in 2002 to analyse whether and how a common statutory protection against discrimination could be prepared and how the supervision could be enhanced and made more efficient by amending the acts. In the following section, the conclusions of the two analyses of the Committee *Ett utvidgat skydd mot könsdiskriminering (SOU 2004:55)* (An expanded protection against sexual discrimination) and *En Sammanhållen diskrimineringslagstiftning (SOU 2006:55)* (A unified discrimination legislation) are discussed.

An expanded protection against sexual discrimination

In May 2004, the Committee submitted its partial report, the purpose of which was to investigate which additional initiatives Sweden should perform to live up to the four EU Directives on sexual discrimination:

· The Equal Treatment Directive 76/207
· The Social Security Directive 79/7
· The Freedom of Movement Directive 86/613 and
· The Directive on equal treatment between men and women in the access to and supply of goods and services 2004/113

Furthermore, it was analysed whether legislation on discrimination based on gender should be implemented in areas outside the labour market and institu-

tions for further and higher education. The changes proposed in the analysis included a revision of the Equal Opportunities Act, which ensured more protection in the labour market, but maintained an opening for preferential treatment based on gender in cases where the aim is to promote equal opportunities for everyone regardless of gender. It was also suggested that the gender cause of discrimination was added to the existing act on the ban against discrimination. These amendments were implemented in July 2005.

A unified discrimination legislation

The analysis presents the proposals of the Committee for a tighter and common legislation against discrimination and for a new common ombudsman institution. As the analysis is very comprehensive, only the most central conclusions are discussed here.

Proposal for a new anti-discrimination legislation

The Committee proposes a new common act to implement a general prohibition against discrimination – *Lagen om förbud och andra åtgärdar mot diskriminering* (Act on the prohibition and other measures against discrimination), which would result in an abrogation of the previous legislation. The protection, which these acts have provided so far, would, however, be maintained as the new proposed act would be applicable to all areas of society and the act would be divided in chapters determining the prohibition in each sector and defining the obligations resulting from this prohibition. In this way, the special circumstances, which may influence the implementation and enforcement of the discrimination ban in each of the sectors, would be taken into account. The sectors, which have been identified as relevant and which have been regulated by the existing acts up till now are: working life, parts of the education system, labour market political activities, start-up or administration of commercial activities, membership of associations and organisations, goods and services, housing market, social services and the social insurance system, unemployment insurance, health and nursing system and with regard to state education grants. In addition to this, it is proposed that the discrimination ban should apply to the following new areas:

· The education system as a whole

- General gatherings and public events
- Military and civil defence service and
- Public employment and public responsibilities.
- Furthermore, it is proposed that private individuals are prohibited to discriminate when they buy, sell or provide goods, services or housing to the public.

In the bill it is also proposed to increase the number of protected categories as discrimination should be prohibited based on gender, *gender identity*, ethnic origin, religion or other religious persuasions, disability, sexual orientation and *age*. Thus, the protection is proposed to include the category of 'gender identity' which shall also comprise all types of trans persons.[18] A discrimination ban based on age is also new, but according to the proposal, the protection should only apply to working life and some parts of the education system. Furthermore, it is proposed that also legal entities such as businesses or organisations should be covered by the protection of the law in the areas where this is necessary. Up till now, only natural persons have been protected by the discrimination legislation.

A new common ombudsman institution

The Committee proposes that the current four Swedish ombudsman institutions will be integrated as one common authority: The Ombudsman against Discrimination, which should function on the basis of the new act and administer the act. It is recommended that the Children's Ombudsman (BO) should still work independently.

Possibility of preferential treatment

It is suggested that preferential treatment based on ethnic origin should be allowed in working life and still, as it has been up till now, within the labour market political activities.

It is suggested that preferential treatment based on gender should be allowed in connection with further education and in labour market political activities and, as before, in working life and in questions of membership of employee, employers' and trade organisations.

Increased requirements for active initiatives against discrimination

The analysis proposes that a wide range of requirements for active initiatives to

promote gender equality and equal treatment should be performed in working life, in education and military and civil defence service. Furthermore, a special initiative in order to protect persons with disabilities against lack of accessibility in certain areas of society is proposed. Thus, it should be classified as discrimination if *fair* initiatives for enhanced accessibility are not initiated. Additionally, the responsibility placed on the employers today of initiating support and adaption activities for persons with disabilities should continue to apply with the new act.

Resources and authority

The Discrimination Committee establishes in the analysis that the primary purpose of the proposed changes is to enhance protection against discrimination and not to initiate greater efficiency which has a cost reduction of the equal treatment work in view. On the contrary, the Committee finds that significant resources in addition to the aggregate budgets of the four existing ombudsmen should be added to a new common ombudsman institution if it is to work properly. Partly, this depends on the addition of new causes of discrimination and new areas to which the prohibition shall apply and must be enforced and partly on the fact that a massive information and training effort is required in order to adapt the public as well as the employees to the new mandate of the ombudsman institution.

7.3. Statements on the issue submitted for consultation

The analysis *En Sammanhållen diskrimineringslagstiftning* (A unified discrimination legislation) was submitted for consultation in 149 organisations, legal bodies and authorities with consultation status, of which 118 replied. In addition to this, 27 organisations without consultation status replied. The following review will present the general trends in the statements, partly based on the comments of the existing ombudsman institutions and partly on the trends in the statements from the interest groups and legal experts within the areas of discrimination proposed to be included in the act. Many statements are very technical and extensive with regard to the legal mattes, but this review emphasises the general indications of the advantages and disadvantages of a common act and ombudsman institution and of certain relevant explanatory notes.

Statement From The Ombudsman against Discrimination on grounds of Sexual Orientation (HomO)

The Ombudsman against Discrimination on grounds of Sexual Orientation is generally in sympathy with the proposal for an integrated discrimination act in the labour market as well as the other areas of society and for a common ombudsman authority, which shall include all areas of discrimination, to administer this act. The Ombudsman against Discrimination on grounds of Sexual Orientation believes that this will contribute to a more efficient protection against discrimination and a more coordinated supervision of the active initiatives against discrimination, which the act requires. The Ombudsman against Discrimination on grounds of Sexual Orientation points out that an integrated act and ombudsman will make the right to complain easier for the individuals being exposed to discrimination, especially if the discriminating action is due to more than one cause of discrimination. This is how the Ombudsman against Discrimination on grounds of Sexual Orientation sees an integrated act and ombudsman and emphasises that society is aware of the fact that all discrimination is unacceptable no matter what the cause is. It is, however, important to ensure continued specialist knowledge on each of the included areas in the integration of the ombudsman institutions and that this is clear in the hearing of the cases.

But apart from this, the Ombudsman against Discrimination on grounds of Sexual Orientation criticizes the Committee's proposal of being inconsistent and calls for a non-exhaustive discrimination concept, ensuring that other areas than the ones proposed would also be protected by the act, if necessary.

The Ombudsman against Discrimination on grounds of Sexual Orientation does not share the opinion that it should be possible to adjust to preferential treatment based on ethnicity, as it has not seen substantial proof of the option of preferential treatment in the gender area having had a positive effect. Thus, it is not thought expedient to approve of the waiver from the equal treatment principle, which preferential treatment is in reality.

Statement from the Ombudsman against Ethnic Discrimination

Just like the Ombudsman against Discrimination on grounds of Sexual Orientation, the Ombudsman against ethnic discrimination is generally in sympathy with the proposal for a common act and ombudsman against discrimination in

the seven areas. Here it is also pointed out that an identical and common act for all causes of discrimination and in the labour market as well as in all other areas would in principle contribute to a more accessible right to complain, both for the persons being discriminated and those who are at risk, just as the acceptance and understanding of the purpose of the act would increase with a more accessible act. But the Ombudsman against ethnic discrimination criticizes the Committee of not having completed its task successfully: to propose a coherent and adequate act against discrimination, as the ombudsman finds that the bill is difficult to get an overall view of and divided and may therefore make the act difficult to adjust to in practice. The Ombudsman against ethnic discrimination agrees on the proposal for preferential treatment based on ethnicity and on the proposal for letting legal entities being protected by the act as well, but does not believe that this protection should only apply to certain areas.

