

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Denmark

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# Executive summary

## Implementation of Employment Directive 2000/78/EC

The Employment Directive 2000/78/EC has been implemented through Act no. 459 of 12 June 1996 on Prohibition against Differential Treatment in the Labour Market, etc. (*Lov nr. 459 af 12. Juni 1996 om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*) with subsequent amendments. This Act prohibits direct and indirect discrimination on grounds of race, colour of skin, religion or belief, political opinion, sexual orientation, age, disability and national, social or ethnic origin.

The Employment Directive 2000/78/EC regarding discrimination on the ground of sexual orientation has been implemented into Danish legislation only as regards to employment.

The Board of Equal Treatment was established by on 1 January 2009. The board is an administrative organ that handles cases concerning discrimination which are covered by the Danish anti-discrimination legislation. The board also treats cases concerning sexual orientation. Decisions made by the board are binding to the parties, and the board can bring cases of non-compliance to the Danish courts. The board cannot start cases on its own initiative.

At the moment in Danish civil law, the grounds of age, sexual orientation, disability and religion and belief do not enjoy protection outside the labour market. The criminal law covers direct differential treatment on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation outside the labour market, but does not expressly cover indirect discrimination, harassment or victimisation (there has been no published cases relating indirect discrimination, harassment or victimization alone – and the case law regarding this law is very limited. It is therefore uncertain whether these areas are covered). The grounds of age and disability do not enjoy protection outside the labour market under criminal law.

## Freedom of movement

An EU citizen may bring family members, including spouse, registered partner (i.e. same sex relationships) or cohabiting partner, children under the age of 21, or a family member who is dependent on the person in question for three months, or six months if the EU citizen is seeking employment, or for the duration of the residency of the EU citizen. Family members must however hold a valid visa if they are citizens of a country with a visa requirement for Denmark.

Generally, little statistical data is available on LGBT people, due to the fact that such information is perceived as sensitive personal information.

Since 1989 Danish law has allowed two persons of the same sex to register their relationship (known as a ‘registered partnership’) and with some few exceptions thus obtain the same legal status as a traditional different-sex marriage.

On 7 June 2012, an amendment to the Act on Marriage (*Ægteskabsloven Æ1*) was passed in the Danish Parliament allowing same sex couples to marry in churches and city halls. The amendment to the act came into effect on 15 June 2012. Due to the access to marriage for same sex couples, registration of partnership is no longer an option. Registered partnerships formed before this date are

still recognized by the authorities and couples in registered partnership can also request to have their registered partnership turned into a marriage.<sup>1</sup>

Although LGBT persons are equal to hetero/cis persons under Danish law, the legal situation of third country national LGBT partners of EU citizens may be worse than that of hetero/cis persons in similar situations. This situation could occur if the third country does not offer legal recognition of same sex relationships, for instance.

## **Asylum and subsidiary protection**

In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark will not adopt Council Directive 2004/83/EC (29.04.2004).

Regarding asylum and the legal position of LGBT persons, there has been a development in the way the Danish Refugee Appeals Board (*Flygtningenævnet*) handle decisions regarding asylum seeking LGBT persons.

The Danish Aliens Act (*Udlændingeloven*) offers protection through two separate clauses: Section 7 (1) and 7 (2). Section 7 (1) includes those protected under the Refugee convention and section 7 (2) offers the so-called *Protection-status*. The two clauses are further explained below in the Asylum section.

After a decision by the Danish Refugee Appeals Board in November 2012 regarding a transgender woman, LGBT persons were then recognized as members of a particular social group because of their sexual orientation or gender identity, and could therefore be granted asylum with refugee status after section 7 (1). The decision also clarified that asylum could be granted regardless of whether it was public knowledge in the home country of the person seeking asylum, that the person was homosexual or transgender.

Statistics on the Danish asylum case law are still not available. From the selected cases of the Refugee Appeals Board (*Flygtningenævnet*), there has since 2009 been published the following: 4 cases were published in 2010; 3 cases in 2011, 2 cases in 2012 and 5 in 2013 where LGBT individuals were denied protection. In one published case from 2011 a homosexual man from Uganda was granted protection under section 7 (2). In one published case from 2012 and 4 from 2013 LGBT people were granted asylum under section 7 (1).

## **Family reunification**

In accordance with Article 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark will not adopt Council Directive 2003/86/EC of 22 September 2003.

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<sup>1</sup> Denmark, The Act on Marriage, Consolidated act no. 1052 of 14 November 2012 (*Ægteskabsloven* Æ1, lovbekendtgørelse nr. 1052 af 14. November 2012), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=140525>. Altered by act no. 532 of 12 June 2012 (lov nr. 532 af 12. juni 2012), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=142282>.

If a person has relatives in Denmark, he or she can apply for a residence permit in accordance with the regulations for family reunification as defined in the Danish Aliens Act. Provided certain mandatory conditions are fulfilled, residence permits can be granted to: spouses, registered partners and cohabiting partners and children under 15 years of age. This would include spouses of the same sex if the marriage is valid under the national legislation of the State where the marriage took place.

In accordance with Denmark's international obligations to protect the right to family life, exemptions from the following requirements for the right to family reunification can be granted: the 24-year age requirement, the attachment requirement, the housing requirement, the collateral requirement, and the requirement that a person's spouse/partner has not received certain types of public assistance within the past 12 months. Certain groups of applicants can be granted exemptions based on their specific situations. The Danish Immigration Service provides examples of such situations, these are described below in the Family Reunification section.

The Danish Immigration Service does not possess statistics on LGBT persons seeking residence in Denmark. Neither case law nor statistics are available in this area.

As with freedom of movement, the legal situation of LGBT partners of Danish citizens or residents could be inferior to that of hetero/cis persons if the third country in which they live does not allow for the recognition of same sex relationships either through marriage or registered partnership, even though Denmark does not formally differentiate between relationships involving LGBT persons and hetero/cis persons.

## **Freedom of assembly**

No particular legislation or incident of particular relevance. No pro-LGBT demonstrations (Gay Pride, etc.) have been prohibited due to the fear of public disorder caused by counter-demonstrations.

Freedom of assembly is constitutionally protected (as well as protected according to international human rights obligations).

According to section 78 (1) of *Act no. 169 of 05.06.1953 Danmarks Riges Grundlov [The Constitution of Denmark]*, "The citizens shall be entitled without previous permission to form associations for any lawful purpose."

According to section 79 of The Danish Constitution, "The citizens shall without previous permission be entitled to assemble unarmed. The police shall be entitled to be present at public meetings. Open-air meetings may be prohibited when it is feared that they may constitute a danger to the public peace."

There have been no anti-LGBT demonstrations in recent years in Denmark and no demonstrations with similar or overlapping aims. Similarly, there are no relevant statistics within the area and no case law of note.

There exists no specific regulation regarding the handling of public meetings related to anti-LGBT demonstrations. The primary regulation concerning public meetings in general is the sections of the Danish constitution described above.

## Criminal Law

According to Section 266 b (1) of the Criminal Code (*Straffeloven*<sup>2</sup>), any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation shall be liable to a fine or to imprisonment for any term not exceeding two years.

Section 81 no. 6 of the *Straffeloven*<sup>3</sup>. The provision now spells out explicitly that generally when sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation, etc., of other parties. Section 81, 6 is also known as the hate crime provision in the Danish Criminal Code.

According to guidelines from Commissioner of Police (Rigspolitechefen), the Danish police districts have since 1992 reported to the Danish Security and Intelligence Service (Politiets Efterretningstjeneste (PET)) on criminal acts which are deemed to be religiously or racially motivated. The aim is to monitor possible signs of systematic or organised criminal activity in these areas. As of 1 January 2009, the reports have been expanded to include criminal acts with other extremist motivations. This also includes registration of crimes committed on ground of sexual orientation<sup>4</sup>.

One hate-crime case that received publicity in 2013 was that of Cecilia Mundt, who is a trans person. She was assaulted with a hammer in a public place. Her assailant volunteered himself to the police and on 24 October 2013, he was found guilty under the section 81, 6 statute in the Danish Criminal Code described above, and was sentenced to one year and three months in prison.<sup>5</sup>

## Transgender issues

There is no official judicial definition on transgender or transvestites in Denmark. The Board of Equal Treatment has in one case defined a transsexual person as “a person who, for example, is born as a man and who wears female clothes and over a number of years desires another gender identity, evidenced by undergoing medicinal and surgical actions”<sup>6</sup>.

But the term *transgender people* must be seen as an umbrella term referring to a group of people who differ from traditional gender norms and includes *transgender people* (individuals who identify with the opposite gender and sometimes desire to change their body to match their gender), *transvestites* (individuals who cross-dress to occasionally identify with the opposite gender), and *intersexuals* (individuals with physical characteristic of both sexes)<sup>7</sup>.

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<sup>2</sup> Denmark, the Danish Criminal Code (*Straffeloven*), Act of 1930 No. 126. 22 August 2013.

<sup>3</sup> Inserted by Act No. 218 of 31 March 2004 amending the Danish Criminal Code (*Straffeloven*).

<sup>4</sup> Denmark, the Danish Security and Intelligence Service (*Politiets Efterretningstjeneste*), 23 December 2008, available in Danish at: [https://www.pet.dk/~media/Forebyggende%20sikkerhed/RACI-rapporter/ny\\_RACI.ashx](https://www.pet.dk/~media/Forebyggende%20sikkerhed/RACI-rapporter/ny_RACI.ashx)

<sup>5</sup> Danish broadcasting corporation Danmarks Radio, 25 October 2013, “Fighting hatecrimes” (“*Til kamp mod hadforbrydelser*”) available in Danish at: [http://www.dr.dk/Nyheder/Politik/KV13/Artikler/P4\\_Koebenhavn/2013/10/25/080820.htm](http://www.dr.dk/Nyheder/Politik/KV13/Artikler/P4_Koebenhavn/2013/10/25/080820.htm)

<sup>6</sup> Denmark, The Board of Equal Treatment, decision no. 171/2013, 28 August 2013, available in Danish at: <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1247&type=Afgoerelse>

<sup>7</sup> WHO's Diagnosis System ICD10

Section 266 b of *Straffeloven*<sup>8</sup> prohibits the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation (introduced by Act no. 357 in 1987, according to the legal commentary probably covering transvestites/transsexualism). This interpretation of ‘sexual orientation’ also covers Section 81 no. 6 of *Straffeloven*<sup>9</sup>. This provision now spells out explicitly that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion, or sexual orientation, etc.

