

Danish comments on the communication to CEAR from the Danish Association of Masters and PhDs (dated 22 July 2004)

General comments concerning activation and rehabilitation in the Danish labour market policy

In relation to the complaint it is generally important to take the general objectives of the Danish labour market system and history into account. The following comments give an overall overview of the focus and background of the existing system.

Denmark has a long-standing tradition in the field of the labour market policy Denmark in relation to procurement of job opportunities for temporarily unemployed persons.

In relation to unemployed persons as well as the labour market job training is an essential part of the Danish labour market system in that job training helps to ensure a well-functioning labour market, where labour market needs are matched with appropriate training measures either through formal education or on-the-job training.

In order to increase the level of employment by 2010 the Government has introduced the labour market reform "More People into Employment". In order to achieve the goal of an increased labour force it is essential to improve and develop the formal and informal skills and qualifications of the population as a whole.

As to the active labour market measures the purpose of these have been to provide the necessary measures and means to ensure the shortest way for unemployed persons to obtain ordinary employment. Moreover, the aim is to ensure that as many people as possible are given the opportunity to achieve labour market attachment in the short as well as the long run.

In order to set the goals for the individual the basis of deciding the relevant measures is, on the one hand, the resources, qualifications and wishes of the individual and on the other hand, the labour market. The active measures are supplementary means in order to ensure a quick return to the labour market and are to be seen in the context of intensified contact programmes, which provide counselling and guidance as well as targeted placement activities and jobseeking initiatives as a minimum every 3 months.

The measures can either be in the form of on-the-job training or education with the purpose of obtaining a level of rehabilitation of unemployed persons in order to ensure their attachment to the labour market in the short as well as the long run.

As mentioned by the Danish Association of Masters and PhDs it is correct that persons who are unemployed have to meet certain requirements in order to qualify for either unemployment benefits or unemployment insurance.

It is also correct that sanctions can and may be imposed if the unemployed person does not meet the requirements laid down by law. However, this is to be seen in the context of measures initiated either by the municipalities or the Public Employment Services and have to be targeted at the needs and wishes of the individuals as well as the needs of the labour market.

In order to grasp the essentials of the Danish system it is important to bear in mind that the remuneration paid to temporarily unemployed persons is relatively high compared to many other countries and that substantial national funds are allocated to active labour market measures in order to maintain or develop the skills and competences of the labour force in order to meet the labour market demands.

The system provides financial support during periods of unemployment combined with targeted individual measures in order to bring the individual back into the labour market if this is needed.

The system lays down rights and obligations on unemployed persons, which should be seen in relation to the funds allocated to bring the individual up to level with the needs of the labour market and out of unemployment and still be able to receive a relatively high compensation.

Job offers provided by the national authorities - whether the salary is ordinary pay in the private sector with no limits on the salary or ordinary pay in the public sector where there is a ceiling on the salary – constitute a combination of ordinary work and rehabilitation/upgrading of professional, social or other skills.

On the basis of the above-mentioned it is the view of the Danish Government that the possibility of sanctions being imposed if unemployed persons do not accept an offer of job training and is so required by law *does not* constitute a violation of C29 Forced Labour Convention prohibiting compulsory or forced labour.

It is the view of the Danish Government that Denmark is in compliance with C29 (forced labour) and that obligations may be imposed on the individual and that there is a possibility of imposing sanctions in order to ensure compliance with labour market rules which provides substantial funds for supplementary measures of rehabilitation of unemployed persons in order for them to become fully self-sufficient members of the community.

Comments concerning the complaint and the Danish unemployment benefit system

In the communication from the Danish Association of Masters and PhDs it appears that the system of activation and job offers was revised in 1991 in relation to persons who qualify for unemployment benefits, and that it was introduced to the field of social assistance in 1995.

This description is not in compliance with the real facts.

The first element of an active labour market policy was introduced by the job offer scheme in 1978. In the mid-1980s a short upswing in the economy showed that there were serious bottleneck problems on the labour market. The job offer scheme was therefore supplemented by the educational subsidy scheme (ESS), and the adult vocational training programmes were improved so that these, to a higher extent, could contribute to strengthening the qualifications of the less well-educated.

In the light of the exacerbated economic developments, there was an advancement of the offers for activation in 1988 so that these were made at an earlier stage of the unemployment spell, and in 1989 the “Youth Package” was introduced. With this initiative, the element of duty in the activation measures was tightened.

In 1994, the Act on an Active Labour Market Policy entered into force, which meant that the rules on some of the municipal activation were co-ordinated with the rules concerning insured persons. During the 1990s, the support period was gradually reduced and there was an advancement of the offers for activation. Over the years, this field has, thus, undergone significant changes. There was no revision of the system in 1991. In short, the main purpose of activation is today to continue to maintain the qualifications of unemployed persons and to upgrade their qualifications to meet the demands of the labour market.

It is correct that the main part of the offers for activation and education/training have been remunerated more or less at the same level as public services. The sole purpose of the system of retraining and upgrading of qualifications is to qualify persons to work on the ordinary labour market, and therefore it has been most appropriate that the system includes incentives to apply for work on the ordinary labour market. As a starting point, the system does this by ensuring that income-replacing benefits are lower than the earned income these replace.