Statement from the Swedish Disability Ombudsman (HO)

The Swedish Disability Ombudsman does also support the bill for a common act against discrimination and welcomes it especially as it is proposed that the protection is enhanced for persons with disabilities. Special weight is attached to the bill's opening in relation to the lack of accessibility in certain cases being definable as discrimination. The Swedish Disability Ombudsman also supports the proposal for an integration of the four ombudsmen into a common authority, but points out that it is a problem that this authority will not be separated from the Government. The Swedish Disability Ombudsman believes that the responsibility for the preventive activities, which the authority is proposed to administer, in reality will become an issue of implementing Government policies and will thus suppress the independence of the ombudsman institution. The Swedish Disability Ombudsman believes that the new ombudsman should instead be responsible for checking if the conventions on human rights and the discrimination acts are being complied with and communicating its results to the public. The Swedish Disability Ombudsman points out that if the ombudsman against discrimination is not provided with this function, Sweden will find it difficult to live up to the new UN convention on the rights of disabled people, as there is currently no independent body checking whether the human rights are being complied with in Sweden (as the convention demands). Furthermore, the Swedish Disability Ombudsman points out that the increased protection of dis-

abled people, which is proposed by the Committee, is not consistent as it would only apply to the labour market. The Swedish Disability Ombudsman agrees that it should be classified as discrimination not to initiate fair provisions of accessibility, but believes that this obligation should be applicable to all areas.[19] The Swedish Disability Ombudsman thus believes that disability should be on a parity with the other causes of discrimination and thus also rank below the section on 'unlawful discrimination' in the Swedish criminal code.[20]

Statement from the Equal Opportunities Ombudsman (JämO)

Contrary to the other ombudsman institutions, the Equal Opportunities Ombudsman rejects the bill proposing a common act against discrimination and a common ombudsman institution. Instead, the Equal Opportunities Ombudsman believes that all acts on prohibitions against sexual discrimination and provisions on active initiatives to promote equality between women and men should be aggregated as one common act where the provisions regarding the new cause of discrimination, gender identity, should also be included. The Equal Opportunities Ombudsman should thus remain an independent authority and administer this common equal opportunities act. Furthermore, the Equal Opportunities Ombudsman believes that preferential treatment based on gender should be adjusted as soon as there is reason to believe that it would accelerate the achievement of genuine equality between women and men.

The reason for this deviant attitude in the statement compared to the other ombudsmen is that the work of the Equal Opportunities Ombudsman differs from the work of the other ombudsman institutions, partly because it works against (sexual) discrimination, but also for real gender equality in the Swedish society; a mandate the other ombudsmen do not have. The Equal Opportunities Ombudsman points out that the work against discrimination is not enough to reach the goal – real progress of the also requires evident, distinct and sanctioned demands for active initiatives in all areas of society and the Equal Opportunities Ombudsman fears that the gender equality will be given a low priority with a common ombudsman on discrimination as this would focus on getting the initiatives from the other 'categories' to reach the same level as the gender equality work.

In this way, the Equal Opportunities Ombudsman does not relate to the is-

sue of whether a common legislation and/or ombudsman in the other proposed areas is desirable, but mentions this model (two acts and ombudsman institutions – one for gender equality and one against discrimination of minorities) as a possible organisation, which should have been analysed by the Committee. If the bill is passed, the Equal Opportunities Ombudsman points out that up till now there have been a number of acts[21] with the purpose of protecting minorities, but which should also be extended to include discrimination based on gender and protection of the groups of men and women in case of an integration.

Statement from the Children's Ombudsman

The Children's Ombudsman is generally in sympathy with the proposal of the Discrimination Committee for integrated discrimination legislation and a common ombudsman, but points out that the Committee has not taken a child and youth perspective in the analysis, which is regrettable as children and young people are affected by all causes of discrimination. Furthermore, the Children's Ombudsman believes that it is unfortunate that age discrimination is only partly included in the bill, as the ombudsman believes that children should have the option to recover their civil rights if they have been victims of unmotivated differential treatment based on age and that the common discrimination ombudsman should be able to hear these cases. The Children's ombudsman also shares the view that the Children's Ombudsman should continue as an independent authority and should not be integrated with the other ombudsman institutions.

Trends in the statements from the interest groups[22]

The trends from the ombudsmen may also be said to apply to the statements of the interest groups, where particularly the women's organisations are opposed to the bill. In general, the NGOs in the other areas agree with the basic proposals; a common act and an integration of the ombudsman institutions. However, the satisfaction with the specific bill varies and several of the NGOs point out areas or causes of discrimination which should have been included in the bill, but generally they all agree that an integration is the right development. This is not the case, however, with the women's organisations; all of them dismiss the analysis and demand that a new committee is established and ordered to carry out a consistent gender analysis of its bill before it is submitted. The Swedish Women's

Lobby states that the informative and preventive work of the Equal Opportunities Ombudsman would risk falling short of individual complaints when integrating the institutions, which the Lobby does not want.

Trends in the statements from legal experts[23]

The legal experts are not directly for or against the proposal of the analysis for a common discrimination act and ombudsman institution, but point out weaknesses and strengths in relation to their different perspective in the bill and proposed abrogation of the legislation, which the analysis submits. In particular, the proposal for the option of preferential treatment based on ethnic origin is discussed and the trend in the statements is that if the bill is passed, it must be followed by a provision stating to what extent and in which cases this may be relevant (e.g. see the report of the Chancellor of Justice). Furthermore, the Crime Victim Compensation and Support Authority states that it should be considered whether it should be possible to request compensation as a result of discrimination contrary to law (the report of the Crime Victim and Support Authority).

7.4. The forthcoming development

According to plan, the common Ombudsman against Discrimination should begin working on 1 January 2009.

Thus, the work of making the equal treatment policies multi-dimensional is facing a new departure in Sweden. Up till now, the policies at departmental as well as ombudsman level have been to gather the competences of each specific discrimination area in one place and develop the knowledge internally and externally from here. Clearly, there has been some kind of cooperation between the different institutions and the four ombudsmen have had continuous meetings where cases of mutual interest could be discussed, but despite this, all discrimination cases have had to be divided between the ombudsmen, even if it would actually involve more than one discrimination factor. In the work for gender equality and anti-discrimination up till now, Sweden has required that both perspectives should be mainstreamed in all public corporations. Thus all ombudsmen – in addition to their core areas – have had as their job to estimate and report in which ways the work against discrimination in the other areas could be

improved internally in the organisation. However, this has mainly been in relation to the organisation and internal work of the actual institution and has only to a minor extent been reflected in the external work. With the new Government (from September 2006), the work against discrimination was reorganised at departmental level as the Ministry of Gender Equality and Ministry of Integration were combined in one common department, which is also responsible for HBT[24] issues. The responsibility for discrimination based on age and disability rests with the Minister for Health and Social Affairs.

A new common act against discrimination will clearly ensure an equal and common regulatory framework for all areas of discrimination, but as the different acts regulating each of the four discrimination factors today are basically also covering the same areas, the feature of this act is rather that it suggests that the discrimination ban should cover new areas and strengthen the requirements for active initiatives.

Contrary to this, the integrated ombudsman institution will be an innovation, which will be able to contribute to increased attention to multi-dimensional discrimination and greater coordination and efficiency in the hearing of cases of this nature. It is presumed that the many competences gathered in the same institution according to this bill would benefit each other and contribute to enhanced knowledge for all involved parties. However, many of the statements maintain that the specific competence in each of the areas must be ensured in the new authority as well in order for it to become both wide and pointed. If this is successful and if the proposal is cleared, it must be expected that the Swedish discrimination policy in the future will be more multi-dimensional than before.

Conclusions and perspectives

To sum up, it may be established that there is not unity in the matter of which path the future development of the discrimination policies in Sweden should take. A majority of the statements on the issue submitted for consultation is in sympathy with a common organisation of all areas of discrimination whereas those who primarily work for gender equality believes that this work should be performed independently and more vigorously than in the other areas as this disparity is regarded fundamental to the other areas of discrimination because *'…discrimination of women differs from the other causes of discrimination as women*

are not a minority and women are also represented in the other discrimination categories' (quote: statement of the Swedish Women's Lobby). In this connection, it is important to take into account that the battle for gender equality and its advocates enjoys great legitimacy in Sweden and that this point of view may therefore not be said to be marginalised, but on the other hand to be on equal terms with the opposite – that the battle for equal treatment is led best with common efforts.

This disagreement may have a positive effect as it will create attention to how a new Ombudsman would handle the gender equality work and that there will probably be made demands for a documented focus on gender in all cases – which may further contribute to increased attention on more dimensions in all discrimination cases. On the other hand, the criticism from the women's organisations is relevant seeing that, as a whole, it may be difficult to take on the mantle of four so outstanding institutions as the Equal Opportunities Ombudsman, the Ombudsman against Discrimination on grounds of Sexual Orientation, the Swedish Disability Ombudsman and the Ombudsman against ethnic discrimination in one common unit and it is conceivable that the gender equality initiatives in particular, which holds so much attention in Sweden, may loose its privileged position in relation to the other areas in case of an integration.

