

DISCRIMINATION



JURK

juridisk rådgivning for kvinner

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1.0 INTRODUCTION

1.1 The purpose of this brochure

This brochure is about discrimination. Our goal with this brochure is to provide a brief presentation of legal issues relevant in the context of discrimination. The purpose is to enable the reader to see the main issues that may occur, and to make the reader aware of her rights. According to Norwegian legislation, everyone who lives in Norway shall have equal opportunities and rights in the society.

This brochure is a step towards fighting and ultimately banishing discrimination. We wish to do this by providing information on protection against discrimination.

We believe that the more you know about the protection provided to you by law, the more you will use the rules and invoke your rights.

2.0 CONTENT OF THE BROCHURE

Have you ever experienced not getting a phone call back after a house-viewing, or not getting a permanent employment because your Norwegian is not good enough?

Have you experienced others calling you unpleasant names, or that your husband believes that your son should be allowed to do more or different activities than your daughter?

Have you ever wondered if this is discrimination or

harassment? Have you wondered where to go, who to call or how to get help? If yes, you should read this brochure.

3.0 DISCRIMINATION

3.1 What is discrimination?

Discrimination is the same as treating people differently for no valid reason.

In simple terms this means treating a person less favorably or pleasantly on the basis of gender, pregnancy, parental leave, religion, life stance, skin color, national origins, ethnic background, disability, gender identity, sexual orientation, age or combinations of the terms mentioned above. These terms are called grounds of discrimination.

Discrimination causes that you are not given the same rights and opportunities as others.

One example of discrimination is a woman losing her job because she is pregnant.

Practice and research show that women often have a lower position in society than men and are therefore more often discriminated.

Immigrant women face discrimination more often than Norwegian women. They experience discrimination both for being women also for being foreigners. For example, many experience great difficulty when it comes to employment.

Discrimination is an international problem. There is therefore an extensive international legislation on this area, which aims to prevent discrimination. Norway is bound by these rules, and they apply as Norwegian law.

3.2 Discrimination is illegal

Discrimination is against the law It is illegal to discriminate according to Norwegian law.

Human rights It is also illegal to discriminate according to human rights legislation.

For example the Convention on the Elimination of All Forms of Discrimination against Women offers you protection against discrimination on the basis of gender, and the International Convention on the Elimination of All Forms of Racial Discrimination makes it illegal to discriminate on the basis of your ethnic origin.

Compensation You can claim compensation if you are discriminated. Compensation means payment in money. It is only the Court and Diskrimineringsnemnda that can award compensation.

Punishment If someone exposes you to racism or other severe discrimination, they can be punished by Norwegian law. The incident should then be reported to the police.

3.3 What is discrimination in terms of the law?

Not all differential treatment is discrimination Being discriminated can be a degrading experience. But being treated unfairly and differently might feel unjust without it qualifying as discrimination in terms of the law.

What is discrimination in terms of the law?

Three key characteristics to constitute discrimination

Discrimination has three key characteristics:

1. Differential treatment. This means that someone is being treated less favourably than others in a similar situation.
2. The differential treatment of a person is based on one or more grounds of discrimination.
3. No legal exceptions apply.

All three characteristics must be present to constitute discrimination.

3.3.1 Differential treatment

1st characteristic

Unjustified means without good reason

Differential treatment is the first key characteristic for discrimination. Differential treatment means that you are treated differently compared to another person in the same situation as you.

What does it mean to be treated less favourably than others in a similar situation?

Example

A woman and a man apply for the same job. Both have the same education and experience (qualifications). They are in a similar situation. One of them gets the job. The one that does not get the job has been treated less favourably than the other applicant.

Comparison

In order to find out if you have been treated less favorably, you must compare your situation to others in the same situation.

The effect of the treatment

It is not necessary that the person who treated you differently did it intentionally. It is enough that you actually are in a less favorable position. This means that it is the effect of the treatment that counts.

Even though you feel that you have been treated less favourably than others, one has to draw a line towards trivial (minor) circumstances.

3.3.2 Grounds of discrimination

2nd Characteristic

The second key characteristic is that the differential treatment is based on one or more grounds of discrimination.