On 3 May 2013, Manu Sareen, the Minister for Gender Equality, explained in the Danish parliament, that gender identity is included in the definition of “sexual orientation” in section 266 b.<sup>10</sup>

In the Ministry of Health and Prevention’s guidelines<sup>11</sup> on castration in order to undertake a gender reassignment, it is mentioned that besides fulfilment of the requirements in section 115 in Act on Health (*Sundhedsloven*<sup>12</sup>) the applicant has to show that his or her wish for gender reassignment is consistent and that the applicant understands the consequences of a gender reassignment.

The Administrative Order on Names states in section 13 that persons who have not had gender reassignment surgery but who have been judged transsexual by *Sexologisk Klinik (Sexological Clinic)* at the National Hospital of Denmark - or persons in entirely comparable circumstances - may obtain a name change, including to a name normally belonging to another gender.

In Denmark there is no specific law regarding gender reassignment operations. *Sundhedsstyrelsen (The Danish National Board of Health)* handles applications for gender reassignment operations with reference to chapter 33 in *Sundhedsloven*<sup>13</sup> and Administrative Order regarding sterilisation and castration<sup>14</sup>, including in reference to gender reassignment. In section 115, subsection 1, of *Sundhedsloven* a person can receive permission for castration.

The Danish Government has presented a draft for a bill amending the Act on the Civil Registration System. The bill purposes that a person over the age of 18 can change his or her civil registration number by filing an application to the Ministry for Economic Affairs and the Interior where the person states, that the reason for the application is that the person identifies as the opposite gender and the person confirms the application six months later.<sup>15</sup>

On June 11 2014, this bill was adopted in the Danish Parliament. The amendment to the Act on the Civil Registration System will come into effect on 1 September 2014<sup>16</sup>. On 18 June 2014, the new guide advising authorities on the requirements for the treatment of patients with gender identity

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<sup>8</sup> Denmark, the Danish Criminal Code (*Straffeloven*), Act of 1930 No. 126. 22 August 2013.

<sup>9</sup> Act amending the Danish Criminal Code (*Straffeloven*), inserted by Act No. 218 of 31 March 2004

<sup>10</sup> Note from the discussion of suggestion B 28 of 2012-2013 of the Danish Parliament (*Folketinget*): <http://www.ft.dk/samling/20121/beslutningsforslag/b28/bilag/2/1252625/index.htm>

<sup>11</sup> Denmark, The Act on Health (*Sundhedsloven*) of 2005 No. 546.

<sup>12</sup> No. 328 of 11 May 2007

<sup>13</sup> Denmark, The Act on Health (*Sundhedsloven*), of 2005 No. 546

<sup>14</sup> No. 14, 10 January 2006

<sup>15</sup> Denmark, draft for bill amending the Act on the Civil Registration System (allocating civil registration numbers to persons identifying as the opposite gender) (*Udkast til forslag om lov om ændring af lov om Det Centrale Personregister (Tildeling af nyt personnummer til personer, der oplever sig som tilhørende det andet køn)*), information available in Danish at: <http://hoeringsportalen.dk/Hearing/Details/23614>.

<sup>16</sup> Text of the changes to the Act on the Civil Registration System available in Danish at [http://www.ft.dk/samling/20131/lovforslag/1182/html\\_som\\_vedtaget.htm](http://www.ft.dk/samling/20131/lovforslag/1182/html_som_vedtaget.htm)

issues was presented<sup>17</sup>. The old guide, written in 2006, dealt solely with the matter of castration as a prerequisite for juridical gender change. The new guide concerns all aspects of gender reassignment and treatment of gender identity issues and is targeted at medical professionals across multiple specialties, including psychiatry, gynaecology, plastic surgery and paediatrics.

Ligestillingsnævnet (*The Gender Equality Board* –closed down as of 1 January 2009) has handled two complaints regarding discrimination towards transsexual persons. The jurisdiction of the Gender Equality Board was in 2009 transferred to The Board of Equal Treatment. Since then, The Board of Equal Treatment has decided on 5 cases involving transgender persons<sup>18</sup>. A common trend between three of these cases was that the Board recognized “gender identity” (*kønsidentitet*) as protected even though it is not specifically mentioned in the relevant laws. The cases are analysed in more detail in the Transgender Issues section.

## Miscellaneous

Faroese legislation only prohibits hate speech based on religion and ethnicity. However, in 2006 a proposal was adopted by the *Lagting* [Faroese Parliament] to include sexual orientation in the provision prohibiting hate speech in the Faroese Criminal Code.

In 1994, Justitsministeriet (the Ministry of Justice) in Denmark, in consultation with the *Landsstyre* [cabinet of the Greenland home rule government], appointed a joint Danish and Greenland commission to review the Greenland justice system. Den Grønlandske Retsvæsenkommission (The Commission on Greenland’s Judicial System) proposed in 2004 that the section on hate speech in the Greenlandic Criminal Code should be amended to include ‘sexual orientation’, corresponding to the parallel section of the Danish Penal Code.

In 2009 it was allowed for a co-mother to adopt a child from the time of birth if the child was conceived by artificial insemination with semen from an anonymous donor.<sup>19</sup> This is only possible if the insemination has taken place in a clinic and not at home.<sup>20</sup>

In August 2013 gay men were allowed to be known semen donors.<sup>21</sup>

In December 2013 it became possible for a co-mother to become the legal co-parent from the birth of the child even when the biological father is not anonymous.

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<sup>17</sup> Draft of new guide available in Danish at <http://www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf>

<sup>18</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), list of decisions available in Danish: <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/default.aspx>

<sup>19</sup> Denmark, Act no. 318 of 28 April 2009, amending the Act on Social Service (Continuity in placing of a child etc.) (*Lov nr. 318 af 28. april 2009 om ændring af lov om social service (Kontinuitet i anbringelse m.v.)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=124538>.

<sup>20</sup> LGBT Denmark, Comments on the draft for the bill amending the Act of Adoption, 20 January 2014 (*Høringssvar vedr. udkast til forslag til lov om ændring af adoptionsloven (Adgang for samlevende til at adoptere sammen)*), available in Danish at: [http://panbloggen.files.wordpress.com/2014/01/20140119\\_lgbtdk\\_sm\\_hoeringssvar\\_adoption.pdf](http://panbloggen.files.wordpress.com/2014/01/20140119_lgbtdk_sm_hoeringssvar_adoption.pdf).

<sup>21</sup> Denmark, The Danish Health and Medicines Authority (*Sundhedsstyrelsen*), Guidance note for fertility clinics, 23 August 2013, available in Danish at: [http://panbloggen.files.wordpress.com/2013/08/20130823\\_screening\\_af\\_kendt\\_donor.pdf](http://panbloggen.files.wordpress.com/2013/08/20130823_screening_af_kendt_donor.pdf).



## Good practices

An amendment to the Act on artificial insemination with medical assistance and research (Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.<sup>22</sup>) was put before the Danish parliament. Prior to the amendment, single women and lesbian couples were not able to receive treatment by a physician with a view to conceiving a child by artificial insemination. This proposed amendment has now been adopted by the *Folketing* [Danish national parliament]; henceforth, women have the same access to artificial insemination regardless of their marital status and sexual orientation. The Act entered into force on 1 January 2007.

On 17 March 2009, the Parliament adopted a Parliamentary decision requiring the Government to draft legislation allowing homosexuals to adopt children. The proposal was not supported by Government, but still adopted by majority in Parliament (62 in favour and 52 against). 6 MPs (from the liberal party) voted for the proposal and against the political line of the party<sup>23</sup>.

Copenhagen Police, Copenhagen Municipality, The Danish Institute for Human Rights, LGBT-Denmark (NGO on LGBT issues in Denmark) and World Outgames in 2009 initiated cooperation and a campaign with the aim of stopping or reducing hate crimes and produced a handbook of good practices.

In February of 2013, Copenhagen municipality launched the Stemplelet (*Branded*) campaign, aimed at combatting hate crimes and discrimination through allowing citizens to anonymously register cases of either online<sup>24</sup>. If the users request so, they will also be contacted by the Danish Institute for Human Rights, offering guidance on how to proceed further with their case and make an official complaint with the Board of Equal Treatment or the police, depending on the nature of the case.

The Police of Funen has since November 2012 educated 250 police officers in handling hate crimes. The background of this focus was a report made by the Danish Institute for Human Rights regarding hate crimes stating that the Danish Police force lacked knowledge about hate crimes and how to handle these.<sup>25</sup>

## Intersex

Intersex is not explicitly covered in national non-discrimination legislation. It is unclear, to what degree intersex people are protected under existing law, but The Board of Equal Treatment has decided on at least one case in which the complainant was a transsexual man who had previously received a sex-change operation from female to male, indicating that the Board considers the

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<sup>22</sup> Denmark, Act 1997 No. 460; Act on Artificial Insemination in connection with medical treatment, diagnosis, research, etc. (extent of treatment in regional hospitals; assessment of parental unfitness; relaxation of the rules regarding egg donation; and extension of the storage of frozen human eggs) (Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.) 10 June 1997.

