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Comments from KRIFA
on the
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the European Social Charter

submitted by

THE GOVERNMENT OF DENMARK

(Articles 2, 4, 5 and 6 of the European Social Charter and
Articles 2 and 3 of the Additional Protocol
for the period 01/01/2005 – 31/12/2008)

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CYCLE XIX-3 (2010)

The European Committee of Social Rights

Article 5 of the European Social Charter

A Shadow Report

From the Independent Danish Union Kristelig Fagbevægelse

September 2009

Introduction

In Denmark, there has been increasing focus on the situation of employees who are members of so-called independent trade unions like Kristelig Fagbevægelse. Independent trade unions are not part of any of the 3 trade union confederations (hovedorganisationer) in Denmark.

On the labour market in Denmark, members of Kristelig Fagbevægelse and other independent trade unions experience discrimination and/or harassment because of their trade union membership.

Article 5 of the European Social Charter stipulates a freedom to join or not to join a trade union. The freedom guaranteed by Article 5 implies that the exercise of an employee's right to join a trade union is the result of a choice and that consequently, it is not to be decided by the worker under constraints that rule out the exercise of this freedom.¹

It is the opinion of Kristelig Fagbevægelse that the freedom to join and not to join a trade union is not sufficiently protected by Danish law and practice.

In August 2009, the Danish Institute of Human Rights published a report on discrimination on the basis of trade union membership in Denmark.² The report examined and illustrated the situation of members of independent trade unions. Furthermore, the report provided a sound knowledge base on human rights principles and Danish national regulation governing the right to organize and the right to protection against trade union discrimination. The report finally presented a number of proposals for consideration.

The report is only published in the Danish language. It will, however, be enclosed this shadow report and send to the Committee of Social Rights by e-mail (pdf) as well as by mail.

Experiences of trade union pressure and discrimination

¹ Council of Europe, Digest of the Case Law of the European Committee of Social Rights (1 September 2008), p 50.

² Institut for Menneskerettigheder, Diskrimination på grund af fagforeningsmedlemskab, Udredning nr. 7 (2009).

Members of Kristelig Fagbevægelse and other independent trade unions in Denmark experience *pressure* to become members of certain other trade unions. In some situations the pressure is so strong that it is perceived to be discrimination and/or harassment.

Besides of the pressure, members of Kristelig Fagbevægelse experience direct and indirect *discrimination* and *harassment* because of their trade union membership.

In the report by the Danish Institute of Human Rights, members of independent trade unions tell about their experiences of pressure, discrimination and harassment.³ The following quotes are all taken from this report and are brought here to illustrate the subjective experiences of pressure and discrimination on account of trade union membership.

Experience of discrimination by colleagues

A carpenter on the private labour market explains:

“The charge hand told me that the gang did not want to work with me. They didn’t want me at all. The colleagues didn’t say anything to me directly. But the charge hand told me that it was because of my lack of membership of trade union X. The gang wanted me to become a member of X. The charge hand told me that he was very happy with me. But because of the fact that I was not a member of the right trade union, the others didn’t want me.”

Experience of discrimination by the shop steward

A public employee tells:

“On the first day of my employment, my colleague took me to the shop steward. He was kind of old school. I asked him about the advantages of moving over to his trade union. He said that they had some good drinking bouts to different places. I said that I was not interested in any drinking bouts. Then things went a bit out of hand. He told me that I should be very aware that if I did not move over to his union, there would not be any pay rise for all the time that I was here.”

Experience of discrimination by the management or personnel department

The report from the Danish Institute of Human Rights suggests that problems of discrimination are most commonly experienced by employees in the public sector. Public employees tell about experiences of discrimination by management and by personnel department.

A public employee explains the following:

“At one time by coincidence, I discovered that wage negotiations had been called. I discovered it because the engineers had been summoned. And the engineers are always called much later than me. This means that the personnel department had already allocated the funds that were allocated for office workers like me. Every time wage negotiations has been held, I have been either late or too late.