The law states that there are certain categories against which discrimination are illegal. These are called grounds of discrimination.

Grounds of discrimination

The grounds of discrimination in Norwegian legislation are:

- gender (female and male)
- pregnancy, parental leave because of birth or adoption
- caring responsibilities (breastfeeding etc.)
- reduced functionality (blindness, wheelchair user etc.)
- ethnicity (Chinese, Norwegian etc.)
- national origins (country of origin)
- skin colour (brown, black, white etc.)
- language (English, Norwegian, Urdu etc.)
- religion (Christian, Islam, Hindu etc.)
- life stance (Humanism, atheism etc.)
- sexual orientation (lesbian and homosexual)
- gender identity or expression

In work relations it is also illegal to discriminate on the grounds of:

- age (elderly or young)

- political views
- membership in a labour organisation (trade union)

Example

If you are refused the opportunity to rent a flat because you are a foreigner, this may be discrimination. In this case, the ground of discrimination may be your national origin or ethnicity.

If you are treated less favorably than others on the basis of one or several of the grounds of discrimination, and the differentiated treatment does not have a due and valid reason, you have been discriminated.

3.3.3 No legal exceptions apply

3rd
Characteristic

The third key requirement is that no legal exceptions apply to your situation. The differential treatment is only legal if it is fair, necessary and proportional.

No legal
exceptions apply

In order for the different treatment to be legal and not qualify as discrimination, all of these three requirements must be fulfilled.

Fair differential
treatment

Fair differential treatment

For the differential treatment to be fair, one has to consider what is reasonable. This is often a difficult legal evaluation. Furthermore one has to see if the differential treatment is based on correct facts.

Example

In a case before the Equality and Anti-Discrimination Ombud (LDO) a woman had applied for a job as a cleaner in a Church.

The woman had just moved to Norway and she spoke very little Norwegian. The Church did not wish to employ her because her Norwegian was poor. The

employer believed that this was a valid reason not to employ her.

The woman felt that she had been treated unfairly. She felt that she did not need to speak Norwegian well in order to do her job as a cleaner.

The LDO agreed with the woman that her lack of Norwegian skills was not a valid reason not to employ her. Therefore, it was not a fair differential treatment.

Necessary differential treatment

Necessary
differential
treatment

Furthermore, the differential treatment has to be necessary to achieve the goal.

For something to be necessary, it has to be more than desirable.

Proportional
differential
treatment

The differential treatment is not necessary if the goal can be achieved in another way.

Proportional differential treatment

The differential treatment cannot under any circumstances be disproportionately invasive towards the person being treated differently. Disproportionally invasive means that the act has to be worse for the person being treated differently than the importance of achieving the goal obtained by the differential treatment.

Seek help

It can be hard to find out whether you have been exposed to unfair differential treatment (discrimination). It is therefore advisable to seek help, if you are in doubt about having been discriminated.

3.4 Direct and indirect discrimination

Both direct and indirect differential treatment can be discrimination.

Direct

1. “Direct differential treatment” means an act or a lack of action that has the purpose or effect that a person is treated worse than others in the same situation.

Indirect

2. “Indirect differential treatment” means any apparently neutral provision, condition, practice, act or a lack of action that result in a person being put in a worse position than other people.

What is direct and indirect discrimination?

Example of
direct
discrimination

One example of direct discrimination is a case the Equality and Discrimination Ombud (LDO) had about an advertisement published by an airline. The company wished to employ a woman between the ages of 20-25 and of Norwegian national (ethnic) origins.

LDO ruled that this was direct discrimination because the advertisement excluded many job seekers. The advertisement excluded many job seekers because only ethnic Norwegian women between the ages 20-25 could apply. All those who are sufficiently qualified must be able to apply for an advertised job. This kind of advertisement is direct discrimination and is unlawful.

Example of
indirect
discrimination

An example of indirect discrimination is a case LDO had concerning a public swimming pool where there was a rule that ”ordinary” bathing suits must be worn. This meant a one-piece swimsuit, swimming shorts/trunks or bikini.

Some of the women wanted to use something more covering due to their religion. This was not allowed and they were therefore not allowed to use the pool.