<sup>23</sup> Denmark, LB36, *Forslag til folketingsbeslutning om adgang til at ansøge om fremmedadoption for par i registreret partnerskab*, proposal and parliament vote numbers in Danish:

<http://www.ft.dk/samling/20081/beslutningsforslag/B36/index.htm>

<sup>24</sup> Stemplelet-campaign, information available in Danish at: <http://sigfranu.dk/stemplelet/>

<sup>25</sup> The Danish Police, The Police of Funen, news, The Police of Funen fights hate crimes (Dansk Politi, Fyens Politi, nyheder, Fyns Politi bekæmper hadforbrydelser), 14 November 2012, available in Danish at: [https://www.politi.dk/Fyn/da/lokalnyt/Nyheder/Fyns-Politi-bekaemper-hadforbrydelser.htm?wbc\\_purpose=Ba](https://www.politi.dk/Fyn/da/lokalnyt/Nyheder/Fyns-Politi-bekaemper-hadforbrydelser.htm?wbc_purpose=Ba).

protection under Danish non-discrimination laws afforded on account of gender to be expanded beyond a binary gender system<sup>26</sup>.

In recent rulings regarding discrimination of trans persons, The Board of Equal Treatment has used the term “gender identity”, despite this term not being used in the legislation.<sup>27</sup> There are no non-discrimination policies that explicitly cover intersex discrimination.

A new civil registration number (and as a result, a new registration of gender) can only be granted under two circumstances: Either if there was a (technical) mistake in the original registration or if the person in question has undergone and completed gender reassignment surgery<sup>28</sup>.

The Danish Health and Medicine Authority informs that the public medical system, on account of a concrete, medical assessment in each individual case offers surgical and medicinal treatment for intersex people, if there is a need for it. The assessment is made in a highly specialized pediatric department.

The legal foundation for the treatment of intersex people is partially the Act on Health (Sundhedsloven), which regulates the medical systems offers of treatment and contains rules on informed consent and Act on the Authorisation of Medical Personnel and on Medical Process (lov om autorisation af sundhedspersoner og om sundhedsfaglig virksomhed), which sets forth requirements with regards to the duty of medical personnel to exhibit diligence and conscience.

The Danish Government has presented a draft for a bill amending the Act on the Civil Registration System. The bill purposes that a person over the age of 18 can change his or her civil registration number by filing an application to the Ministry for Economic Affairs and the Interior where the person states, that the reason for the application is that the person identifies as the opposite gender and the person confirms the application six months later.<sup>29</sup>

On June 11 2014, this bill passed a vote in Danish parliament and the change to the Act on the Civil Registration System will come into effect on 1 September 2014<sup>30</sup>. On 18 June 2014, a new guide advising authorities on the requirements for the treatment of patients with gender identity issues was presented<sup>31</sup>. The old guide, written in 2006, dealt solely with the matter of castration as a prerequisite for juridical gender change. The new guide concerns all aspects of gender reassignment and treatment of gender identity issues and is targeted at medical professionals across multiple specialties, including psychiatry, gynaecology, plastic surgery and paediatrics.

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<sup>26</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), decision no. 249/2013, 27 November 2013, available in Danish at:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1325&type=Afgoerelse>

<sup>27</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*) decisions no. 166/2011, 11 November 2011, no. 418/2012, 21 November 2012 and no. 171/2013, 28 August 2013, available in Danish at:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/default.aspx>

<sup>28</sup> Denmark, Guide to the peoples registry (*Vejledning om folkeregistrering*), 14 June 2013, available in Danish at:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=152201>

<sup>29</sup> Denmark, draft for bill amending the Act on the Civil Registration System (allocating civil registration numbers to persons identifying as the opposite gender) (*Udkast til forslag om lov om ændring af lov om Det Centrale Personregister (Tildeling af nyt personnummer til personer, der oplever sig som tilhørende det andet køn)*), information available in Danish at: <http://hoeringsportalen.dk/Hearing/Details/23614>.

<sup>30</sup> Act on the Civil Registration System (*Den centrale personregistersystem*) available in Danish at [www.ft.dk/samling/20131/lovforslag/1182/html\\_](http://www.ft.dk/samling/20131/lovforslag/1182/html_) (accessed June 2014)

<sup>31</sup> Denmark, Danish Health and Medicines Authority (*Sundhedsstyrelsen*) 2 June 2014, Draft of Guide on Counseling on diagnoses and treatment of transgender persons (*Udkast til Vejledning om udredning og behandling af transkønnede*) available in Danish at [www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf](http://www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf) (accessed June and July 2014)

# 1. Implementation of Employment Directive 2000/78/EC

In March 2004, the Danish Parliament adopted an amendment to the Act no. 459 of 12 June 1996 on Prohibition against Differential Treatment in the Labour Market, etc. (*Lov nr. 459 af 12. juni 1996 om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*), in order to implement anti-discrimination directives 2000/43/EC and 2000/78/EC<sup>32</sup>. The Act on Prohibition against Differential Treatment in the Labour Market, etc now prohibits direct and indirect discrimination because of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, it is prohibited to discriminate against employees as regards access to vocational education and training, continued training and retraining. The same prohibition applies to people providing guidance and training as well as people involved in work placement activities and people who are involved in the formulating rules and making decisions about the right to perform activities in professional trades and membership of workers' and employers' organisations. The above-mentioned amendments adopted in 2004 introduced protection against discrimination based on religious conviction (a precision in the legislative text compared to an earlier formulation) as well as the possibility of shifting the burden of proof in cases of alleged discrimination.<sup>33</sup> The newest amendment to the Act on Prohibition against Differential Treatment in the Labour Market is consolidated act no. 1349 of 16 December 2008, with the same title<sup>34</sup>. No new amendments to the act have been completed since 4 April 2014.

A victim of discrimination can bring the case before the ordinary courts unless the prohibition of differential treatment is mentioned in a collective agreement and the victim is a member of a trade union. In this case, the complaint has to be handled by the labour market system. The above-mentioned amendments should be perceived as complete implementation of the Employment Directive 2000/78/EC.

*Hovedorganisation for fagforeninger (LO) [Danish Federation of Trade Unions (LO)]* initiated a survey with the aim of analysing the conditions for homosexuals on the Danish labour market. CATINET Research was responsible for the practical part of the survey. The survey showed that only 1 percent of homosexuals – whose colleagues knew that they were homosexual – felt that their colleagues generally had a negative attitude to the fact that he or she was homosexual. However, 39 percent had experienced discrimination at their former or present work places. 54 percent of those who had experienced discrimination at their work place had been exposed to unpleasant hints. The survey also showed that 5 percent of homosexuals had been asked about their sexual orientation during a job interview<sup>35</sup>.

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<sup>32</sup> Denmark, Act No. 253 of 7. April 2004 amending act on Prohibition against Differential Treatment in the Labour Market, etc. (*Lov nr. 253 af 7. april 2004 om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=30059>.

<sup>33</sup> Fifth Periodic Report of Denmark concerning the International Covenant on Civil and Political Rights (April 2007)

<sup>34</sup> Denmark, amending act on Prohibition against Differential treatment in the Labour Market no. 1349 of 16 December 2008 (*Lov nr. 1349 af 16. december 2008 om forbud mod forskelsbehandling på arbejdsmarkedet*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=122522>.

<sup>35</sup> Denmark, newspaper article *Ugebrevet A4* (2005), "Gays and lesbians are discriminated on the job" ("*Bøsser og lesbiske diskrimineres på jobbet*"), 8 August 2005, available in Danish at: [www.ugebreveta4.dk/boesser-og-lesbiske-diskrimineres-paa-jobbet\\_16992.aspx](http://www.ugebreveta4.dk/boesser-og-lesbiske-diskrimineres-paa-jobbet_16992.aspx)

The Employment Directive 2000/78/EC regarding discrimination on the ground of sexual orientation was implemented into Danish legislation only relating to employment.

## 1.1 Equality Bodies

The Board of Equal Treatment (*Ligebehandlingsnævnet*) is an administrative body established 1 January 2009.<sup>36</sup> The board deals with complaints related to discrimination based on gender, race, colour, religion or belief, political views, sexual orientation, age, disability or national, social or ethnic origin within the Labour Market. Outside the labour market, the Board deals with complaints related to discrimination based on race, ethnic origin or gender. The Board is composed of three judges who act as presidency and nine additional members with a law degree. Decisions made by the Board are final and binding for both parties and can be brought before the City Courts. The Board is able to award compensation to victims. Any citizen can file a complaint to the Board of Equal Treatment. If a decision by the Board of Equal Treatment is not followed by a party the Board has an obligation to bring the case before the courts at the request of the other party. The Board of Equal Treatment bases its decisions on written information received from the complainant, the defendant and the secretariat of the Board of Equal treatment. It is not possible to present a complaint to the Board in person. It is possible however to request a meeting with the Secretariat. The Board of Equal Treatment is unable to start cases on its own initiative.

A victim of discrimination can also bring the case before the ordinary courts unless the prohibition of differential treatment is mentioned in a collective agreement and the victim is a member of a trade union. The complaint then has to be handled by industrial bodies. If the case is brought before the ordinary courts, the judge can decide to let a third party with a legal interest in the outcome of the case intervene in support of one of the parties<sup>37</sup>. The intervening party will however not be able to appeal the case independently.

There are no significant trends apparent from the rulings from The Board of Equal Treatment. The Board publishes annual statistical reports, but these reports do not contain a category for LGBT cases, which instead get included in a “gender” category in cases concerning gender identity or an “other” category concerning discrimination on the grounds of sexual orientation.

Three cases brought before The Board of Equal Treatment and/or the courts are significant:

### **J.nr. 7100411-12, 10 October 2012**

In ruling 7100411-12 from The Board of Equal Treatment, a private company was found to have violated the right to equal treatment of a woman married to another woman. The woman in question had applied for a job with the company and during a telephone interview, the matter of the woman’s marriage had come up. The leader from the company, who was conducting the interview, reacted by stating that they had had a negative experience with “someone like that” previously.