Source material

Swedish government official reports

- SOU 1964:43, *Social omvårdnad av handikappade,,* Regeringskansliet, Stockholm (Social care of disabled persons, the Government Offices, Stockholm)
- SOU 1983:18, *Lag mot etnisk diskriminering i arbetslivet,* Regeringskansliet, Stockholm (Act against ethnic discrimination in working life, the Government Offices, Stockholm)
- SOU 1991:46, *Handikapp – Välfärd – Rättvisa,* Regeringskansliet, Stockholm (Disability – Wellfare – Justice, the Government Offices, Stockholm)
- SOU 1992:52, *Ett samhälle för alla*, Regeringskansliet, Stockholm (A society for all, the Government Offices, Stockholm)
- SOU 1992:96, *Lag mot etnisk diskriminering i arbetslivet,* Regeringskansliet, Stockholm (Act against ethnic discrimination in working life, the Government Offices, Stockholm)
- SOU 1997:174, *Räkna med mångfald! Förslag till lag mot etnisk diskriminering i arbetslivet mm.,* Regeringskansliet, Stockholm (Count on multiplicity! Bill on act against discrimination in working life, the Government Offices, Stockholm)
- SOU 2004:55, *Ett utvidgat skydd mot könsdiskriminering,* Regeringskansliet, Stockholm (An expanded protection against sexual discrimination, the Government Offices, Stockholm)
- SOU 2005:56, *Det blågula glashuset*, Regeringskansliet, Stockholm (The blue and yellow glass house, the Government Offices, Stockholm)
- SOU 2006:22, *En sammanhållen diskrimineringslagstiftning*, Regeringskansliet, Stockholm (A Unified Discrimination Legislation, the Government Offices, Stockholm)

Bills

- Bill 1997 98:177: *Ny lag om åtgärder mot etnisk diskriminering i arbetslivet* (New act on measures against ethnic discrimination in working life)
- Bill 1999/2000:79, bet. 1999/2000:SoU14 *Från patient till medborgare – en nationell handlingsplan för handikappolitiken* (From patient to citizen – a national action plan for the disability policies)

Government lists

- *Remisssammanställning över SOU 2006:22 En sammanhållen diskrimineringslagstiftning* (Report list of SOU 2006:22 A Unified Discrimination Legislation)

Directive

- Dir. 2002:11 om tilsättelse av Diskrimineringskommitteen (Dir. 2002:11 on the establishment of the Discrimination Committee)
- Dir. 2006:27 om inrättandet av Delegationen för mänskliga rättigheter i Sverige (Dir. 2006:27 on the structure of the Delegation for Human Rights in Sweden)

Letters

- The Government (2005): *En nationell handlingsplan för de mänskliga rättigheterna 2006-2010*, skr. 2005/06:95 (A national action plan for human rights 2006-2010)

Literature

- Borchorst, Anette and Dahlerup, Drude (2003): Ligestilling – hvad er problemet? pp. 9-28, in Borchorst, Anette and Dahlerup, Drude (2003): *Ligestillings politik som diskurs og praksis*, Forlaget Samfundslitteratur, Århus (Gender Equality – What is the Problem? *Gender Equality policies as discourse and in practice*)

Other materials

The Equal Opportunities Ombudsman (JämO)

- The Equal Opportunities Ombudsman (JämO) (1999-2006): *Annual report of the Equal Opportunities Ombudsman*, 1999, Stockholm

The Ombudsman against Ethnic Discrimination (DO)

- The Ombudsman against Ethnic Discrimination (2003-2006): *Annual report of the Ombudsman against ethnic discrimination, 2003-2006*, Stockholm
- *Detta är Ombudsmannen mot etnisk diskriminering*, info-blad (This is the Ombundsman against ethnic discrimination, publication)

The Swedish Disability Ombudsman (HO)

- The Swedish Disability Ombudsman (2000): *Tillgänglighet för alla, HO årsrapport 2000*, Stockholm (Accessibility for all, Annual report of the Swedish Disability Ombudsman 2000, Stockholm)
- The Swedish Disability Ombudsman (2001): *Tänk tillgängligt, HO årsrapport 2001,* Stockholm (Think accessibility, Annual report of the Swedish Disability Ombudsman, 2001, Stockholm)
- The Swedish Disability Ombudsman (2002): *Skydda mot diskriminering, HO årsrapport 2002*, Stockholm (Protect against discrimination, Annual report of the Swedish Disability Ombudsman, 2002, Stockholm)
- The Swedish Disability Ombudsman (2003): *Från ord till handling, HO års rapport 2003*, Stockholm (From words to action, Annual report of the Swedish Disability Ombudsman, 2003, Stockholm)
- The Swedish Disability Ombudsman (2004): *På väg mot ett samhälle för alla, HO årsrapport 2004*, Stockholm (On the way to a society for all, Annual report of the Swedish Disability Ombudsman, 2004, Stockholm)
- The Swedish Disability Ombudsman (2005): *HO årsrapport 2005*, Stockholm (Annual report of the Swedish Disability Ombudsman, 2005, Stockholm)
- The Swedish Disability Ombudsman (2006): *HO årsrapport 2006*, Stockholm (Annual report of the Swedish Disability Ombudsman, 2006, Stockholm)
- The Swedish Disability Ombudsman (2004), *Diskriminering och tillgänglighet,- rapport till Diskrimineringskommitteen,* HO, Stockholm (Discrimination and accessibility – report to the Discrimination Committee, The Swedish Disability Ombudsman, Stockholm)

The Ombudsman against Discrimination on Grounds of Sexual Orientation (HomO)

- The Ombudsman against Discrimination on Grounds of Sexual Orientation

(2001-2006): *Rapport 2001-2006*, HomO, Stockholm (Report 2001-2006, The Ombudsman against Discrimination on grounds of Sexual Orientation, Stockholm)

· The Ombudsman against Discrimination on grounds of Sexual Orientation (2007): *För Männskliga Rättigheter. Mot Diskriminering och Homofobi*, brochure HomO, Stockholm (For Human Rights. Against Discrimination and Homophobia, brochure, The Ombudsman against Discrimination on grounds of Sexual Orientation, Stockholm)

The Children's Ombudsman (BO)

· The Children's Ombudsman (2006): *Annual report of the Children's Ombudsman 2006*, The Children's Ombudsman, Stockholm

NOTER

1. Indledning

1. Diskrimination defineres som en usaglig forskelsbehandling der medfører en ringere behandling for et individ end andre på baggrund af fx hudfarve, etnisk baggrund, seksuel orientering, køn, alder, handicap eller religion. Anti-diskrimineringspolitik har som sit udgangspunkt at gøre det muligt for alle samfundets borgere at deltage på lige vilkår med andre, og at have lige adgang til de gældende rettigheder i samfundet. Diskrimination har således ofte at gøre med strukturel magt. Man skelner mellem "direkte diskrimination", som beskriver handlinger, der har til formål at diskriminere, og "indirekte diskrimination": i udgangspunktet neutrale handlinger, der har en diskriminerende virkning. Direkte og indirekte diskrimination kan udføres af enkeltpersoner og af grupper af personer. Strukturel indirekte diskrimination udføres af institutioner. Flerdimensional diskrimination beskriver forskelsbehandling på mere end ét grundlag (fx køn og etnisk oprindelse) (kilde: www.menneskeret.dk).

2. Island er en undtagelse. Se kapitel 5.

3. For ny nordisk kønsforskning om, hvilke konsekvenser aktuel politikudvikling har for ligestilling som teoretisk se "Lige muligheder", temanummer af *Kvinder, køn & forskning* nr. 1 2008, Københavns Universitet.

4. Europa-parlamentets og rådets afgørelse nr. 771/2006/EF af 17. maj 2006 om Det europæiske år for lige muligheder for alle (2007) – mod et retfærdigt samfund, s. 3.