The rule applied to all, but nevertheless resulted in these women being disadvantaged because they were unable to use the pool.

The LDO ruled that the consequence of the ban was discriminating against Muslim women. This was indirect discrimination and unlawful.

4. HARASSMENT AND RACISM

4.1 What is harassment?

**Unwanted and
offensive conduct**

Harassment is an unwanted conduct or behavior a person exhibits towards you and which you experience as annoying or offensive to you dignity. In other words it is a conduct or behavior that makes you feel victimized.

**Harassment is
illegal**

The Norwegian law forbids harassment on the grounds of gender, pregnancy, parental leave, religion, life stance, skin color, national origins, ethnic background, disability, gender identity, sexual orientation, age or combinations of the terms mentioned above

Bullying can be harassment. Bullying can be that someone gossips about you (talks behind your back) or makes negative comments. Bullying in the work place is illegal according to Norwegian law

Example

Many immigrant women who wish to live in accordance with western norms say that they experience harassment

from their own ethnic community. One example of this is that some Muslim women receive unpleasant comments if they choose not to wear a Hijab. This type of bullying is harassment, and it is illegal.

Illegal everywhere

Harassment can take place in the street, at home, at work, at a public office etc. Regardless of where harassment takes place, it is forbidden by law.

Punishment

In some incidents, harassment can be punished according to Norwegian penal code. In such a case the incident should be reported to the police.

4.2 Sexual harassment

Sexual harassment

Any form for unwanted sexual attention of which purpose or consequence is to be offensive, frightening, hostile, degrading, humiliating or bothersome is considered sexual harassment.

Sexual attention

Sexual attention is attention which has a sexual character. The attention can be anything from looks, touching, comments and suggestions with a sexual undertone, to attempted rape or rape.

What is sexual harassment?

To be considered as sexual harassment the sexual attention has to be unwanted. Whether the sexual attention is unwanted depends on the subjective perception of the person that the attention is directed at.

As a starting point the person which exercises the sexual harassment has to be made aware that the attention is unwanted for the attention to be considered as sexual harassment. However, if the attention is of a severe character it can be sexual harassment even though the harasser is not made aware that the attention is unwanted.

Furthermore, the attention has to bother the person which the attention is directed at. Whether the attention is bothersome will be decided based on an overall assessment. In this assessment the perception of the person being sexually harassed is very important. Other factors such as time and place of the harassment and the relationship between the harasser and the person being harassed, are also important. The objective characteristics of the attention will also influence the assessment. One shall also take into account that men and women often have a different perception about what is to be considered sexual attention.

Example

Some women experience sexual harassment at work. If your boss for example pinches your bottom or touches you in other inappropriate ways against your will, you are being sexually harassed.

Illegal everywhere

Sexual harassment can take place in the street, at home, at work, at a public office etc. Regardless of where harassment takes place, it is forbidden by law.

Punishment

If the sexual harassment becomes physical, violent or threatening, the perpetrator can be punished after the Norwegian penal code. In such a case, the incident should be reported to the police.

4.3 What is racism?

Racism

Extremely severe harassment that is based on the colour of your skin or ethnic origins is racism.

Illegal and punishable

Racism is illegal and punishable by Norwegian law. Both written and oral comments are punishable by fines or imprisonment.

Report to the police

If you experience racism you should go to the police and report it. The police can help you file a report.

5.0 SITUATIONS WHERE DISCRIMINATION MAY OCCUR

In this section of the brochure we will present a number of concrete examples of discrimination from various areas of life. We ask questions we believe are relevant for you, and try to provide answers.

5.1 Education

Many girls find that their parents prioritize their brothers' education over their own.

Is it legal to treat children differently with regards to education?

Equal rights to education

The answer is no. Boys and girls and women and men have equal rights to education.

This means that they have the same right to attend school and shall have an equal amount of time for homework. They also have the same right to decide what education or job they wish to have.

Religious schools

Some religious schools teach their pupils that women and men have different worth and different roles.

Is it legal for schools to teach these values?