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<sup>36</sup> Denmark, Ministry of Employment (Beskæftigelsesministeriet) Act on the Board of Equal Treatment no. 387 of 27 May 2008 (*Lov om Ligebehandlingsnævnet*), available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=117192](http://www.retsinformation.dk/Forms/R0710.aspx?id=117192).(accessed July 2014)

<sup>37</sup> Denmark, The Administration of Justice Act section 252 (*Retsplejeloven § 252*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=157953>.

In responding to the complaint filed by the woman, the leader apologized for his comment and described it as “clumsy” and “unfortunate”. He added that the comment was meant to exhibit an attitude of inclusiveness and that the staff at the company held no prejudice and were open and tolerant.

As the manager of the company admitted to making the remark, the barrier that often prevents The Board of Equal Treatment from ruling on the substance in cases like this, the disallowance of oral testimonies, did not affect the ability of the board to rule on the case. It was found, that the company had discriminated against the woman and she was rewarded with a compensation of 25.000 DKK (€ 3350)

The significant aspect of this case was that the Board ruling on a case requiring oral testimonies. This is normally the largest barrier preventing cases involving LGBT-persons from being processed by the Board. When a case is rejected by the Board, the complainant could choose to go the more costly way of the court system. If The Board of Equal Treatment is to expand its allowance of cases involving oral testimonies, this could lead to more LGBT-cases being ruled on.

### **J.nr. 7100169-12, 20 June 2012**

In ruling 7100169-12 from The Board of Equal Treatment, a homosexual man with a degree in medicine had applied for a position as a doctor in an unnamed Region (healthcare in Denmark is governed for the most part by 5 regional governments with a geographical area of influence each). He was turned down on three different occasions, each time for a different reason. The man brought the case before The Board of Equal Treatment because one of the members of the committee responsible for hiring the doctors in the region was his personal doctor and had knowledge of his sexual orientation because of this, and because the man thought he had been discriminated on this ground.

The Board found that the person or persons in charge of the hiring process having knowledge of an applicant’s sexual orientation and choosing not to hire said person, is not in itself proof enough to support the presumption that the applicant’s sexual orientation has been considered as a factor in the hiring process.

Not many cases involve this specific situation, but presumably the Board will follow this line in the future, meaning that knowledge of an applicant’s sexual orientation will not be a deciding matter in future cases brought before the Board.

### **U.2008.1353V, 22 February 2008**

In case U.2008.1353V from the Western High Court (*Vestre Landsret*), a baker had made disparaging remarks towards a homosexual employee after learning about said employee’s sexual orientation from another employee. The baker had, among other things, shown another employee a picture of two boys who had been hung in Iran because they were homosexual, saying “that’s how they should be treated”.

In court, the baker denied having made these comments. However, considering a signed account from a witness, combined with the fact that the plaintiff had gone on sick leave shortly after the comments were allegedly made, the court found that it had been proven that the baker had made the

derogatory comments. He was found guilty and the plaintiff was awarded a compensation of 100.000 DKK (€ 14.000).

The most significant aspect of this case was that the defendant denied having made the disparaging remarks. Court cases involving discrimination based on sexual orientation and gender identity are rare in Denmark. A decision in favour of the complainant in a case where the defendant outright denied having made the remarks in question could be considered a big step, although it remains to be seen if this case was merely a one-off.

## 1.2 Non-Governmental Organisations

A civil society organisation which should be mentioned is LGBT Denmark (*LGBT Danmark*). LGBT Denmark is a sexual orientation and gender political interest group that for example gives guidance to victims of discrimination on the ground of sexual orientation and/or gender identity. In Denmark there are also other groups that focus specifically on the interests of transgender people, e.g. *Transseksuel.dk*, *Patientforeningen For Transseksuelle (PFT)* [*Patient Association of Transgender People*] and *FATID*, the Organisation of Transgender People in Denmark (*Foreningen af Transkønnede i Danmark*)

The NGOs can give legal advice to victims during discrimination procedures. Normally the trade union will be the prime mover in cases regarding discrimination on the labour market. Normally the guidance from LGBT-Denmark and other NGOs is concentrated at the earlier stages by helping collecting documentation, by contacting the trade union or other relevant guidance.

There is no restrictions as to who can represent a complainant in a case at the Board of Equal Treatment, as long as the representative has a power of attorney. This means that any organisation or private individual can represent a complainant.<sup>38</sup>

It has not been possible to get the information on how many civil society organisations engage on behalf or in support of complainants or how often these organisations make use of this possibility. It is there for neither possible to analyse the impact of this engagement for the victim.

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<sup>38</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), : [ast.dk/naevn/ligebehandlingsnaevnet/hvis-du-vil-klage-til-ligebehandlingsnaevnet](http://ast.dk/naevn/ligebehandlingsnaevnet/hvis-du-vil-klage-til-ligebehandlingsnaevnet).(accessed July 2014)

## 2. Freedom of movement

An EU/EEA citizen may bring his/her family members, e.g. spouse, registered partner or cohabiting partner, children under the age of 21, or a family member who is dependent on the person in question, for three months, or six months if the EU/EEA citizen is seeking employment, or for the duration of their residency. However, family members must hold a valid visa if they are citizens of a country with a visa requirement for Denmark<sup>39</sup>.

Denmark has implemented Directive 2004/38/EC and no exceptions to the Directive have been introduced. Hence, as long as the conditions for a registered partnership are met, LGBT partners are equal to other family members falling within the scope of article 2 (b) of the Directive. Same-sex spouses legally married (or registered) under the laws of another EU Member State are considered spouses for the purposes of family reunification in Denmark. There is no relevant case law.

An EU/EEA citizen can reside freely in Denmark for up to three months. If this person is seeking employment, they can stay for up to six months.

If a person stay exceeds the three or six month limit, he or she needs proof of registration (if the person is an EU citizen) or proof of residence (if the person is an EEA citizen). Unlike the residence permit issued in accordance with the Danish Aliens Act (*Udlændingeloven*), proof of registration or residence is simply proof of the rights the person already holds according to the EU regulations on free movement of people and services.

Statistics Denmark (*Danmarks Statistik*) provides basic and detailed data on every person living legally in Denmark.

Statistics Denmark is the central statistical authority and is an independent and autonomous institution. Statistical information on demographic issues is almost exclusively based on information that is recorded in the government's Central Population Register (*Det Centrale Personregister*). This register contains no information on ethnic identity, religion or language, sexual orientation or other sensitive personal information, with certain exceptions in relation to citizens of foreign countries, persons born outside Denmark and information on whether a person is a member of the Danish National Church (*Folkekirken*). Most of the data on the population comes from administrative databases held by governmental agencies rather than census data. All inhabitants in Denmark are registered in the Central Population Register with a unique 10-digit personal number. Information on place and date of birth, sex, emigration and immigration status, addresses, civil status, as well as names and personal numbers of parents, spouses and children are all listed in the register. The personal number is a key that links data from other population databases for example on highest completed education, labour market attachment, income, use of day care, receipt of social benefits etc.<sup>40</sup>.

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<sup>39</sup> Denmark, Administrative order no. 322 of 21 April 2009 on Residence in Denmark for Foreigners Covered by the European Union Regulation (*the EU-residence order*) (*Bekendtgørelse om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)*) available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=124578](http://www.retsinformation.dk/Forms/R0710.aspx?id=124578). (accessed July 2014)

<sup>40</sup> EU, Eero Olli and Birgitte Kofod Olsen, 2005, Towards Common Measures for Discrimination Centre for Combating Ethnic Discrimination (Senter Mot Etnisk Diskriminering) and Danish Institute for Human Rights (Institut For Menneskettigheder) Part 1: Exploring possibilities for combining existing data for measuring ethnic discrimination.

Since 1989 Danish law has allowed two persons of the same sex to register their relationship (known as ‘registered partnership’) and with some few exceptions obtain the same legal status as a traditional different-sex marriage.

On 7 June 2012, a modification to the Act on Marriage (*Ægteskabsloven Æ1*) was passed in the Danish Parliament allowing same sex couples to marry in churches and city halls. The modification to the act came into effect on 15 June 2012. Due to the access to marriage for same sex couples, registration of partnership is no longer an option. Registered partnerships formed before this date are still recognized by the government, and couples in such a registered partnership can also request to have their registered partnership turned into a marriage.<sup>41</sup>

	Registered partnerships	Marriage between same-sex couples
2006	400	0
2007	425	0
2008	441	0
2009	388	0
2010	410	0
2011	346	0
2012	117	164

Figure demonstrating the number of registered partnerships and marriages between same-sex couples in the years 2006-2012. No numbers exist for 2013 as of yet. As marriage between same-sex couples was allowed on 15 June 2012, the number of marriages listed only covers the second half of 2012.<sup>42</sup>

The Danish Immigration Service does not possess statistics on LGBT persons seeking residence in Denmark. Since LGBT persons are equal to hetero/cis persons under Danish law, there is no available case law in this specific area.

Although LGBT persons are equal to hetero/cis persons under Danish law, the legal situation of third country national LGBT partners of EU citizens maybe worse than that of hetero/cis persons in similar situations. This situation could occur if the third country does not offer legal recognition of same sex relationships, for instance. If neither marriage nor a registered partnership is possible in the third country in question, this would prevent the LGBT couple from invoking the same rights as a hetero/cis couple within the context of freedom of movement, even though same sex marriage is legal in Denmark.

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<sup>41</sup> Denmark, The Act on Marriage, Consolidated act no. 1052 of 14 November 2012 (*Ægteskabsloven Æ1*, *lovbekendtgørelse nr. 1052 af 14. November 2012*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=140525>. Altered by act no. 532 of 12 June 2012 (lov nr. 532 af 12. juni 2012), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=142282>.