5. Læs mere om, hvordan begrebet er blevet adopteret i en nordisk kønsforskningskontekst i Ann-Dorte Christensen og Birte Siim: "Fra køn til diversitet – intersektionalitet i en dansk/nordisk kontekst", in *Kvinder, køn & forskning* nr. 2-3 temanummer om intersektionalitet, Københavns Universitet, 2006. Se også *Kvinnovetenskapligt tidskrift* nr. 2-3 2005, *Tidskrift for kjønnsforskning* nr. 3 2004, *NORA – Nordic Journal for Women's Stduies and Gender Research* vol. 11 no 2 2005 om køn og etnicitet, samt Kathy Davis (2008): "Intersectionality as Buzzword. A sociology of science perspective on what makes a feminist theory successful", in *Feminist Theory* vol 9 no 1 2008.

6. "Intersektionalitet", temanummer af *Kvinder, køn & forskning, nr. 2-3* 2006, Københavns Universitet.

7. Lykke (2008), s. 104f

8. http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=8&

DF=28/02/2006&CL=ENG Bemærk at diskrimineringsgrundlagene ikke er udtømmende, derfor kan også andre diskrimineringsgrundlag som fx handicap og seksuel orientering omfattes af artikel 14.
9. EU-Kommissionens hjemmeside om bekæmpelse af diskrimination: http://www.stop-discrimination.info/
Measuring Discrimination. Data Collection and EU Equality Law: http://p30029.typo3server.info/fileadmin/pdfs/Reports/Measuring_Discrimination_en.pdf
10. http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html
11. Implementation of Anti-discrimination directives into national law http://ec.europa.eu/employment_social/fundamental_rights/legis/lgms_en.htm EU-kommissionens årlige rapporter om anti-diskrimination: http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#Annual
12. *Tackling Multiple Discrimination. Practices, policies and laws*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.4 (2007).
13. http://ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm
14. Som det vil fremgå af rapporten er direktiverne implementeret forskelligt i de nordiske lande. For en oversigt over, hvordan de øvrige medlemslande har implementeret direktiverne se rapporter fra 2007 her: http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#coun
I Norge har Arbeids- og inkluderingsdepartementet udarbejdet en rapport om, hvordan de to direktiver er implementeret i norsk lovgivning. Læs rapporten (på engelsk) her: http://www.regjeringen.no/upload/BLD/Rapporter/2008/Anti_discriminationtour.pdf
14a. http://www.equalityhumanrights.com
15. For en kritisk analyse af den politiske proces se Squires (2007).
16. For en teoretisk analyse af "diversity policies" i Storbritannien se Bagilhole (2006).
17. "A Single Equalities Body". Paper by Judith Squires. GENIE, University of Helsinki 15.12.2007. For en nærmere analyse af udviklingen i britisk ligestillingspolitik se Squires (2007).
18. *Framework for a Fairer Future – The Equality Bill*:
http://www.equalities.gov.uk/publications/FRAMEWORK%20FAIRER%20FUTURE.pdf Læs også kommissionens respons til lovforslaget: http://www.equalityhumanrights.com/Documents/DLRresponses/Fairness_Final.pdf
19. http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf
20. http://www.equalityni.org
21. I 1999 udvidedes loven til at omfatte diskrimination på grund af "gender reassignment" (kønskorrigerende behandling).
22. http://www.ofmdfmni.gov.uk/single-bill-consultation.pdf
23. http://www.ofmdfmni.gov.uk/equality-bill-report.pdf

24. http://www.equality.ie/
25. Bortset fra Island (se kapitel 5).
26. *Centre for Equal Opportunities and Opposition to Racism* i Belgien har eksisteret siden 1993 og fungerer som nationalt klageinstans for diskrimination på grund af køn, race, hudfarve, herkomst, national eller etnisk oprindelse, seksuel oerientering, civil status, fødsel, formue, alder, religiøs eller filosofisk overbevisning, nutidig eller fremtidig helbredstilstand, handicap eller fysiske karakteristika. Læs mere på centrets hjemmeside: http://www.diversiteit.be
27. Argumenterne i den politiske debat lød blandt andet: "*The discrimination against women are of a different nature (...) Women, who make up half of the population, cannot be treated on the same terms as other groups of discrimination victims. Doing so would be to deny their existence.*" (kilde: Michel Pasteel, Director of the Institute for the equality of women and men in Belgium).
28. http://www.iefh.fgov.be
28a. Centret har eksisteret siden 1993 og fungerer som nationalt klageinstans for diskrimination på grund af køn, race, hudfarve, herkomst, national eller etnisk oprindelse, seksuel oerientering, civil status, fødsel, formue, alder, religiøs eller filosofisk overbevisning, nutidig eller fremtidig helbredstilstand, handicap eller fysiske karakteristika. Læs mere på centrets hjemmeside: http://www.diversiteit.be
29. (kilde: Michel Pasteel, Director of the Institute for the equality of women and men in Belgium).
30. Universal Declaration of Human Rights http://www.un.org/Overview/rights.html
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) http://www2.ohchr.org/english/law/cerd.htm
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) http://www.un.org/womenwatch/daw/cedaw/
Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities
http://www.un.org/disabilities/default.asp?id=93
31. For en oversigt se *The National Human Rights Institutions Forum*s hjemmeside: http://www.demotemp360.nic.in/default.asp?PID=253
32. Case-eksempler fra Canada på diskriminering på flere grundlag se her: http://www.chrc-ccdp.ca/publications/anti_discrimination_appendixb-en.asp For en grundig gennemgang af Canadas politik på området se rapporten: *An Intersectional Approach to Discrimination. Addressing Multiple Grounds in Human Rights Claims.* Discussion Paper, Ontario Human Rights Commission (2001): http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtnts/pdf
32a. http://www.chrc-ccdp.ca
33. http://laws.justice.gc.ca/en/H-6/index.html

34. The Canadian Human Rights Committee http://www.chrc-ccdp.ca/publications/2001_lr/default-en.asp
35. The Australian Human Rights Commission http://www.humanrights.gov.au/index.htm
36. "Gender and Race Intersectionality Issues Paper" http://www.humanrights.gov.au/racial_discrimination/conferences/worldconference/aus_gender.html
36a. http://www.hrc.co.nz
37. I New Zealand viste en undersøgelse i 2004-2005, at transkønnede personers rettigheder ikke var omfattet af lovgivningen. En *Transgender Inquiry* blev offentliggjort, som har til formål at undersøge tre kerneområder af problematikken: personlige erfaringer med diskrimination; besværligheder med adgang til sundhedstjenester, og barrierer transkønnede personer oplever, når deres kønsstatus forsøges anerkendt juridisk fx på dåbsattester og pas. Den endelige rapport blev publiceret i januar 2008 med kommissionens anbefalinger og forslag til videre handling. Download rapporten her: http://www.hrc.co.nz/home/hrc/introduction/actiononthetransgenderinquiry/resources/resources.php
38. Se fx Bagilhole (2006), Schiek and Chege (2008) og Squires (2007).
39. Verloo (2006).
40. Verloo (2006), p. 223.
41. Et nyt nordisk forskningsprojekt skal studere ændringerne i Nordisk ligestillingslovgivning i lyset af, hvordan initiativer til at forhindre diskrimination på flere grundlag debatteres, fortolket, begrundes og problematiseres af politiske partier og civilsamfundsaktører i Norge, Sverige og Danmark. Centrale forskningsspørgsmål vil desuden være: Lægges der i bekæmpelsen af diskrimination vægt på en intersektionel tilgang som et vigtig motiv bag juridiske reformer? Og hvordan håndteres udfordringerne for multiple diskrimination og intersektionalitet i praksis af håndhævningsorganerne? Læs mere om projektet her: http://www.samfunnsforskning.no/page/Forskning/Prosjekter_kjonn/1417/43339.html
42. *Equal Voices*, issue 22, December 2007. European Union Agency for Fundamental Rights http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=476bbe34e6f40
43. p. 9.
44. http://ec.europa.eu/employment_social/progress/index_en.htm
45. Legal experts network: http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#lawrev
46. Rapporten *Tackling Multiple Discrimination. Practices, policies and laws* (2007) kan downloades her: http://www.menneskeret.dk/files/pdf/Tackling%20Multiple%20Discrimination%20Practices%20policies%20and%20laws%20(2).pdf

2. Opsummering

1. http://borger.dk/forside/lovgivning/hoeringsportalen/faktaside?p_hoeringid=65
2. http://www.ft.dk/Samling/20072/lovforslag/L41/som_vedtaget.htm
3. Om distinktionen jämlikhet og jämställdhet se kapitel 4.
4. http://www.om.fi/text/sv/Oikeapalsta/Haku/1201510078928
5. For en analyse af disse se kapitel 5.
6. http://www.althingi.is/altext/135/s/0698.html
7. http://www.regjeringen.no/upload/kilde/krd/rap/2003/0015/ddd/pdfv/182685-handhevingdiskriminering.pdf
8. http://www.regjeringen.no/nb/dep/bld/kampanjer/diskrimineringslovutvalget.html?id=476264
9. http://www.regeringen.se/sb/d/138/a/23053
10. http://www.regeringen.se/sb/d/108/a/58696
11. http://www.regeringen.se/sb/d/108/a/100634
12. Se blandt andet de nationale strategier og afrapporteringer for *Det europæiske år for lige muligheder for alle 2007* http://ec.europa.eu/employment_social/eyeq/index.cfm?language=EN
13. Se det kommende forskningsprojekt "Multidimensional equality – A New "Nordic Model"?" http://www.samfunnsforskning.no/page/Nyhetsside/Nyheter_eksterne_arkiv/7671/38728.html

13a. I Danmark har Institut for menneskerettigheder på eget initiativ nedsat et ligebehandlingsudvalg bestående af repræsentanter fra forskellige NGO'er og institutioner. Udvalgets overordnede funktion er at rådgive instituttet i spørgsmål vedrørende ligebehandling, ligestilling og diskrimination.