³ Udredning nr. 7, page 21-35.

The shop steward has never told me when time is coming up for wage negotiations. And neither has the personnel department.”

Experience of pressure to move to another trade union

Members of independent trade unions experience pressure to move to the trade union that is party to the collective agreement covering their particular place of work.

A public employee tells about his anger of not being able to be a member of the trade union that he really wants to be part of:

“I have fought a personal fight. But the whole system is rotten. It is difficult to fight from the floor. It brings you a lot of speculations. It took too much of my thinking. The personal costs were too high. Especially when my colleagues started to suffer. When my colleagues could not get their pay increase.”

Conclusions on the subjective experiences of discrimination

The various examples of experienced discrimination on account of trade union membership are not necessarily manifestations of discrimination in a legal sense. However, taken together with the extent of which pressure and discrimination is experienced on the Danish labour market – as illustrated in the following section - the examples are still relevant as they contribute to illustrate the situation of members of independent trade unions on the labour market in Denmark.

The extent of pressure and discrimination on the basis of trade union membership

Pressure

A Danish market research- and consulting firm Megafon has made a survey on pressure to become members of certain trade unions.⁴ The survey shows that in the fall of 2008, 21 % of salary earners in Denmark reported that they had experienced pressure to become members of certain trade unions. On the public labour market it was 33 % of the employees that reported about experienced pressure to become members of certain trade unions.

The respondents of the Megafon-study included members of trade unions within one of the trade union confederations (hovedorganisationer) as well as respondents who were members of independent trade unions and respondents not being members of trade unions at all.

The report by the Institute of Human Rights also included a questionnaire survey conducted among members of the independent trade union Kristelig Fagbevægelse.⁵ This questionnaire illustrated that 22 % of the respondents from Kristelig Fagbevægelse reported that they had experienced pressure to become

⁴ Udredning nr. 7, p. 35 ff.

⁵ Udredning nr. 7, p. 37 ff.

members of certain trade unions. On the public labour market around 35 % of the respondents from Kristelig Fagbevægelse tell about pressure to become members of certain trade unions.

Around a third of public employees in Denmark thus experience pressure to become members of a specific trade union.

The survey from Megafon as well as the survey among members of Kristelig Fagbevægelse illustrate that it is shop stewards and colleagues primarily pressing for membership of certain trade unions. The survey from Megafon shows that 13 % of the public employees experienced pressure coming from their employer.

The survey among members of Kristelig Fagbevægelse shows that pressure is at its highest during labour disputes. However, pressure is also reported upon during the normal day of work, at staff meetings and during allocation of wage allowances.

Discrimination

The questionnaire survey among members of Kristelig Fagbevægelse also demonstrated that there are problems of perceived discrimination on the basis of trade union membership. The survey shows that in the fall of 2008, around 11 % of the respondents from Kristelig Fagbevægelse felt that they had experienced discrimination because of their trade union membership. On the public labour market, nearly 18 % of the publicly employed respondents from Kristelig Fagbevægelse had experienced discrimination.

The survey among members of Kristelig Fagbevægelse illustrates that experienced discrimination primarily has to do with individual wage allowances and harassment.

Experience of pressure and discrimination – conclusion

The surveys by Megafon and the survey conducted among members of Kristelig Fagbevægelse demonstrate that there are serious problems of perceived trade union pressure in Denmark. The problem is not just an isolated finding.

The surveys also illustrate that there are serious problems of experienced discrimination on the basis of trade union membership. The above listed statements from members of independent trade unions illustrate the results of the quantitative surveys.

Most common, problems of pressure and discrimination are experienced by employees of the public sector in Denmark.

Danish law on freedom of association and freedom from discrimination on the basis of trade union membership

Danish legal regulation of the freedom to organize and of the protection against trade union discrimination is imprecise. The right to freedom of association largely depends upon whether the work of the individual employee is covered by collective agreements and whether he or she is a member of the trade union that is party to the collective agreement in question.