<sup>42</sup> Denmark, Statistics Denmark, State data bank available in Danish and English at: [statistikbanken.dk/statbank5a/default.asp?w=1422](http://statistikbanken.dk/statbank5a/default.asp?w=1422) (accessed July 2014)



### 3. Asylum and subsidiary protection

In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Denmark will not adopt Council Directive 2004/83/EC of 29 April 2004 on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Article 40 of the Preamble).

According to the 1951 United Nations Convention on the Status of Refugees, a refugee is a person who is outside his or her country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Asylum seekers whose applications Denmark has an obligation to treat and who are covered by the definition in the Refugee convention are entitled to asylum in Denmark, cf. Section 7(1) of Danish Aliens Act (*Udlændingeloven*)<sup>43</sup>.

In addition, Denmark grants protection in cases where it is obliged to do so as a state in order to comply with the international conventions it has ratified. For example, residence permits are granted to asylum seekers who risk the death penalty, torture, or inhumane or degrading treatment or punishment if they return to their country of origin, cf. Section 7(2) of the Aliens Act. Such a residence permit is referred to as *Protection-Status (B-status)*.

Asylum applications based on the applicant's sexual orientation and/or gender identity is – as any other application for asylum – considered under section 7 of the Danish Aliens Act.

Prior to 2013, if the applicants claimed to be at risk of being exposed to persecution or other forms of harm because of the applicant's sexual orientation and/or gender identity this would be a part of the assessment. In the legal practice of the Danish asylum authorities, applicants who have been granted a residence permit under section 7 of the Aliens Act with reference to their sexual orientation have been granted a residence permit according to section 7 (2) (subsidiary protection). This practice was the result of the assessment the authorities made of the specific circumstances of each individual case and not a decision in principle.

Regarding asylum and the legal position of LGBT persons, there has been a development in the way the Danish Refugee Appeals Board (*Flygtningenævnet*) handle decisions regarding asylum seeking LGBT persons.

The Danish Institute for Human Rights has contacted the NGO LGBT Asylum, who has informed us with the following information.

According to the assessment of LGBT- Asylum, LGBT persons with sexual orientation and/or gender identity as their motif for asylum were not, until November 2012, granted asylum after the Danish Aliens Act section 7 (1) (refugee status after the 1951 Refugee Convention and 1967 Protocol), but instead they could be granted asylum after the Danish Aliens Act section 7 (2) (recognition of the need for protection). After a decision by the Danish Refugee Appeals Board in November 2012 regarding a transgender woman, LGBT persons was then recognized as members of a particular social group because of their sexual orientation and/or gender identity, and could therefore be granted asylum with refugee status after section 7 (1).

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<sup>43</sup> Denmark, The Danish Aliens Act, Consolidated act no. 863 25 June 2013 (*Udlændingeloven, lovbekendtgørelse nr. 863 af 25. juni 2013*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=144310>.

LGBT Asylum has also informed that until January 2013, LGBT persons were not granted asylum unless there has been actual individual persecution in the country of origin. If they have held their sexual orientation and/or gender identity a secret – and therefore not being persecuted – they were not granted asylum (a so called demand of discretion).

In a decision from the Danish Refugee Appeals Board from January 2013, a homosexual man from Afghanistan was granted asylum with refugee status. He wasn't openly homosexual until he was in Denmark.<sup>44</sup>

LGTB partners are accepted as family members in the context of asylum and /or subsidiary protection in so far that they are co-habiting partners, on equal footing as different sex partners.

No statistics are available on the Danish case law, however the Refugee Appeals Board (*Flygtningenævnet*) publishes selected cases on their website.<sup>45</sup> The data on this website is only available back to 2004. 5 cases were published in 2004; one case in 2005, one case in 2007, one case in 2008 and 3 cases in 2009, where LGBT individuals were denied protection. In 2 published cases from 2005, one from 2008 and one from 2009 did LGBT people benefit from protection. In the case from 2009, a homosexual man received protection according to section 7(1) of the Aliens Act. The person is however also a stateless person from Lebanon, which in itself may entitle him to protection according to section 7(1). Therefore the case doesn't necessarily mean that homosexuality is considered as covered by the Refugee convention.

Statistics on the Danish asylum case law are still not available. From the selected cases of the Refugee Appeals Board (*Flygtningenævnet*), there has since 2009 been published the following: 4 cases were published in 2010; 3 cases in 2011, 2 cases in 2012 and 5 in 2013 where LGBT individuals were denied protection. In one published case from 2011 a homosexual man from Uganda was granted protection after section 7 (2). In one published case from 2012 and 4 from 2013 LGBT people was granted asylum after section 7 (1).

## Case law

In September 2005 the Danish Refugee Appeals Board granted a residence permit to a male citizen from Iran. The man had entered into a homosexual relationship with a school friend. The Board decided that there was no reason to assume that the applicant would risk being persecuted by the authorities because of his homosexuality if he returned to Iran. The Board however found that the applicant would risk assault as included in paragraph 7 (2) of the Aliens Act if he was returned to Iran. The decision was based on former assaults by the brothers of the applicant's boyfriend and the fact that the brothers and the applicant's father had threatened the applicants' life<sup>46</sup>. The applicant was therefore granted b-status residence permit.

In a case from 2011, the Danish Refugee Appeals Board denied a homosexual man from Morocco asylum with the reason that they did not find parts of his story credible and with the reason that even though homosexual activities are forbidden and criminalized in Morocco, it follows from the general background information that there is shown some tolerance towards homosexuality, especially in the

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<sup>44</sup> Information provided by LGBT Denmark on 30 January 2014.

<sup>45</sup> Denmark, The Refugee Appeals Board (Flygtningenævnet) [www.flygtningenævnet.dk](http://www.flygtningenævnet.dk) (Accessed July 2014)

<sup>46</sup> Please refer to Annex: Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case IIran/2005/15

larger cities.<sup>47</sup>

It is unlikely that this case will set precedent for the future, as the Refugee Appeals Board went very far in their search for arguments against asylum. Even under the usually restrictive jurisprudence of the Board, this case is the only example of the Board setting aside concerns about criminalization on account of urban and rural differences.

In a case from 2013, the Danish Refugee Appeals Board granted a homosexual woman from Uganda asylum after section 7 (1). The Board gave the following reasons for their decision; they found the applicant was able to give a cohesive and detailed explanation for her motif for asylum and found her story credible. The Board found that the applicant had made it probable that she is homosexual, and because of that had been a victim of assaults from both authorities and local population in Uganda. On these reasons and because of the general situation for homosexuals in Uganda, the Board found that she was in risk of persecution because of her membership of a particular social group if she returned to Uganda, and there for granted her asylum.<sup>48</sup>

One aspect that sets aside this case from the 2005 one is that, unlike the 2005 case, the Board – considered a general risk of persecution for all homosexuals to be enough to grant asylum. It is unclear whether the Board would have reached the same conclusion had the woman not also been assaulted by both the authorities and locals, but the general risk of persecution in the country was at least considered an argument in favour of granting asylum.

The National Expert has no knowledge of phallometric testing or similar or comparable practices being used when establishing the credibility of asylum claims based on sexual orientation. In Danish asylum cases the credibility of the asylum seekers story is often taken into consideration. If an asylum seeker claims to be the victim of persecution because of his or her sexual orientation the Danish asylum authorities will probably request an elaborating explanation concerning this issue. Whether an asylum seeker has a specific sexual orientation will however not be questioned unless specific circumstances or information gives reason to consider this unlikely.

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<sup>47</sup> Denmark, the Danish Refugee Appeals Board (*Flygtningenævnet*), decision maro/2011/1, available in Danish at: [www.flygtningenaevnet.dk/Templates/PraksisSoegeside.aspx?NRMODE=Published&NRNODEGUID=%7b70F54DDC-B66D-408B-AC3B-C96FD9767C36%7d&NRORIGINALURL=%2fda-dk%2fPraksis%2fPraksis%2ehtm&NRCACHEHINT=NoModifyGuest](http://www.flygtningenaevnet.dk/Templates/PraksisSoegeside.aspx?NRMODE=Published&NRNODEGUID=%7b70F54DDC-B66D-408B-AC3B-C96FD9767C36%7d&NRORIGINALURL=%2fda-dk%2fPraksis%2fPraksis%2ehtm&NRCACHEHINT=NoModifyGuest).

<sup>48</sup> Denmark, the Danish Refugee Appeals Board (*Flygtningenævnet*), decision ugan/2013/4, available in Danish at: [www.flygtningenaevnet.dk/Templates/PraksisSoegeside.aspx?NRMODE=Published&NRNODEGUID=%7b70F54DDC-B66D-408B-AC3B-C96FD9767C36%7d&NRORIGINALURL=%2fda-dk%2fPraksis%2fPraksis%2ehtm&NRCACHEHINT=NoModifyGuest](http://www.flygtningenaevnet.dk/Templates/PraksisSoegeside.aspx?NRMODE=Published&NRNODEGUID=%7b70F54DDC-B66D-408B-AC3B-C96FD9767C36%7d&NRORIGINALURL=%2fda-dk%2fPraksis%2fPraksis%2ehtm&NRCACHEHINT=NoModifyGuest).

## 4. Family reunification

In accordance with Article 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark will not adopt Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Article 18 of the Preamble).

If a person has relatives in Denmark, he or she can apply for a residence permit in accordance with the regulations on family reunification as defined in the Danish Aliens Act. Provided certain mandatory conditions are fulfilled, residence permits can be granted to: spouses, registered partners and cohabiting partners and children under 15 years of age. Residence permits are initially issued temporarily with a possibility of extension provided the original conditions for issuing the permit are still met. After an initial period of time determined by a person's specific situation, he or she can apply for a permanent residence permit. Normally, a residence permit gives the right to work in Denmark.