Human rights

The answer is no. The Equality and Discrimination Ombud (LDO) and The Complaints Board have prohibited schoolbooks that teach that girls and boys have different roles and values. This applies in all schools, including religious schools.

Human rights legislation protects girls from being brought up to believe that they are inferior to boys.

Religious communities

Even though women and men are equal under the law, there are many who believe that this does not apply within religious communities. Religious communities, including all forms of life stance communities, can for example be Churches, Mosques or Temples.

The law draws up the boundaries for the degree to which religious/life stance communities etc. can treat women and men differently.

What is a religious leader or teacher allowed to say and teach?

There is a limit to what a Minister, Pastor, Priest, Imam or other religious leaders can say.

A religious leader cannot harass women or encourage violence

A religious leader does not have the right to degrade or harass women (see section 4 for more details about harassment etc.). Nor can a religious leader encourage the use of violence – “discipline” – in the home against “disobedient” women and children.

5.2 Work

5.2.1 Discrimination in the work place

Discrimination at the work place is illegal

Discrimination at the workplace is illegal.

This means that you are protected against discrimination in:

- job advertisements
- interviews
- engagement in a new job
- relocation

- promotion
- training
- wages
- leave of absence
- cessation (that you have to leave your work)

Example

A Muslim woman wished to travel on a pilgrimage (hajj). She was working in the SFO and was refused three weeks holiday to travel. SFO said that it was not good for the children that she was going to be away for that long.

She complained to the Equality and Discrimination Ombud (LDO).

The LDO ruled that this was indirect discrimination because the woman was not given an individual assessment with regard to her request. She had therefore been treated less favourably than others because she was religious. SFO had no valid reason to refuse her request for holiday.

5.2.2 Pregnancy and work

Discrimination due to pregnancy is illegal

It is illegal to discriminate against women due to pregnancy or childbirth.

The Equality and Discrimination Ombud (LDO) has ruled in many cases concerning pregnancy and work.

Example

A woman worked part time as a cook at a hotel. When the hotel decided to employ a new cook in a permanent full time position, the woman said she would like the post. The woman was promised the job. After the promise was made she became pregnant. The hotel then said that they would employ a new cook instead.

The LDO ruled that this was discrimination because the reason why she did not get the job was that she was pregnant. This is illegal. Pregnancy is not a valid reason for treating people unfairly. The woman was therefore able to continue in her job.

5.2.3 Job interviews

Illegal to ask about religion, politics or pregnancy

It is not permitted to ask about religion or political views in a job interview. It is also illegal to ask if the candidate is planning an adoption, is pregnant or plans to get pregnant. This includes both male and female candidates.

Example

Have you ever been asked about any of this in a job interview?

A woman was asked about her faith during an interview for a job at the University of Oslo. When the woman replied that she was Muslim, the interviewer asked about her eating habits. The woman lost self-confidence during the interview and afterwards felt that she had been discriminated.

She sought legal advice. The conclusion was that she had been discriminated against.

5.2.4 Clothing in the workplace

Many wonder whether they have the right to wear a headscarf (hijab) at work.

In the majority of workplaces you have the right to wear religious clothing and symbols while you work. But you also have the right not to wear the hijab.

As a woman living in Norway, you have the right to

A right to choose choose how you wish to dress. You also have the right to be treated on equal terms with others, even if you do dress differently.

The Equality and Discrimination Ombud (LDO) have dealt with a number of cases that concern what rights women have to wear the hijab at work.

Example One of the cases was about a Muslim woman who worked in a shop at a shopping centre. She wore a hijab at work. Her manager received a number of complaints from other shops at the centre. He therefore told the woman that if she wanted to keep her job she had to stop wearing the hijab.

The woman found it too humiliating to take off her hijab, and she therefore got dismissed. She believed that she had been unfairly treated in comparison to others who did not wear the hijab, and that the dismissal was discriminating.

The woman contacted the LDO. The LDO ruled that this was discrimination and that the woman had the right to wear a hijab in her workplace. The grounds of discrimination were gender and religion.

Exceptions To refuse a person to wear religious headwear or symbols one must have a valid reason to do so. In some jobs it is necessary to be perceived as neutral with regards to religion and value. Such jobs can be a police officer or a news reporter on TV.