The question in paragraph 1 is whether the requirement for retraining and upgrading of skills is in compliance with the prohibition against forced labour. The complainant states that according to Article 1 of the Convention, forced labour presupposes a threat of sanction. According hereto, the circumstance, under which unemployment benefits or social assistance may lapse if the individual is not available for work or participate in retraining or upgrading of skills with a view to meeting the requirements of the labour market, is a sanction. This is claimed to be substantiated by the notion that during the Conference on the Forced Labour Convention in 1930 it was mentioned that the sanction should be in the form of "loss of rights and privileges".

In this connection, the Danish Government states that the Danish activation policy is based on rights and duties going together. Not only in Denmark but also in a number of other Western European countries the concept of workfare was introduced in the 1990s. Thus, not only the right to benefits but also the right to an offer for activation, upgrading of skills, etc. go together so that the individual is not left to his or her own.

The starting point is multidimensional but is mostly based on all persons who receive benefits being aware that the community needs them and that they are expected not only to receive but also to contribute to the community. It is, thus, indisputable that the individual is entitled to assistance if the person in question is not able to provide for him or herself for a period of time. The person in question must in return make his or her services available to the community and with this duty follows a right to retraining and upgrading of skills. If the person in question is not able to find a job and provide for him or herself offhand, the individual has a duty, in return, to seek retraining and upgrading of skills to the extent that the person in question, on a regular basis, adapts his or her qualifications to the demands of the Danish labour market. By this, the unemployed person is again able to contribute with his or her services.

This is based on the principle of a duty to self-support. Any person who *cannot* provide for him or herself is entitled to assistance from the public sector.

It should be mentioned that "loss of rights and privileges" as mentioned as replacement for sanction in paragraph I, hardly resembles earned income or a corresponding income-replacing benefit. Generally, any person who performs a job receives an earned income. Usually, it is not considered a loss of rights and privileges when a person who is not working does not receive an earned income. The same applies for income-replacing benefits, which is based on a principle of self-support. If the person in question does not wish to participate in retraining or upgrading of skills with a view to meeting the demands of the labour market, it is not a loss of rights and privileges, if the person in

question does not receive the allowance that is provided for persons, who are undergoing retraining or upgrading of skills – or a corresponding amount. This means that there is no loss of rights and privileges in any other sense than a person who *does not* perform any type of work *is not* entitled to be paid for it.

The Danish Government agrees to the description of the survey from the Winter of 2002 which shows that violating the availability rules of the legislation comply with the sanctions of the municipalities.

With regard to section II concerning violation of Article 25 of the ILO Convention No. 30 on working hours in the field of commerce and offices, it is noted that Denmark has not ratified the Convention. Furthermore, as mentioned, it is the opinion of Denmark that activation constitutes retraining and upgrading of skills.

With reference to the Danish report, 2001 on ILO-Convention 105 it should be noted that the Danish Criminal Code does not contain an express punishment provision concerning illegal exaction of forced labour but deprivation of liberty for own personal gain under section 261 of the Criminal Code is sanctioned by imprisonment from 1 to 12 years. Furthermore, reference is made to the Danish 2002 report on Convention No. 29. Here detailed information on section 260 and 261 has been given.

In section III, the complainant states that a judgment from the Eastern High Court should have been mentioned in a report for the period up to 31 May 2002, since the report was delayed for one year. In this connection, it should be mentioned that the judgment of the Eastern High Court was announced on 19 December 2002, and therefore, it was not mentioned in a report in the period up to 31 May 2002. This is a matter of regret if this is a misunderstanding.

There are no comments to the description of the judgments.

Danish and other relevant case law concerning the Danish activation and rehabilitation system

Judgment of the European Court of Justice: C 413/01 – Ninni – Orasche.

The case involved a person who was referred work, which only paid benefits for the work performance.

The European Court of Justice held that the remuneration was correct in that the person's employment activity was purely marginal and ancillary and not effective and genuine employment. Therefore, the remuneration should not be contractual wage but unemployment benefits/social assistance in order to recover his/her working capacity.

International judgment – Judgement of the European Court of Justice: 344/97 – Bettrey.

The case involved an employment project and therefore there was no actual working relationship.

The case dealt with a person who was employed in an enterprise in an employment project. The aim was to maintain, create or promote the capability to work in regard to employees who were not capable of taking a job on ordinary terms. By this labour market attachment could be achieved in a working relationship that was similar to ordinary employment.

The remuneration was social assistance or unemployment benefits. The purpose of the employment relationship was to retrain the unemployed person to obtain ordinary employment and the employed person should thus not receive pay but only public subsistence allowance. This judgment was announced by the Court in plenum.

The judgment of the European Court of Justice: C 456/02 – Trojani.

This case involved an employee who could not claim contractual wage but only unemployment benefits/social assistance as the case dealt with employment as part of retraining. In the judgment reference was made to the preliminary ruling in the case of Betty.

ØL. 178.99 – 14th division

The case involved performed work in an employment project. Therefore, the Court held that contractual wages could not be paid but only unemployment benefits/social assistance in that this was a case of retraining for the purpose of getting the unemployed person back into ordinary employment.

ØL 101.03 – 8th division 6/5 – 04.

The case involved employment where the unemployed person only received unemployment benefits. The Court held that the purpose of the employment relationship was to bring the unemployed person back into ordinary employment, including retraining the unemployed. Therefore, the unemployed person was only entitled to unemployment benefits and not contractual wage.