### Obtaining a residence permit

Pursuant to section 9 of the Aliens Act, a residence permit may be granted, upon application, to an alien over the age of 24 who cohabits at a shared residence, either in marriage or in regular cohabitation of prolonged duration, with a person permanently resident in Denmark over the age of 24 who is a Danish national, or a national of one of the other Nordic countries, or is issued with a residence permit as a refugee, or has held a permanent residence permit for Denmark for more than the last three years. Obtaining a residence permit under section 9(1) of the Danish Aliens Act, also requires that other conditions of mainly financial character are satisfied.

Denmark recognises the possibility to obtain a family reunification in relation to de facto cohabitation and recognise the existence of a registered partnership between individuals of the same sex. Hence, a same-sex spouse married to the third-country national legally residing in Denmark is considered a 'spouse' for purposes of family reunification. According Act no. 938 of 10 October 2005 on registered partnership (*om registreret partnerskab*) section 3, registered partnerships have the same legal consequences as traditional different sex marriages.<sup>49</sup>

In accordance with Denmark's international obligations to protect the right to family life, exemptions from the following requirements can be granted to certain groups of applicants: the 24-year requirement, the attachment requirement, the housing requirement, the collateral requirement, and the requirement that a person's spouse/partner has not received certain types of public assistance within the past 12 months.

Exemptions from the 24-year requirement, the housing requirement, the collateral requirement and the self-support requirement can be made if there is particular special reasons for this. The Danish Immigrations Service gives the following as examples: the person already living in Denmark is a refugee, the person living in Denmark has children under 18 living at home who have formed an

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<sup>49</sup> With some few exceptions listed in Section 4 of the Act including (non-exhaustively): Adoption; special rules concerning one party of the marriage based on gender alone;

individual attachment to Denmark or are seriously ill.<sup>50</sup>

The attachment requirement does not apply if the person living in Denmark has held Danish citizenship for over 26 years or was born and raised in Denmark, or came to Denmark as a small child, and has been a legal resident in Denmark for over 26 years.<sup>51</sup>

As mentioned in the freedom of movement chapter, The Danish Immigration Service does not possess statistics on LGBT persons seeking residence in Denmark. Neither case law nor statistics are available in this area.

As with freedom of movement, the legal situation of LGBT partners of Danish citizens or residents could be inferior to that of hetero/cis persons if the third country in which they live does not allow for the recognition of same sex relationships either through marriage or registered partnership, even though Denmark does not formally differentiate between LGBT and hetero/cis relationships.

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<sup>50</sup> Denmark, The Danish Immigration Service (*Udlændingestyrelsen*), information available in English at: [www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/family\\_reunification.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification.htm). (accessed July 2014)

<sup>51</sup> Denmark, The Danish Immigration Service (*Udlændingestyrelsen*), information available in English at: [www.nyidanmark.dk/en-us/coming\\_to\\_dk/familyreunification/spouses/spouses.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/spouses.htm). (accessed July 2014)

## 5. Freedom of assembly

Freedom of assembly is constitutionally protected (as well as protected according to international human rights obligations)

### **Section 78, part 1 of the Danish Constitution (1849):**

*“The citizens shall be entitled without previous permission to form associations for any lawful purpose.”*

### **Section 79 of the Danish Constitution:**

*“The citizens shall without previous permission be entitled to assemble unarmed. The police shall be entitled to be present at public meetings. Open-air meetings may be prohibited when it is feared that they may constitute a danger to the public peace.”*

According to the legal commentary, “Danger to the public peace” implies a danger of violation of common interests of considerable value, for instance if an assembly constitutes a threat to the lives or welfare of citizens or commits widespread destruction of property.

In accordance to section 7 of the Danish *act no. 444 of 09.06.2004 om Politiets virksomhed [on the activities of the police]*, it is the duty of the police to secure the citizens right to assembly.

### **Section 80 of the Danish Constitution:**

*“In case of riots the armed forces, unless attacked, may take action only after the crowd in the name of the King and the Law has three times been called upon to disperse, and such warning has been unheeded.”*

In accordance to section 9 of the Danish act on the activities of the police, it is the duty of the police to prevent disturbances which constitutes a danger to the public peace, public order, to the lives of single persons or to the public safety.

There have been no anti-LGBT demonstrations in recent times in Denmark and no demonstrations with similar or overlapping aims. Similarly, there are no relevant statistics within the area and no case law of note.

There exists no specific regulation regarding the handling of public meetings related to anti-LGBT demonstrations. The primary regulation concerning public meetings in general is the sections of the Danish constitution described above.

## 6. Criminal law

According to The Danish Criminal Code Consolidated Act no 1028 of 22 August 2013 (*Straffeloven*)<sup>52</sup> section 266 b (1) any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation shall be liable to a fine or to imprisonment for any term not exceeding two years.

According to section 266 b, subsection 2, it shall be considered an aggravating circumstance if the conduct is characterised as propaganda. The Danish Criminal Code, section 266 b is subject to narrow interpretation out of regard for the right to freedom of expression and the principle of legality in criminal law.

Section 81 no. 6 of the Criminal Code<sup>53</sup> spells out explicitly that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation, etc., of other individuals.<sup>54</sup> Section 81, no. 6 is also commonly called the hate crime provision.

According to guidelines from Commissioner of Police (*Rigspolitichefen*), the Danish police districts have since 1992 reported to the Danish Security and Intelligence Service on criminal acts which are deemed to be religious or racial motivated. The aim is to monitor if there are signs of a more systematic or organised character of the criminal activity in these areas. As of 1 January 2009, the reports have been expanded to include criminal acts with other extremist motivations This also includes registration of crimes committed on ground of sexual orientation<sup>55</sup>.

According to section 234 of the Danish Penal Code, it is illegal to sell obscene pictures or items to persons below the age of 16. If the material in question is not sold it will not be covered by this provision. It might however be covered by section 232 of the Danish Penal code which states that it is illegal to commit offences against public decency.

There is no recent case law which defines what is considered obscene within the scope of sections 232 and 234. The official Danish Legal commentary *Karnov* is of the opinion that in a present day context pictures or film containing nudity or showing sexual intercourse is not considered obscene, unless the material contains pictures of homosexual, sadistic or sexually perverted contents.<sup>56</sup> There is however no recent Danish case law to support this distinction. It should also be underlined that in the opinion of the expert it is more than doubtful that drawing parallel from homosexuality, sadism and sexual perversion putting

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<sup>52</sup> Denmark, the Danish Criminal Code, Consolidated act no. 1028 of 29 August 2013 (*Straffeloven, lovbekendtgørelse nr. 1028 af 29. august 2013*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152827>.

<sup>53</sup> Denmark, Amendment of Danish Criminal Code (*Straffeloven*) by Act No. 218 of 31 March 2004 [www.retsinformation.dk/Forms/r0710.aspx?id=152827](https://www.retsinformation.dk/Forms/r0710.aspx?id=152827) (accessed July 2014)

<sup>54</sup> Denmark, Ministry of Foreign Affairs (*Udenrigsministeriet*) Fifth Periodic Report of Denmark Concerning The International Covenant On Civil and Political Rights – April 2007

<sup>55</sup> Denmark, the Danish Security and Intelligence Service (*Politiets Efterretningstjeneste*), 23 December 2008, available in Danish at: [https://www.pet.dk/~media/Forebyggende%20sikkerhed/RACI-rapporter/ny\\_RACI.ashx](https://www.pet.dk/~media/Forebyggende%20sikkerhed/RACI-rapporter/ny_RACI.ashx)

<sup>56</sup> Karnov, Information on the Danish Criminal Code, (*Information om LBKG 2009-10-29 nr 1034 Straffeloven*), note 929 (available at [www.thomson.dk](http://www.thomson.dk))

them into one single category of obscenity will be valid in a Danish court of law anno 2010. Hence a new up to date wording of the official commentary is recommended, which should reflect the quiet liberal present day conditions of the Danish society in this aspect. As of 28 February 2014, the outdated definition still exists in the Karnov legal commentary.

According to Administrative order concerning the securing of public order and protection of individuals and the public safety by the police, and the access to initiate interim measures by the police (Administrative order on police regulation (*om politiets sikring af den offentlige orden og beskyttelse af enkeltpersoners og den offentlige sikkerhed mv., samt politiets adgang til at iværksætte midlertidige foranstaltninger (Ordensbekendtgørelsen)*)<sup>57</sup> section 3(2), it is prohibited to act in an indecent or offensive manner which is able to molest others or cause public indignation.

Section 9 prohibits the posting or distribution of posters or exhibition, sale or distribution of pictures or written material which is able to cause public disturbance or contains offensive content.

In Denmark, there is no other legislation similar to the Lithuanian law banning materials that agitate for homosexual, bisexual and polygamous relations from schools or public places and media where they could be viewed by children.

One hate-crime case that received publicity in 2013 was that of a person, who is a trans person and who was assaulted with a hammer in a public place. The person's assailant turned himself in to the police and on 24 October 2013, he was found guilty under section 81, no. 6 in the Danish Criminal Code described above, and was sentenced to one year and three months in prison.<sup>58</sup>

The Danish anti-discrimination laws are mostly civic laws and are for the most parts implementations of the anti-discrimination EU directives.

Beside from these civic bans on discrimination, there is a Danish criminal law that also forbids and criminalize discrimination when buying goods and services on grounds of race, skin colour, national or ethnic origin, belief or sexual orientation.<sup>59</sup>

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<sup>57</sup> Denmark, Administrative order concerning the securing of public order and protection of individuals and the public safety by the police, and the access to initiate interim measures by the police (Administrative order on police regulation no. 511 if 20 June 2005, amended by law no. 249 if 30 March 2011 (*om politiets sikring af den offentlige orden og beskyttelse af enkeltpersoners og den offentlige sikkerhed mv., samt politiets adgang til at iværksætte midlertidige foranstaltninger (Ordensbekendtgørelsen)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=2113>.