14. Ankestyrelsen er øverste klageinstans på velfærdsområdet, der træffer afgørelser i ca. 19.000 klagesager hvert år og fastlægger praksis på landsplan ved blandt andet at offentliggøre de principielle afgørelser.
15. http://www.equalities.gov.uk/
16. http://www.iefh.fgov.be
17. https://www.retsinformation.dk/Forms/R0710.aspx?id=20929
18. https://www.retsinformation.dk/Forms/R0710.aspx?id=30750
19. https://www.retsinformation.dk/Forms/R0710.aspx?id=30796
20. https://www.retsinformation.dk/Forms/R0710.aspx?id=30047
21. https://www.retsinformation.dk/Forms/R0710.aspx?id=25742
22. https://www.retsinformation.dk/Forms/R0710.aspx?id=31753
23. https://www.retsinformation.dk/Forms/R0710.aspx?id=28938
24. https://www.retsinformation.dk/Forms/R0710.aspx?id=30199

25. http://www.finlex.fi/sv/laki/ajantasa/1986/19860609
26. http://www.finlex.fi/sv/laki/ajantasa/2004/20040021
27. http://www.finlex.fi/sv/laki/ajantasa/2006/20060044
28. http://www.althingi.is/altext/135/s/0698.html
29. http://www.lovdata.no/all/nl-20050610-040.html
30. http://www.lovdata.no/all/nl-19780609-045.html
31. http://www.lovdata.no/all/nl-20050603-033.html
32. http://www.lovdata.no/all/tl-20050617-062-013.html
33. http://www.lovdata.no/all/tl-19990326-017-001.html#1-8
34. http://www.lovdata.no/all/tl-20030606-039-001.html#1-5
35. http://www.lovdata.no/all/tl-20030606-038-001.html#1-
36. http://www.lovdata.no/all/nl-19970523-031.html
37. http://www.regeringen.se/sb/d/9756/a/100634
38. Det er dog værd at bemærke, at Island senest er blevet opfordret til af EUs menneskerettighedskommission og af UNHCHR (Committee on the Elimination of Racial Discrimination) at adoptere en omfattende anti-diskrimineringslovgivning. Forberedelserne til at indarbejde to af EU's anti-diskrimineringsdirektiver i islandsk lovgivning er derfor indledt.
39. Loven gælder ikke forhold af privat karakter.
40. Begrænset til forholdet mellem arbejdsgiver og –tager ved blandt andet ansættelse, spørgsmål om løns- og andre ansættelsesvilkår og ved afslutningen af et arbejdsforhold.
41. Island har ikke adopteret specifik lovgivning på området. De andre grundlag end køn er således kun beskyttet i grundloven.
42. Der eksisterer dog undtagsparagraffer i Likestillings- og arbeidsmiljøloven, som giver trossamfund lov til at diskriminere på grund af køn og religion.
43. Dette skyldes ifølge det svenske lovforslag, at al særbehandling på grund af alder ikke regnes som diskriminering (fx at arbejdstagere over 40 år har ret til flere feriedage).
44. I Norge diskuterer man pt. i Diskrimineringslovutvalget, om man skal have en udtømmende liste som ambition for den nye lovgivning eller ej.
45. Denne diskussion skal ikke uddybes her, men i stedet henvises til gennemgangen af de respektive høringssvar i rapportens nationale oversigter.

3. Danmark

1. http://www.ft.dk/doc.aspx?/Samling/20072/lovforslag/L41/index.htm
2. Ligebehandlingsudvalget (LBU) er rådgivende for Rådet for menneskerettigheder og er sammensat af personer og organisationer repræsenteret i rådet, der besidder særlig

kundskab om og erfaring med ligebehandlingsarbejde indenfor et eller flere af de seks områder: Køn, race/etnicitet, seksuel orientering, handicap, alder og religion/trosopfatning. Udvalget organiserer således primært civilsamfundsorganisationer indenfor hvert af de seks grundlag.

3. For en nærmere gennemgang af den internationale retlige regulering på området anbefales Institut for Menneskerettigheders udredning *Effektiv beskyttelse mod diskrimination – om retlige og faktiske tiltag*, nr. 5, 2007 (IMR 2007).

4. Gender mainstreaming indebærer, at et køns- og ligestillingsperspektiv samt en konsekvensanalyse skal indtænkes i alle dele af en virksomheds aktiviteter.

5. Lov om ændring af lov om ligestilling af kvinder og mænd og lov om Teknologirådet (Nedlæggelse af Videnscenter for Ligestilling), Lov nr. 396 af06/06/2002

6. Lov nr. 286 af 25 april 2003 om ændring af lov om ligestilling mellem kvinder og mænd

7. Lov nr. 374 af 28 maj 2003 om etnisk ligebehandling

8. Sammenfatningen er baseret på høringsudtalelser fra følgende organisationer: Dokumentations- og rådgivingscenteret om racediskrimination, Dansk Flygtningehjælp, ENAR – European Network Against Racism, Foreningen for Etnisk Ligestilling, Kvinderådet, Islamisk-Kristent Studiecenter, De Samvirkende Invalideorganisationer, Det centrale Handicapråd og Center for Ligebehandling af Handicappede, Landsforeningen for Bøsser og Lesbiske, Retsikkerhedsfonden, Ældremobiliseringen, Dansk Ungdoms Fællesråd, Amnesty International

9. Direktivet omtaler særligt den dobbeltdiskrimination, der kan ramme kvinder, der på grund af manglende kønsligestilling,samt tilhør til en minoritetsgruppe, rammes dobbelt af en diskriminerende praksis, men direktivet åbner også op for, at multi-diskrimination på baggrund af mere end to diskriminationsgrunde og uafhængigt af køn som faktor, kan forekomme.

6. Norge

43. LDO er den offisielle forkortelsen for Likestillings- og diskrimineringsombudet, mens LDN er en uoffisiell forkortelse som vi vil bruke i dette kapittelet.

44. Takk til Barne- og likestillingsdepartementet, ved Arni Hole og Hanne Skui, for nyttige innspill til teksten.

45. Dagens Barne- og likestillingsdepartement (BLD).

46. Det vil si at de var negative til å kombinere lovhåndhever- og pådriverrollen på

kjønnsfeltet. De ønsket ikke å uttale seg om hvorvidt pådriverrollen på etnisitetsfeltet burde innlemmes i det nye organet eller ikke ettersom de mente at man kunne ha andre erfaringer på dette arbeidsfeltet som kunne tale for en slik løsning.
47. Skiftet navn til Barne- og likestillingsdepartementet (BLD) etter stortingsvalget høsten 2005.