Some work tasks require a certain level of safety. In such cases an employer can demand that employees do not wear personal and/or religious symbols. This applies for example to jobs where it is necessary to wear helmets or personal protective clothing/equipment.

5.2.5 Part-time employment

Discrimination of part-time employees is illegal

Many women in Norway work part-time, and wonder if they have the same rights as full-time employees. Part-time means that you work less hours than a standard working week, normally 37,5 hours a week.

Does a woman working part-time have fewer rights than a woman working full-time?

The answer is no. When you work part-time you have the same rights as full-time employees. This means that you for example have the same pension rights as full-time employees, but in accordance with the hours you work. This means that if you for example have a 50 % position, you have 50 % of pension rights.

Indirect discrimination

Discrimination against part-time employees can also be discrimination on the basis of gender, as most part-time employees are women.

Priority for full-time work

As a part time employee, you have the right to be prioritized when your work place is hiring someone in a full position. This means that you are first in line for the job.

5.3 Housing

It is illegal to discriminate on the basis of ethnicity or gender in the housing market

Many immigrants find that it can be difficult to rent/lease or buy a house.

Does a landlord have the right to decline you as a tenant or buyer because you are an immigrant?

It is illegal to discriminate on the grounds of ethnicity or

Example

gender in connection with the rental, lease or sale of a house, apartment or similar housing.

One case before the LDO was about an Iranian family who wished to purchase a house.

The family made the best offer for the house, but the owners sold it to an ethnic Norwegian family. The owners said that they did not dare to sell the house to foreigners because they did not want “any trouble”.

According to the LDO, the Iranian family had been refused the house because they were foreigners, and they had been treated unfairly in comparison to ethnic Norwegian families. The family being foreigners and that the owners were afraid of “trouble” was not a valid reason to deny them the right to purchase the house.

This was discrimination.

It may also be discrimination if you cannot rent or lease a house because you are not from Norway or have a foreign-sounding name.

It is illegal to put out house advertisements on Internet pages such as www.finn.no and state in the advertisement that the landlord only wants Norwegian applicants.

Example

In a case put before the LDN in 2013 the tribunal ruled that a landlord by rejecting two tenants based on their sexual orientation had not acted in accordance with the law. LDN concluded that there was discrimination.

5.4 Particularly about discrimination of immigrant women.

5.4.1 Public offices

It is illegal for the public sector to discriminate

Many immigrant women feel that they are discriminated in relations with public service offices such as NAV.

Public employees, civil servants and institutions shall not discriminate. This means that they cannot treat you differently than others who are from another country, unless they have a valid reason.

5.4.2 Checking in at hotels

Illegal to discriminate at check-ins

Some foreign women have been declined at the check-in counter at hotels due to their foreign appearance, as the receptionist believed that they were prostitutes.

One example from the Equality and Discrimination Ombud (LDO) and Complaints Board was about two Asian women who wished to check in at a hotel in Oslo.

The two women were denied rooms because they lived close to Oslo. The hotel had this rule to prevent drug addicts and prostitutes from staying at the hotel. The women felt that it had been presumed that they were prostitutes because they were female and from Asia.

The women, who claimed that they had been discriminated against, complained to the LDO. The LDO and Complaints Board ruled that the incident came on the basis on two grounds, also known as cross discrimination. The women had been unjustifiably treated differently and less favourably than others, because they were women and from a different country.

The grounds of discrimination were therefore both gender and ethnicity.

5.4.3 Equality between women and men

It is illegal to discriminate within the family

Many immigrant women find that their husbands do not want them to work or go out without an escort. *Is this discrimination?*

The right to not be discriminated also applies within the family.

This means that as a woman you have the right to be treated with the same respect and dignity as your husband. You also have the right to decide what you want to do and when you want to do it.

Example:
Illegal punishment

Some women are told by their husbands that they can't go outside the house, use the telephone or Internet, or take work. If this is done against their will it is deemed to be loss of liberty, or, in simple terms, imprisonment.