<sup>58</sup> Denmark, Danish Broadcasting Corporation (*Danmarks Radio*), 25 October 2013, "Fighting hatecrimes" ("*Til kamp mod hadforbrydelser*"), available in Danish at: [www.dr.dk/Nyheder/Politik/KV13/Artikler/P4\\_Koebenhavn/2013/10/25/080820.htm](http://www.dr.dk/Nyheder/Politik/KV13/Artikler/P4_Koebenhavn/2013/10/25/080820.htm)

<sup>59</sup> Denmark, Act on prohibition of differential treatment on grounds of race etc., Consolidated act no. 626 of 29 September 1987 (*Lovbekendtgørelse nr. 626 af 29. september 1987 om forbud mod forskelsbehandling på grund af race m.v.*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=59249>.



## 7. Transgender issues

The Gender Equality Board handled two complaints regarding discrimination towards transsexual persons. The task of the Gender Equality Board was to handle complaints about specific cases of differential treatment on the basis of gender. The jurisdiction of the Gender Equality Board was transferred to The Board of Equal Treatment in 2009. Since then, The Board of Equal Treatment has decided on 3 cases involving transgender people<sup>60</sup>.

There is no official judicial definition on transgender or transvestites in Denmark. The Board of Equal Treatment has in one case defined a transsexual person as “a person who, for example, is born as a man and who wears female clothes and over a number of years desires another gender identity, evidenced by undergoing medicinal and surgical actions”<sup>61</sup>. But the term *transgender people* must be seen as an umbrella term referring to a group of people who differ from traditional gender norms and includes *transgender people* (individuals who identify with the opposite gender and sometimes desire to change their body to match their gender), *transvestites* (individuals who cross-dress to occasionally identify with the opposite gender), and *intersexuals* (individuals with physical characteristic of both sexes)<sup>62</sup>.

Gender reassignment is regulated in the Danish Health Care Act (*Sundhedsloven*)<sup>63</sup>, section 115. The medical designation for transsexual is ‘Gender Identity Disorder’. The Sexological Clinic at the National Hospital of Denmark conducts an evaluation of whether a person can be described as a transsexual. The international organisation *the World Professional Association for Transgender Health (WPATH)* has drawn up medical and ethical guidelines for treatment of transsexuality (Standards of Care)<sup>64</sup>. Observation and treatment of transsexuals in Denmark take place in conformity with these guidelines according to Sexological Clinic.<sup>65</sup>

Section 266 b of the Criminal Code prohibits the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation (introduced by Act no. 357 in 1987). However, it has also been argued in the commented laws in Karnov, that the area of protection as it is interpreted according to the preparatory works is too broad and it should be interpreted as sexual orientation only (homo-, hetero-, and bi-sexual orientation). There is no case law shedding light on this issue as of 28 February 2014.

On 3 May 2013, Manu Sareen, the Minister of Gender Equality, explained in the Danish parliament,

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<sup>60</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), list of decisions available in Danish: <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/default.aspx>

<sup>61</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), decision no. 171/2013, 28 August 2013, available in Danish at: <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1247&type=Afgoerelse>

<sup>62</sup> UN, World Health Organization (WHO) International Classification of Diseases, Diagnosis System ICD10, 2010, [www.who.int/classification/icd/en](http://www.who.int/classification/icd/en) (accessed July 2014)

<sup>63</sup> Denmark, the Danish Health Care Act (*Sundhedsloven*), Consolidated act no. 913 of 13 July 2010 (*Sundhedsloven, lovbekendtgørelse nr. 913 af 13. juli 2010*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=130455>.

<sup>64</sup> WPATH, Standards of Care, 7th version, available at: [http://www.wpath.org/site\\_page.cfm?pk\\_association\\_webpage\\_menu=1351&pk\\_association\\_webpage=3926](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926).

<sup>65</sup> Denmark, Capital Region of Denmark’s Psychiatric Hospital (*Region Hovedstads Psykiatrisk Hospital*) Sexological Clinic (*Sexologisk Klinik*) [www.sexologi.rh.dk](http://www.sexologi.rh.dk) (accessed July 2014)

that gender identity is included in the definition of “sexual orientation” in section 266 b.<sup>66</sup>

According to subsection 2 of section 266 b of the Danish Criminal Code (*Straffeloven*) (Prohibition of Hate Speech), it shall be considered an aggravating circumstance if the conduct is characterised as propaganda.

Section 81 no. 6 of the Danish Criminal Code<sup>67</sup>: The section does not deal with hate speech, but with all other violations of the Danish Criminal Code (violence, arson etc.) This provision now spells out explicitly that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation, etc., of other individuals (probably including transvestitism / transsexualism and sadomasochism, but not prohibited sexual behaviour such as paedophilia).

The above-mentioned case (section 6, last section) demonstrates that transsexualism is included under section 81 no. 6 of the Danish Criminal Code.

In relation to the Act on the Prohibition of Differential Treatment in the Labour Market, sexual orientation should be interpreted in relation to Council Directive 2000/78/EC.

There doesn't seem to be any differences of treatment in regard to legislation discussed in the remainder of the study between transgender people and other LGBT people. Prior to the adoption and entry into force of the new Act on the Board of Equal Treatment it seemed to be the case that transgender people could submit a case regarding discrimination within the labour market to the to the Gender Equality Board (now closed down) whereas other LGBT persons did not have this possibility (discrimination based on sexual orientation). However, with the establishment of the Board of Equal Treatment, this differential approach of transgender vis-à-vis other LGBT ceased to exist. Members of trade unions can only file a complaint to the Board of Equal Treatment if the trade union can or will not bring the case to the special machinery for settlement of industrial disputes. Attention is drawn to the fact that the board only have written proceedings. The board will therefore reject cases which call for a regular production of evidence in the form of oral statements from the parties or examination or witnesses<sup>68</sup>.

The Danish civil registration numbers are gender specific. Female children are given numbers with even end numbers and male children are given numbers with odd end numbers.<sup>69</sup> It is possible to change ones civil registration number from even end to odd end (or the opposite) if the person has been castrated and undergone other gender reassignment treatments (see the requirements for gender reassignment treatment below).<sup>70</sup>

The Danish Government has presented a draft for a bill amending the Act on the Civil Registration

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<sup>66</sup> Denmark, Minutes from the debate in the Danish Parliament (*Folketinget*) regarding proposal B 28 of 2012-2013 on May 2013 [www.ft.dk/samling/20121/beslutningsforslag/b28/bilag/2/1252625/index.htm](http://www.ft.dk/samling/20121/beslutningsforslag/b28/bilag/2/1252625/index.htm)

<sup>67</sup> Denmark, Amendment to the Danish Criminal Code (*Straffeloven*) by Act No. 218 of 31 March 2004

<sup>68</sup> Denmark, Act on Equality Between Men and Women (Lov om ligestilling mellem mænd og kvinder (*Ligestillingsloven*), Consolidated act no. 1678 19 December 2013 – (*Lovbekendtgørelse nr. 1678 af 19. December 2013*), available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=160578](http://www.retsinformation.dk/Forms/R0710.aspx?id=160578) and Act on the Board of Equal treatment (*Lov om Ligebehandlingsnævnet nr. 905 af 3. september 2013*), no. 905 of 3 September 2012 available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=143051](http://www.retsinformation.dk/Forms/R0710.aspx?id=143051).

<sup>69</sup> Denmark, The Civil Registration System (*Den centrale personregistersystem*), information on the system can be found in English at: [www.cpr.dk/in-english/executive-order-on-the-civil-registration-system-act/](http://www.cpr.dk/in-english/executive-order-on-the-civil-registration-system-act/).

<sup>70</sup> Denmark, The Civil Registration System (*Den centrale Personregistersystem*), information available in Danish at: [www.cpr.dk/borgere/kan-jeg-faa-et-nyt-personnummer/](http://www.cpr.dk/borgere/kan-jeg-faa-et-nyt-personnummer/).

System. The bill purposes that a person over the age of 18 can change his or her civil registration number by filing an application to the Ministry for Economic Affairs and the Interior where the person states, that the reason for the application is that the person identifies as the opposite gender and the person confirms the application six months later.<sup>71</sup>

On June 11 2014, this bill was adopted in the Danish Parliament. The amendment to the Act on the Civil Registration System will come into effect on 1 September 2014<sup>72</sup>. On 18 June 2014, the new guide advising authorities on the requirements for the treatment of patients with gender identity issues was presented<sup>73</sup>. The old guide, written in 2006, dealt solely with the matter of castration as a prerequisite for juridical gender change. The new guide concerns all aspects of gender reassignment and treatment of gender identity issues and is targeted at medical professionals across multiple specialties, including psychiatry, gynaecology, plastic surgery and paediatrics.