7. Sverige

48a. http://www.regeringen.se/sb/d/108/a/100634
48. BarnOmbudsmanden (BO) indgår ikke i redegørelsen, idet institutionens mandat skiller sig noget fra de øvrige ombudsmænds ved blandt andet ikke at være en klageinstans. For mere information herom kan www.bo.se konsulteres. BOs kommentarer til udredningen gennemgås i afsnittet om høringssvar.
49. CERD/C/R.50/Add.2 12 january 1973
50. Lag 2001:1286
51. Direktiv 200/43 og 2000/78
52. Lag 2003:307
53. Mange tilgængelighedsaktivister foretrækker betegnelserne 'funktionshindret' eller 'funktionsnedsat' frem for 'handicappet', idet de mener, at disse begreber i stedet for at lægge problemet hos det handicappede individ i højere grad peger på, at problemer med funktionalitet opstår i mødet med et samfund som ikke er tilpasset til alle sine borgere. Når handicap-begrebet alligevel anvendes er det fordi det er det som benyttes i det officielle kildemateriale og af HandikappOmbudsmanden.
54. Proposition 1978/79:180, bet. 1978/79:UbU45, rskr. 1978/79:422.
55. Lag 1977:1160
56. prop. 1999/2000:79, bet. 1999/2000:SoU14
57. Begrebet seksuel orientering dækker homo-, bi- og heteroseksualitet. Transseksuelle henvises derfor til JämO, idet det vurderes at de i højere grad diskrimineres på grund af deres køn (og den måde de udtrykker det på) en på grund af deres seksuelle orientering (HomO årsrapport 2006).
58. Lag 1991:433
59. Lag 1999:130
60. Lag 1999:132
61. Lag 1999:133
62. Lag 2001:1286

63. Lag 2003:307
64. Lag 2006:67
65. Transperson er et samlingsbegreb for personer der gennem sine kønsudtryk og/eller kønsidentitet afviger fra en binær kønsnorm eller fortolker sine biologiske køn på en ikke-konventionel måde. Oftest indregnes transvestitter, transgenderister, drag-personer, transseksuelle, intergender og intersexuelle i begrebet. (SOU 2006:22).
66. Med undtagelse af enkeltpersoner, der udbyder varer, tjenester eller boliger
67. 16 kap 9 § brottsbalken (straffeloven).
68. 16 kap 9 § brottsbalken (olaga diskriminering) och bestämmelsen i 16 kap 8 § (hets mot folkgrupp).
69. Afsnittet bygger på høringssvar fra Sveriges Kristna Råd, Sveriges Kvinnolobby, Sveriges Pensionärers Riksförbund, Sveriges Förenade Gaystudenter, Samarbetsorganet för etniska organisationer i Sverige, Pensionärernas Riksorganisation, Riksförbundet för sexuellt likaberättigande, Rädda barnen, Fredrika Bremerförbundet, Full Personality Expression – Sweden, Förbundet Rörelsehindrade, Företagarna, Handikappförbundens Samarbetsorgan, Centrum mot rasism, Sveriges Pensionärsförbund, Marschen för tillgänglighet, Sverigeunionen av Soroptimistklubbar, Kvinna Skaraborg, Riksförbundet för sexuell upplysning, TheMa, Kvinnor i svenska kyrkan og Barn- och elevombudet vid Skolverket.
70. Dette afsnit bygger på høringssvar fra Riksdagens ombudsmän, Arbetsdomstolen, Brottsoffermyndigheten, Internationelle juristkommissionen, Åklagarmyndigheten, Rättshjälpsmyndigheten og Hovrätten för Västa Sverige og övre Skåne.
71. HBT = Homo-, Bi- og Transpersoner.

NOTES

1. Introduction

1. Discrimination is defined as non-objective differential treatment that will result in poorer treatment of an individual or others based on e.g. skin colour, ethnic background, sexual orientation, gender, age, disability or religion. Anti-discrimination policies are based on the concept of making it possible for all people in society to participate on equal terms with others and to have the same access to the applicable rights in society. Discrimination is thus often related to structural power. You distinguish between "direct discrimination", which describes actions that aim to discriminate, and "indirect discrimination": basically neutral actions, which have a discriminatory effect. Direct and indirect discrimination may be performed by individuals and by groups of persons. Structural indirect discrimination is performed by institutions. Multi-dimensional discrimination describes differential treatment based on more than one cause (e.g. gender and ethnic origin) (source: www.menneskeret.dk).

2. Iceland is an exception. See chapter 5.

3. For the most recent gender research on which consequences the current policy development has for gender equality as theory, see "Lige muligheder", temanummer af *Kvinder, køn & forskning* nr. 1 2008, Københavns Universitet. ("Equal opportunities", special issue of Women, Gender and Research no. 1 2008, University of Copenhagen)

4. Decision of the European Parliament and the Council no. 771/2006/EF of 17 May 2006 on The European year of equal opportunities for everyone (2007) – towards a just society, p. 3.

5. Read more on how the concept has been adopted in a Nordic gender research context in Ann-Dorte Christensen and Birte Siim: "Fra køn til diversitet – intersektionalitet i en dansk/nordisk kontekst", in *Kvinder, køn & forskning* nr. 2-3 temanummer om intersektionalitet, Københavns Universitet, 2006. ("From gender to diversity – intersectionality in a Danish/Nordic context" in Women, Gender and Research n. 2-3, special issue on intersectionality, University of Copenhagen, 2006). Also see *Kvinnovetenskapligt tidskrift* nr. 2-3 2005 (Women's scientific journal no. 2-3 2005), *Tidskrift for kjønnsforskning* nr. 3 2004, (Journal of Gender Research no. 3 2004), *NORA* –

Nordic Journal for Women's Studies and Gender Research vol. 11 no 2 2005 on gender and ethnicity and Kathy Davis (2008): "Intersectionality as Buzzword. A sociology of science perspective on what makes a feminist theory successful", in *Feminist Theory* vol 9 no 1 2008.

6. "Intersektionalitet", temanummer af *Kvinder, køn & forskning, nr. 2-3* 2006, Københavns Universitet. ("Intersectionality", special issue of Women, Gender and Research, no. 2-3 2006, University of Copenhagen).

7. Lykke (2008), p. 104f

8. http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=8&DF=28/02/2006&CL=ENG Note that the discrimination bases are not exhaustive which is why other discrimination bases such as disability and sexual orientation are included in Article 14.

9. The website of the EU Commission on the fight against discrimination: http://www.stop-discrimination.info/

Measuring Discrimination. Data Collection and EU Equality Law: http://p30029.typo3server.

info/fileadmin/pdfs/Reports/Measuring_Discrimination_en.pdf

10. http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html

11. Implementation of Anti-discrimination directives into national law http://ec.europa.eu/employment_social/fundamental_rights/legis/lgms_en.htm The EU Commission's annual reports on anti-discrimination: http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#Annual

12. *Tackling Multiple Discrimination. Practices, policies and laws*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.4 (2007).

13. http://ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm

14. As it will appear from the report, the directives are implemented differently in the Nordic countries. For an overview of how the other member states have implemented the directives, see the reports from 2007 here:

http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#coun

In Norway, the Ministry of Labour and Social Inclusion has prepared a report on how the two directives are implemented in the Norwegian legislation. Read the report (in English) here:

http://www.regjeringen.no/upload/BLD/Rapporter/2008/Anti_discriminationtour.pdf

14a. http://www.equalityhumanrights.com

15. For a critical analysis of the political process, see Squires (2007).
16. For a theoretical analysis of diversity policies in Great Britain, see Bagilhole (2006).
17. "A Single Equalities Body". Paper by Judith Squires. GENIE, University of Helsinki 15.12.2007. For a further analysis of the development in British gender equality policies, see Squires (2007).
18. *Framework for a Fairer Future – The Equality Bill*: http://www.equalities.gov.uk/publications/FRAMEWORK%20FAIRER%20FUTURE.pdf Also read the Commission's response to the bill: http://www.equalityhumanrights.com/Documents/DLRresponses/Fairness_Final.pdf
19. http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf
20. http://www.equalityni.org
21. In 1999, the act was extended to include discrimination based on "gender reassignment" (gender-corrective treatment).
22. http://www.ofmdfmni.gov.uk/single-bill-consultation.pdf
23. http://www.ofmdfmni.gov.uk/equality-bill-report.pdf
24. http://www.equality.ie/
25. With the exception of Iceland (see chapter 5).
26. *Centre for Equal Opportunities and Opposition to Racism* in Belgium has existed since 1993 and acts as a national complaints body for discrimination based on gender, race, skin colour, descent, national or ethnic origin, sexual orientation, civil status, birth, property, age, religious or philosophical persuasion, present or future health, disability or physical characteristics. Read more on the centre's website: http://www.diversiteit.be
27. The arguments in the political debate were, for instance: "*The discrimination against women are of a different nature (...) Women, who make up half of the population, cannot be treated on the same terms as other groups of discrimination victims. Doing so would be to deny their existence.*" (source: Michel Pasteel, Director of the Institute for the equality of women and men in Belgium).
28. http://www.iefh.fgov.be
28a. The Centre has existed since 1993 and acts as a national complaints body for discrimination based on gender, race, skin colour, descent, national or ethnic origin, sexual orientation, civil status, birth, property, age, religious or philosophical persuasion, present or future health, disability or physical characteristics. Read more on the centre's website: http://www.diversiteit.be
29. (source: Michel Pasteel, Director of the Institute for the equality of women and men in Belgium).