5.4.4 Equality for children

It is illegal to discriminate between children in the family

Many girls find that they are given more responsibility for housework than their brothers – *is this discrimination?*

The answer is yes. Girls and boys have the right to equal treatment within the family. This means that both girls and boys shall attend school and shall be respected equally in the home.

Many immigrant women find that their husbands have their “hearts in their homelands”. This sometimes makes them not want their children to become “too Norwegian” and participate in society in the same way

Children have the right to participate in decision making

as Norwegian children.

Children have the right to full integration in Norway. This means that they have the right to participate in society, engage in leisure time activities, go to school and have friends.

When parents are making a decision on behalf of their child, the child has the right to be heard and to participate in making the decision. Girls and boys have the same right to be heard in matters that concern them.

Parents have the right to advise children when they are deciding on things such as hairstyles, clothes etc., but they do not have the right to force a child. This applies equally to religious clothing and symbols.

6. WHAT YOU SHOULD DO IF YOU HAVE EXPERIENCED DISCRIMINATION

6.1 Seek help

There are several organizations you can reach out to for help in a situation where you believe you may have been discriminated against. JURK, OMOD, Diskrimineringsnemnda (DN) and Likestillings- og diskrimineringsombudet (LDO) are some of them.

6.1.1 JURK

What is Legal Advice for Women (JURK)?

JURK is a politically independent legal aid initiative that is run by law students. We provide advice and guidance on legislation and rules to all who define themselves as women.

JURK is bound by secrecy and you can trust us and feel safe when you contact us. Our counselling is free of charge.

How to contact JURK:

You can visit JURK:
Skippergata 23 i Oslo
Mondays 12-15
Wednesdays 17-20

You can call JURK:
22 84 29 50
Mondays 12-15
Wednesdays 9-12 and 17-20

You can send a letter to JURK:
Skippergata 23, 0154 OSLO

You can visit www.jurk.no for more information about JURK.

6.1.2 OMOD

OMOD (The Institution Against Public Discrimination) is an organization that works to prevent public discrimination on the basis of ethnicity.

How to contact OMOD:

You can call OMOD:
22 20 87 37

6.1.3 Diskrimineringsnemnda

**Complaint about
discrimination**

If you believe you are or have been discriminated against you can complain to the Anti-Discrimination

Tribunal (DN).

Increased
awareness

When you complain about discrimination you are helping to increase awareness and focus on discrimination. This helps to develop a less discriminating society.

Put an end to the
discrimination

If the DN finds that discrimination has been practised, it can ask the perpetrator to stop discriminating. The DN can also decide that the party who has discriminated must pay compensation or restitution.

How to contact the DN:

You can send DN an email:
post@diskrimineringsnemnda.no

You can call DN:
Telephone: 90 93 31 25

You can visit DN's website:
www.diskrimineringsnemnda.no

6.1.4 Likestillings- og diskrimineringsombudet

Advice and
guidance

The Equality and Anti-Discrimination Ombud (LDO) can guide you on how to write the complaint to DN. LDO can also give you advice and guidance in a case regarding discrimination or harassment.

How to contact the LDO:

LDO's post address is:
Mariboegate 13, Oslo, 4.etasje (visit).
Postboks 9297 Grønland, 0134 Oslo, Norge.

You can send an email:
post@LDO.no

Remember that you should not send sensitive information in an e-mail.

You can call the LDO:
Green number: 80 04 15 56
Telephone: 23 15 73 00
Fax: 23 15 73 01
You can also send an SMS to 95 92 05 44.

