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Positive Action and Sex Discrimination at Danish Universities: Making Sense of the Current Debate

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Positive Action at Århus University

- Incentive system for increasing the number of female professors and associate professors.
 - Open 10 temporary professorships and 10 associate professorships
 - If women are hired for these positions, the university pays first year's salary plus 100.000 kroner to be applied to the women's research



The debate

- “Dansk Folkeparti og Liberal Alliance raser over, at nogle universiteter vil give økonomisk bonus til fakulteter, som ansætter flere kvindelige forskere. De kalder det kønskvotering ad bagvejen og kræver, regeringen griber ind”, 24 September 24 2010, www.Altinget.dk.

”DF og LA: Stop kønsdiskriminering af mænd”

- ”Det er nærmest værre end kvoter. Det er et opgør med idealet om, at folk skal have lige muligheder, uanset hvem du er. Her vil man faktisk bruge offentlige penge på at give nogle ansøgere dårligere muligheder end andre, og det er jo ikke ligestilling. ” Simon Emil Ammitzbøll (LA), www.Altinget.dk, 24 September 2010.



What IS discrimination?

- Defined by EU legislation, which is implemented in all the Member States.
- Direct discrimination:
 - “where one person is treated less favourably than another is ... in a comparable situation on grounds of sex”
 - Prohibited unless an explicit exception provided by law applies.
 - Positive action is one such exception



Positive Action Measures Permitted by the EU Treaty

- Treaty on the Functioning of the EU, Article 157(4)
 - With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.



Positive Action Permitted by the European Court of Justice

1. Positive action is justified only where there is existing inequality, i.e. one sex is under-represented.
2. The positive action must be directed at rectifying a particular existing inequality and target the conditions giving rise to the inequality.
3. No automatic absolute preference may be given to one sex in regards to hiring or promotion.
 - Preference may be given to the under-represented sex in regards to hiring or promotion if it is possible to bring individual arguments forward that may tilt the decision in favour of a person of the over-represented sex.
4. Automatic preferences may be given in the context of allocating training places and calls to interviews, where the under-represented sex is not completely excluded from the possibility of getting training or being called to interview when they have equal qualifications.



Positive Action Measures Permitted by Danish Law

- General rule: Equal Treatment Act § 13
 - Stk. 2 - Only permitted after getting approval from the relevant minister, and the measure must be intended to promote equal opportunities by decreasing the actual inequalities that influence access to employment etc.
 - Stk. 3 - The minister for sex equality establish rules permitting positive action measures without pre-approval..
- Regulations issued pursuant to § 13 stk. 3 (bekendtgørelse nr. 340 af 10/04/2007)
 - Positive action measures can be applied for a period of up to 2 years in order to recruit the under-represented sex. In order to do so, no more than 25% of one sex must be represented in the area being targeted by the measure, and the underrepresented sex cannot be given preference for employment or acceptance to a competence-building education.



Why positive action? A legal answer

- UN Convention on Elimination of Discrimination against Women, Monitoring Committee's Report on Denmark
 - 24. The Committee remains concerned at the low percentage of women in high-ranking posts, particularly in academia, where the presence of women declines as they move up the academic ladder and where they currently hold only 13 per cent of professorships. ...
 - 25. The Committee urges the State party to strengthen its efforts to increase the number of women in high-ranking posts, particularly in academia. It recommends that the State party adopt effective proactive measures to encourage more women to apply for high-ranking posts and it encourages the State party to draw on the University of Copenhagen's example on the use of temporary special measures to recruit more female professors.
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Why positive action? A practical answer

- Gender composition of Danish university faculties have not change over time at a rate that reflects the increasing numbers of female university graduates.
- Many possible explanations
 - An “overdetermined” phenomenon - Prof. Roberto M. Fernandez, MIT Sloane School of Business – research on the “glass ceiling” phenomenon
 - Demand side factors: actions of employers
 - Supply side factors: actions of individuals (skills and interests; networks) – notes that networks tend to be gendered
 - Systemic factors: legal rules, e.g. maternity leave rules; institutional/social features (e.g. education system)



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Why positive action? More practical answers and a question

- Former Minister Helge Sanders, “Debatoplæg om dansk forsknings uudnyttede reserve”, rundbordssamtale, Christiansborg, 5 februar 2009
 - No lack of female talent – statistics for 1995-2006
 - 69% women, 67% men were assessed qualified for the research position they applied for
 - women’s success rate at getting the positions was slightly better.
 - Female researchers appear to be more hesitant to apply + they fall off the academic career ladder at a higher rate than men.
 - Why?



No simple answer to “why”

- *“If you look at the research and education system as a whole, you see a complicated interplay between men’s and women’s placement in the system and the rules, priorities and other factors that characterise the system. Men and women are differently situated, and these differences work together with systemic forces that tend to lead men into university research careers to a higher degree than women.”*
- Andersen, Heine, Henningsen, Inge, (2008), *Forskningsråd i Danmark – En analyse af forskningsrådenes bevillingspraksis i perioden 2001-2006*. Forsknings- og Innovationsstyrelsen (My translation)