30. Universal Declaration of Human Rights http://www.un.org/Overview/rights.html
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) http://www2.ohchr.org/english/law/cerd.htm
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) http://www.un.org/womenwatch/daw/cedaw/
Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities http://www.un.org/disabilities/default.asp?id=93
31. For an overview, see the website of *The National Human Rights Institutions Forum:* http://www.demotemp360.nic.in/default.asp?PID=253
32. Case examples from Canada of discrimination on several bases, see here: http://www.chrc-ccdp.ca/publications/anti_discrimination_appendixb-en.asp
For a thorough review of Canada's policies within the area, see the report: *An Intersectional Approach to Discrimination. Addressing Multiple Grounds in Human Rights Claims.* Discussion Paper, Ontario Human Rights Commission (2001): http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtnts/pdf
32a. http://www.chrc-ccdp.ca
33. http://laws.justice.gc.ca/en/H-6/index.html
34. The Canadian Human Rights Committee http://www.chrc-ccdp.ca/publications/2001_lr/default-en.asp
35. The Australian Human Rights Commission http://www.humanrights.gov.au/index.htm
36. "Gender and Race Intersectionality Issues Paper" http://www.humanrights.gov.au/racial_discrimination/conferences/worldconference/aus_gender.html
36a. http://www.hrc.co.nz
37. In New Zealand, a survey from 2004-2005 showed that the rights of transgender persons were not covered by the legislation. A *Transgender Inquiry* was published which aims at investigating the three core areas of the problems: personal experience with discrimination; difficulties with access to health services and barriers that transgender persons are met with when their gender status are sought to be accepted legally e.g. on birth certificates and passports. The final report was published in January 2008 with the commission's recommendations and suggestions for further actions. Download the report here: http://www.hrc.co.nz/home/hrc/introduction/actiononthetransgenderinquiry/resources/resources.php

38. E.g. see Bagilhole (2006), Schiek and Chege (2008) and Squires (2007).
39. Verloo (2006).
40. Verloo (2006), p. 223.
41. A new Nordic research project makes a study of the changes in the Nordic gender equality legislation in the light of how initiatives to prevent discrimination on several bases are discussed, interpreted, justified and problematised by political parties and civil society actors in Norway, Sweden and Denmark. Moreover, central research questions will be: In the fight against discrimination, is importance attached to an intersectional approach as an essential motive behind legal reforms? And how are the challenges of multiple discrimination and intersectionality handled in practice by the enforcement bodies? Read more about the project here:
http://www.samfunnsforskning.no/page/Forskning/Prosjekter_kjonn/1417/43339.html
42. *Equal Voices*, issue 22, December 2007. European Union Agency for Fundamental Rights http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=476bbe34e6f40
43. p. 9.
44. http://ec.europa.eu/employment_social/progress/index_en.htm
45. Legal experts' network:
http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#lawrev
46. The report *Tackling Multiple Discrimination. Practices, policies and laws* (2007) may be downloaded here: http://www.menneskeret.dk/files/pdf/Tackling%20Multiple%20Discrimination%20Practices%20policies%20and%20laws%20(2).pdf

2. Summary

1. http://borger.dk/forside/lovgivning/hoeringsportalen/faktaside?p_hoeringid=65
2. http://www.ft.dk/Samling/20072/lovforslag/L41/som_vedtaget.htm
3. On the distinction of equal right and equality, see Chapter 4.
4. http://www.om.fi/text/sv/Oikeapalsta/Haku/1201510078928
5. For an analysis of these, see Chapter 5.
6. http://www.althingi.is/altext/135/s/0698.html
7. http://www.regjeringen.no/upload/kilde/krd/rap/2003/0015/ddd/pdfv/182685-handhevingdiskriminering.pdf
8. http://www.regjeringen.no/nb/dep/bld/kampanjer/diskrimineringslovutvalget.html?id=476264

9. http://www.regeringen.se/sb/d/138/a/23053
10. http://www.regeringen.se/sb/d/108/a/58696
11. http://www.regeringen.se/sb/d/108/a/100634
12. E.g see the national strategies and reports from the *European Year of Equal Opportunities for All 2007* http://ec.europa.eu/employment_social/eyeq/index.cfm?language=EN
13. See the upcoming research project "Multidimensional equality - A New "Nordic Model"?" http://www.samfunnsforskning.no/page/Nyhetsside/Nyheter_eksterne_arkiv/7671/38728.html
14. In Denmark, the Danish Institute for Human Rights has on their own initiative appointed an equal treatment committee consisting of representatives from different NGOs and institutions. The main function of the committee is to advise the Institute on issues regarding equal treatment, gender equality and discrimination.
15. The National Social Appeals Board is the final complaints authority within the area of social welfare and is making decisions on approx. 19,000 complaints a year and lays down the practice on national basis e.g. by publishing the fundamental decisions.
16. http://www.chrc-ccdp.ca
17. http://www.equalities.gov.uk/
18. http://www.iefh.fgov.be
19. https://www.retsinformation.dk/Forms/R0710.aspx?id=20929
20. https://www.retsinformation.dk/Forms/R0710.aspx?id=30750
21. https://www.retsinformation.dk/Forms/R0710.aspx?id=30796
22. https://www.retsinformation.dk/Forms/R0710.aspx?id=30047
23. https://www.retsinformation.dk/Forms/R0710.aspx?id=25742
24. https://www.retsinformation.dk/Forms/R0710.aspx?id=31753
25. https://www.retsinformation.dk/Forms/R0710.aspx?id=28938
26. https://www.retsinformation.dk/Forms/R0710.aspx?id=30199
27. http://www.finlex.fi/sv/laki/ajantasa/1986/19860609
28. http://www.finlex.fi/sv/laki/ajantasa/2004/20040021
29. http://www.finlex.fi/sv/laki/ajantasa/2006/20060044
30. http://www.althingi.is/altext/135/s/0698.html
31. http://www.lovdata.no/all/nl-20050610-040.html
32. http://www.lovdata.no/all/nl-19780609-045.html
33. http://www.lovdata.no/all/nl-20050603-033.html
34. http://www.lovdata.no/all/tl-20050617-062-013.html
35. http://www.lovdata.no/all/tl-19990326-017-001.html#1-8
36. http://www.lovdata.no/all/tl-20030606-039-001.html#1-5
37. http://www.lovdata.no/all/tl-20030606-038-001.html#1-
38. http://www.lovdata.no/all/nl-19970523-031.html
39. http://www.regeringen.se/sb/d/9756/a/100634

40. It is worth noticing, however, that Iceland has recently been requested to adopt a comprehensive anti-discrimination legislation by the EU Human Rights Commission and by UNHCHR (Committee on the Elimination of Racial Discrimination). The preparations of incorporating two of the EU's anti-discrimination directives have therefore been initiated.
41. The act does not apply to relations of private character.
42. Limited to the relationship between employer and employee with regard to employment, wage issues and other terms of employment and when terminating the employment.
43. Iceland has not adopted a specific legislation in the area. Other bases than gender is thus only protected by the constitution.
44. There are, however, exemption clauses in the Gender Equality and Working Environment Act which allows religious communities to discriminate on the basis of gender and religion.
45. According to the Swedish bill, this is based on the fact that special treatment due to age is not regarded as discrimination (e.g. that employees over the age of 40 have right to more holiday).
46. In Norway, they are presently discussing in the Discrimination Act Committee if there should be the ambition of an exhaustive list in the new legislation or not.
47. There will be no elaboration of this discussion here, but we refer to the discussion of the statements in question in the national summaries of this report.