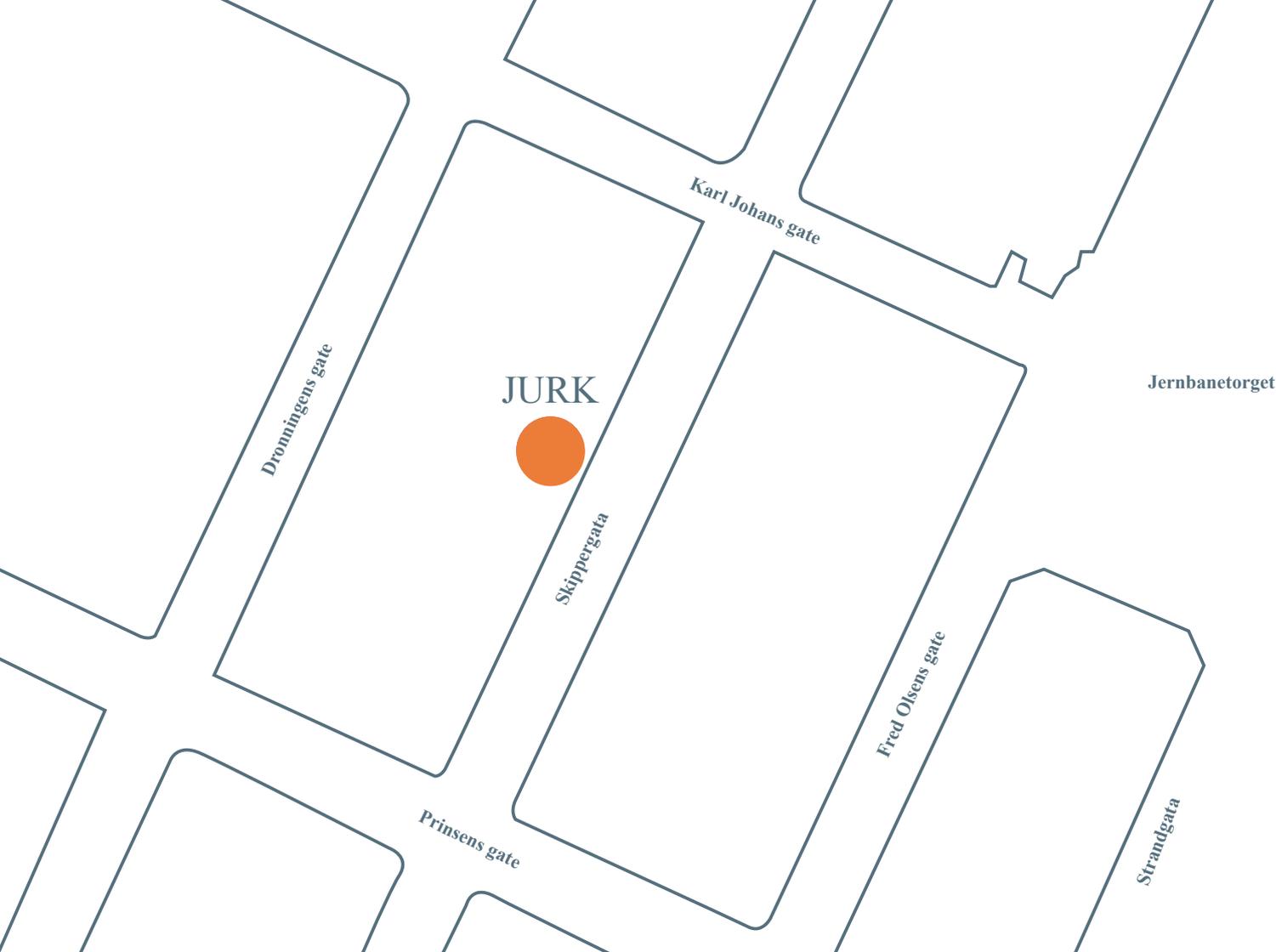
For more information about the LDO you can visit their website: www.ldo.no

7.0 NORWEGIAN DISCRIMINATION LAW

There are several laws that seek to protect people from discrimination. Here follows a list of those laws.

- Likestillings- og diskrimineringsloven 16. juni 2017 nr. 51
- Diskrimineringsombudsloven 16. juni 2017 nr. 50
- Menneskerettsloven 21. mai 1999 nr. 30
- Arbeidsmiljøloven av 17. juni 2005 nr. 62
- Straffeloven av 20. mai 2005 nr. 28
- Husleieloven av 26. mars 1999 nr. 17
- Borettslag loven av 6. juni 2003 nr. 39
- Boligbyggelagsloven av 6. juni 2003 nr. 38
- Eierseksjonsloven 23. mai 1997 nr. 31

You can find these laws on www.lovdata.no



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