Section 78 of the Danish constitution stipulates a right to freedom of association. The Danish constitution clearly protects the positive freedom of association, meaning the right to join an organisation. However, the Constitution does not protect the negative freedom of association and thus there is no constitutional protection of the right not to join an organisation.

Neither the Constitution nor any other law in Denmark offers a general protection against discrimination on account of trade union membership.

The most relevant Danish law in this area is the law on freedom of association (foreningsfrihedsloven). This law protects the positive as well as the negative freedom of association. Furthermore, since 2006 the law on freedom of association has prohibited closed shop agreements on the whole labour market. The law applies to places of work that are covered by collective agreements as well as places of work that are not.

The law on freedom of association contains a protection against trade union discrimination. However, this protection only applies when it comes to access to employment and dismissal. During the time of employment, the law offers no protection against discrimination on account of trade union membership.

Therefore, the law does not prevent an employer from giving preferential treatment to individual employees based on their trade union membership.

In the public sector in general, principles of equality and objectivity (lighed- og saglighedsgrundsætningen) apply. These principles also apply when the public sector acts as an employer. On the public labour market, it is thus illegal to pressure and/or discriminate individual employees on the basis of their trade union membership or their lack of trade union membership. This is a fact in relation to access to employment, dismissal as well as during the time of employment.

The European Committee of Social Rights

The European Committee of Social Rights has over the years adopted several conclusions of non-conformity because of the allowance in Denmark of closed shop agreements. The closed shop agreements have been abolished by the Danish law on freedom of association (foreningsfrihedsloven) since 2006.

The Committee of Social Rights have asked for information from the Danish government on protection against discrimination on grounds of membership or non-membership of a trade union in areas other than access to employment and dismissal.

According to the conclusions by the Committee, it follows that:

“The Danish law prohibits any discrimination related to wages or conditions of employment on grounds of race, skin, colour, religion, beliefs, political convictions, sexual orientation, age, handicap, or national, social or ethnic origin. Any employer who does not secure equal treatment is in breach of the terms of the employment contract. This is also the case where the members of a union other than the one of which most employees are members – or employees who are not union members at all – are not paid the same wages as the members of the majority union. The Committee considers the situation to be in conformity with Article 5 of the Charter.”⁶

The Danish law does not, however, prohibit employers from paying higher salary to members of a specific trade union than to employees who are not members of any trade union or who are members of independent unions.

In theory, the public principle of equality and objectivity prohibits employers on the public labour market from such discrimination. Discrimination is also to some extent prohibited by general labour law principles on the labour market covered by collective agreements. However, on the labour market not covered by collective agreements there is no legal protection against trade union discrimination.

Despite of this legal protection against discrimination, in the real world, employees still face discrimination due to their membership or lack of membership of a trade union.

Conclusion

The primary problem facing members of independent trade unions such as Kristelig Fagbevægelse is that they experience discrimination because of the fact that their trade union is not party to any of the three Danish trade union confederations. In practice, these members experience a lack of effective protection in the workplace against discrimination on the basis of trade union membership.

The public labour market has the strongest legal protection against discrimination on the basis of trade union membership. Still, the problems of experienced pressure and discrimination seem to be most widely spread on the public labour market in Denmark.

All in all, Kristelig Fagbevægelse does not find, that the situation in Denmark is in conformity with Article 5 of the Charter – neither in law nor in actual practice.

Thus, there is a need for a strengthening of the legal right to organize, hereunder the freedom to freely choose a trade union and to freely choose to stand outside a trade union. There is also a need to strengthen the legal protection against discrimination on the basis of trade union membership.

⁶ Conclusions XVIII-1 (2006).

Furthermore, there is a need for a better enforcement of the law to secure a more effective and real life protection against pressure and discrimination on account of trade union membership or lack of trade union membership. This is especially the case within the public labour market.