3. Denmark

1. The Danish Equal Treatment Committee (LBU) is an advisory committee to the Council for Human Rights and is compiled by persons and organisations represented in the Committee, who have a certain knowledge of and experience with gender equality work within one or several of the six areas: Gender, race/ethnicity, sexual orientation, disability, age and religion/faith. Thus, the Committee primarily organises civil society organisations within each of the six protection criteria.
2. For a more thorough review of the international statutory regulation within this field, we recommend the survey of the Danish Institute for Human Rights *Effective protection against discrimination – on legal and real actions*, no. 5, 2007 (IMR 2007)
3. Gender mainstreaming implies that a gender and equality perspective and a feasibility analysis should be incorporated in all parts of a business's activities
4. Act on the amendment of the Act on Equality Between Women and Men and Act

on The Danish Board of Technology (Abolition of the Centre for Gender Equality), Act no. 396 of 06/06/2002
5. Act no.286 of 25 April 2003 on the amendment of the Act on Equality Between Women and Men
6. Act no. 74 of 28 May 2003 on Ethnic Equal Treatment
7. The summary is based on statements from the following organisations: *Documentation and Advice Centre on Racial Discrimination in Denmark (DRC)*, Danish Refugee Council, ENAR – European Network Against Racism, The Committee for Ethnic Equality, the Women's Council in Denmark, *Islamic-Christian Study Centre*, *Disabled Peoples Organisations Denmark (DPOD)*, The Danish Disability Council and The Equal Opportunities Centre for Disabled Persons, *The Danish National Association of Gays & Lesbians*, Retsikkerhedsfonden, *The Danish Association of Senior Citizens*, The Danish Youth Council, Amnesty International
8. In particular, the directive mentions the dual discrimination which may affect women who due to the lacking gender equality and because they belong to a minority group are affected twice as hard by discrimination, but the directive also takes into account that multi-discrimination based on more than two causes of discrimination and independent of gender as a factor may occur.

4. Finland

1. The anti-discrimination laws adopted by the Provincial Legislative Assembly of Åland are available from the site of the provincial administration under *Ålands författningsamling* at http://www.regeringen.ax/lag.pbs
2. Discrimination Board has also been translated into English as National Discrimination Tribunal, but here the name is translated into Discrimination Board, which is more equivalent to the Finnish and Swedish terms, as well as perhaps more in keeping with the decision-making powers of the Board, which are more restricted than those of a court.
3. http://www.om.fi/text/sv/Oikeapalsta/Haku/1201510078928

5. Iceland

1. Stjórnarskrá L__veldisins Íslands, nr. 33/1944.
2. Judgement of 4 June 1998.

3. Judgement of 4 February 1999.
4. Judgement of 6 May 1999.
5. Judgement of 19 December 2000.
6. Judgement of 3 December 1998.
7. Almenn hegningarlög, nr. 19/1940.
8. Supreme Court Judgement of 24 April 2003.
9. Stjórns?slulög, nr. 37/1993.
10. Lög um grunnskóla, nr. 66/1995.
11. Lög um jafna stö∂u og jafnan rétt kvenna og karla, nr. 96/2000.
12. Centre for Gender Equality (Jafnréttisstofa), www.jafnretti.is
13. More information concerning the Complaints Committee may be found under 'Mechanisms'.
14. Comment available at http://50.felagsmalaraduneyti.is/media/endyurskodun/RHIK.pdf (only available in Icelandic).
15. http://www.jafnretti.is/jafnretti/?D10cID=ReadNews&ID=358
16. Lög um málefni fatla∂ra, nr. 59/1992.
17. Lög um félags?jónustu sveitarfélaga, nr. 40/1991.
18. Lög um málefni aldra∂ra, nr. 125/1999.
19. Lög um breytingu á lagaákvæ∂um er var∂a réttarstö∂u samkynhneig∂ra (sambú∂, ættlei∂ingar, tæknifrjóvgun), nr. 65/2006.
20. Lög um Evrópska efnahagssvæ∂i∂, nr. 2/1993.
21. Lög um starfsmenn me∂ tímbundna rá∂ningu, nr. 139/2003.
22. Lög um starfsmenn í hlutastörfum, nr. 39/2003.
23. Airey v. Ireland 32 Eur Ct HR Ser A (1979).
24. Core document forming part of the report of the States Parties: Iceland. 24/06/93. HRI/CORE/1/Add.26. 24 June 1993.
25. Ibid.
26. For more information on the Parliamentary Ombudsman (Umbo∂smann Altingis), see www.umbodsmaduralthingis.is
27. For more information on the Ombudsman for Children (Umbo∂sma∂ur barna), see www.barn.is
28. The City of Reykajvik's Human Rights Policy is available at http://www.reykjavik.is/Portaldata/1/Resources/skjol/stefnur/english.pdf
29. Concluding Observations of the Committee on the Elimination of Racial Discrimination, 67th session 2005.
30. Report by Mr. Alvaro Gil-Robles, Commission for Human Rights, on his visit to the Republic of Iceland, 4-6 July 2005, Strasbourg, 14 December 2005, CommDH(2005)10. www.coe.int

31. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19/07/2000.
32. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303/16, 02/12/2000.

6. Norway

1. LDO is the official abbreviation of the Equality and Anti-discrimination whereas LDN is an unofficial abbreviation which we will use in this chapter.
2. We thank Arni Hole and Hanne Skui at the Ministry of Children and Equality for useful inputs for the text.
3. Currently the Ministry of Children and Equality (BLD).
4. This means that they were negative towards the idea of a combined law enforcement and instigator role in gender issues. They did not wish to state whether the instigator role in ethnicity issues should be included in the new body or not as they believed there could be other experiences within this area pointing to this kind of solution.
5. changed the name to the Ministry of Children and Equality (BLD) after the general election in the autumn of 2005.

7. Sweden

1a. (http://www.regeringen.se/sb/d/ 108/a/100634)
1. The Children's Ombudsman (BO) is not included in the statement as the authority of this institution is separate from the other ombudsmen seeing that it is not a complaints authority. You can find more information at www.bo.se. The comments of the Children's Ombudsman for the analysis are discussed in the section on statements on the issue submitted for consultation.
2. CERD/C/R.50/Add.2 12 January 1973
3. Act no. 2001:1286
4. Directives 200/43 and 2000/78
5. Act no. 2003:307
6. Many accessibility activists prefer the term 'disabled' rather than 'handicapped', as

they believe that this concept describes the fact that the problem does not lie with the disabled individual but rather points out that society is not equipped to accommodate all its citizens. When the handicap concept is still used in Swedish, it is because it is used in the official source material and by the Swedish Disability Ombudsman.

7. Proposition 1978/79:180, bet. 1978/79:UbU45, rskr. 1978/79:422.

8. Act no. 1977:1160

9. prop. 1999/2000:79, bet. 1999/2000:SoU14

10. The concept of sexual orientation covers homosexuality, bisexuality and heterosexuality. Transsexuals are therefore referred to the Equal Opportunities Ombudsman as it is estimated as discrimination based on gender (and the way they express it) rather than based on sexual orientation (Annual report of the Ombudsman against Discrimination on grounds of Sexual Orientation 2006)

11. Act no. 1991:433

12. Act no. 1999:130

13. Act no. 1999:132

14. Act no. 1999:133

15. Act no. 2001:1286

16. Act no. 2003:307

17. Act no. 2006:67

18. Trans person is a concept covering all persons who through their gender expressions and/or gender identity differ greatly from a binary gender norm or interpret their biological gender in an unconventional way. Often includes transvestites, transgenderists, drags, transsexuals, intergender and intersexuals.(SOU 2006:22)

19. With the exeption of individuals offering goods, services or housing

20. 16 ch. S 9, the criminal code

21. 16 ch. S 9, the criminal code (unlawful discrimination) and the provision in 16 ch. S 8 (persecution of minorities)

22. *This section is based on statements from Christian Council of Sweden, the Swedish Women's Lobby, Sveriges Pensionärers Riksförbund (the Accossiation of senior citizens), The Swedish Federation of LGBTQ Student Organizations, The Cooperation Group for ethnic Associations in Sweden, Swedish National Pensioners' Organisation, The Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights, Save the Children, Sweden, The Fredrika-Bremer-Association , Full Personality Expression – Sweden, Förbundet Rörelsehindrade (Disabled persons), The federation of private enterprises, The Swedish Disability Federation, Centre against racism, THE SWEDISH ASSOCIATION FOR SENIOR CITIZENS The March for Accessibility, Soroptimist Sweden, Kvinna Skaraborg, the Swedish Associa-*

tion for Sexuality Education, TheMa, Kvinnor i svenska kyrkan (Women in Swedish Churches) and Barn- och elevombudet vid Skolverket (the ombudsman for children and pupils in the education system)

23. *This section is based on statements from the Parliamentary Ombudsmen, THE SWEDISH LABOUR COURT, the Crime Victim Compensation and Support Authority, Internationelle juristkommissionen (International lawyer's commission), The Swedish Prosecution Authority, The Legal Aid Authority and the High Court for the Western part of Sweden and upper Skåne*.

24. HBT= Homosexuals, Bisexuals and Trans persons

norden

Nordisk institutt for
kunnskap om kjønn – NIKK

norden

Nordic Gender Institute –
NIKK