In accordance with section 13, subsection 2 of the Danish Act on Names (*Navneloven*)<sup>74</sup> a first name may not denote the opposite gender in relation to the individual who will bear the name. In accordance with section 4, subsection 4 a family name cannot be adopted pursuant to subsection (1) (vi), if it denotes a member of the opposite gender in relation to the individual who intends to adopt the name. The Minister for Family and Consumer Affairs (*Familie- og forbrugsministeren*) may specify rules that exempt transsexual individuals from the abovementioned provisions. The Administrative Order on Names (*Bekendtgørelse om navne*)<sup>75</sup> states in section 13 that a person who has not had a gender reassignment operation, but who has been evaluated as transsexual by the Sexological Clinic at the National Hospital of Denmark - or persons in entirely comparable circumstance -, can obtain a name change. If the evaluation from the Sexological Clinic raises any doubts about whether the person is transsexual, a supplementary evaluation can be obtained from the Retslægerådet<sup>76</sup>. It follows from the comments to the bill amending the Danish Act of Names, that the exception should also allow transpersons, who cannot be diagnosed as transsexuals by Sexological Clinic, but through a number of years often has dressed as the opposite gender and after thorough consideration has the need of dressing and living as the opposite gender and therefore present themselves as transsexuals, but mainly because of the person occasionally still finds pleasure in using his or hers genitals sexually, cannot be seen as transsexual in the psychiatric manner.<sup>77</sup>

It is not described in the Administrative Order on Names what “entirely comparable circumstances”

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<sup>71</sup> Denmark, Draft bill amending the Act on the Civil Registration System (*Centrale Person Registrerings System*) allocating civil registration numbers to persons- the numbers identify gender (male/female)) (*Udkast til forslag om lov om ændring af lov om Det Centrale Personregister (Tildeling af nyt personnummer til personer, der oplever sig som tilhørende det andet køn)*), information available in Danish at: [www.hoeringsportalen.dk/Hearing/Details/23614](http://www.hoeringsportalen.dk/Hearing/Details/23614).

<sup>72</sup> Denmark, Text to the amendments to the Act on the Civil Registration System (*Den centrale personregistersystem*) available in Danish at [www.ft.dk/samling/20131/lovforslag/1182/html\\_som\\_vedtaget.htm](http://www.ft.dk/samling/20131/lovforslag/1182/html_som_vedtaget.htm)

<sup>73</sup> Denmark, Danish Health and Medicines Authority ( Sundhedsstyrelsen) 2 June 2014, Draft of new guide Guide on Counseling on diagnoses and treatment of transgender (Udkast til Vejledning om udredning og behandling af transkønnede) available in Danish at [www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf](http://www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf) (accessed June and July 2014)

<sup>74</sup> Denmark, the Danish Act on Names, Consolidated act no. 392 of 1 May 2012 (*Navneloven, lovbekendtgørelse nr. 392 af 1. maj 2012*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=141282>.

<sup>75</sup> Denmark, the Administrative Order on Names no. 1324 of 27 November 2013 (*Bekendtgørelse om navne nr. 1324 af 27. november 2013*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=159135>.

<sup>76</sup> The Medico-legal Council (*Retslægerådet*) is placed under the Danish Ministry of Justice.

<sup>77</sup> Denmark, bill no. 107 of 28 January 2009, amending the Act of Names (Access to taking on the name of a deceased spouse's middle or last name etc.) (*Lovforslag nr. 107 af 28. Januar 2009 om ændring af navneloven (Adgang til at tage en afdød ægtefælles mellem- og efternavn m.v.)*), information available in Danish at: [http://www.ft.dk/samling/20081/lovforslag/1107/html\\_som\\_fremsat.htm](http://www.ft.dk/samling/20081/lovforslag/1107/html_som_fremsat.htm).

covers, but bearing in mind, that the Sexological Clinic is a psychiatric facility and that transsexualism is a diagnosis – it could imply that it covers situations, where the person applying for a change of name, cannot be diagnosed with transsexualism, but “almost” so to speak.

If the bill amending the Act on the Civil Registration System mentioned above will pass, this will also have an impact on access to change first name.

In the period 2000-2007, 20 persons were approved for a first name change equating to their new gender by the Sexological Clinic. In the period 2008-2014, up to 4 April 2014, 45 persons were approved for a first name change to a name belonging to another gender than their own.<sup>78</sup> As mentioned above, the Clinic has to confirm that the person is transsexual, or is in entirely comparable circumstances.<sup>79</sup>

A person can change the gender marker in his or her passport to the opposite gender if a person has been castrated and undergone other gender reassignment treatments (see the requirements for gender reassignment treatment below). A person who has not been castrated and has undergone other gender reassignment treatments, but who has been evaluated as transsexual by the Sexological Clinic at the National Hospital of Denmark - or persons in entirely comparable circumstance -, can have his or hers gender marker change to “X”. If the evaluation from the Sexological Clinic raises any doubts about whether the person is transsexual, a supplementary evaluation can be obtained from the Retslægerådet.<sup>80</sup>

In Denmark there is no specific law regarding gender reassignment operations. The Danish National Board of Health (*Sundhedsstyrelsen*) handles application for gender reassignment surgery with reference to chapter 33 in the Act on Health Care<sup>81</sup> and Administrative Order regarding sterilisation and castration, including in reference to gender reassignment<sup>82</sup>. According to section 115, subsection 1 of the Act on Health, a person can receive permission for castration<sup>83</sup> in order to obtain gender reassignment if the applicant’s sexual instinct causes substantial psychological suffering or social deterioration. In accordance with subsection 3, the castration of persons under 21 years is - as a fundamental principle - not allowed.

In the Ministry of Health and Prevention’s Guidelines on castration in order to undertake gender reassignment<sup>84</sup>, it is mentioned that besides fulfilling the requirements of section 115 in the Act on Health, the applicant has to show that his or her wish for gender reassignment is consistent and that the applicant understands the consequences of the operation.

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<sup>78</sup> Information received by email from The National Social Appeals Board (*Ankestyrelsen*) on 10 April 2014.

<sup>79</sup> Information received by email from the Family Administration of the Ministry of Justice (*Familiestyrelsen*) ().

<sup>80</sup> Denmark, the Act on Passports etc., Consolidated act no. 1337 of 28 November 2013 (*Bekendtgørelse om pas m.v. nr. 1337 af 28. november 2013*), section 4, subsection 5 and 6, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=159226>.

<sup>81</sup> Denmark, The Act on Health Care, Consolidated act no. 913 of 13 July 2010 (*Sundhedsloven, lovbekendtgørelse nr. 913 af 13. juli 2010*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=130455>.

<sup>82</sup> Denmark, Administrative Order no. 14 of 10 January 2006 regarding sterilisation and castration, including in reference to gender reassignment (*Bekendtgørelse nr. 14 af 10. januar 2006 om sterilisation og kastration, herunder med henblik på kønsskifte*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=10133>.

<sup>83</sup> The definition of castration is surgical intervention where the sexual glands are removed or treatment in order to permanently inactivate the sexual glands. Section 104 in the Act on Health (*Sundhedsloven*)

<sup>84</sup> Denmark, Ministry of Health and Prevention’s Guidelines on castration in order to undertake gender reassignment no. 10077 of 27 November 2006 (*Vejledning nr. 10077 af 27. november 2006 om kastration med henblik på kønsskifte*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=11017>.

The Danish Government has presented a draft for a bill changing the requirements for castration in section 115, subsection 1 of the Act on Health (Sundhedsloven). The bill purposes that the requirements of the applicant's sexual instinct causes substantial psychological suffering or social deterioration will be removed from the law, and instead include the requirements of the Guideline on castration in the Act on Health (the applicant has a consistent wish for gender reassignment and understands the consequences of the operation). The bill also purpose the age requirement will be changed from 21 to 18.<sup>85</sup>

As a fundamental principle, the Danish National Board of Health does not give permission for castration for the purposes of gender reassignment surgery unless the applicant has undergone an observation period at an approved clinic (i.e. the Sexological Clinic at the National Hospital of Denmark) for at least two years. The reason is that castration is a major and irreversible surgical intervention.

After gender reassignment surgery, the Danish National Board of Health will receive information from the hospital which undertook the gender reassignment operation. On this basis, the Danish National Board of Health will officially recognise the gender reassignment and ensure that the person's new gender (and new name) is recorded on the national register. The Danish National Board of Health also handles cases regarding the recognition of gender reassignment operations undertaken abroad.

If the Danish National Board of Health refuses an applicant castration in order to obtain gender reassignment, the applicant cannot bring the refusal before another administrative authority. He or she has to go through the normal judicial system, i.e. the courts.

Regarding adoption, the former Minister of Interior and Health answered in a speech on 11 May 2007 during a parliamentary debate that transsexuality cannot form an objective basis for the refusal of permission to adopt a child in Denmark. When considering an application for child adoption, the authorities will look at the applicant's age, health, social skills and criminal record in order to make an assessment of whether the adoption will be of benefit of the child<sup>86</sup>.

The Gender Equality Board (*Ligestillingsnævnet*) handled two complaints regarding discrimination towards trans persons. As mentioned above, the jurisdiction of the Gender Equality Board was transferred to The Board of Equal Treatment in 2009. Since then, The Board of Equal Treatment has decided on 5 cases involving transgender people<sup>87</sup>. All the cases are described in annex 1. The task of the Board of Equal Treatment is to decide on complaints regarding specific cases of discrimination within the labour marked on the grounds of gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin – and outside of the labour marked on the grounds of gender, race or ethnic origin. Any citizen can complain free of

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<sup>85</sup> Denmark, draft for bill amending the Act on Health and the law on assisted reproduction (amended requirements for castration and adjustments because of the introduction of legal gender reassignment) (Udkast til forslag til lov om ændring af sundhedsloven og lov om assisteret reproduktion i forbindelse med behandling, diagnostik og forskning m.v. (*Ændrede kriterier for kastration og justeringer som følge af indførsel af juridisk kønsskifte m.v.*), information in Danish at: <http://hoeringsportalen.dk/Hearing/Details/23618>.

<sup>86</sup> Denmark, 1st debate in Parliament on proposal B 142 den 11. maj 2007. Minister of Interior and Health speech on 11 May 2007 (*Indenrigs- og Sundhedsministerens tale*). The legislation under consideration at the time was not voted on and no further development has since then taken place, as of 16 April 2014.

<sup>87</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), list of decisions available in Danish: <http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/default.aspx>

charge to the Board regarding discrimination on these grounds within these areas. This free access aims to give the citizen easy access to a hearing of a complaint about discrimination. A decision may order that the complainant is granted compensation or that a dismissal is overruled.

In the three cases decided by the Board of Equal Treatment regarding transsexual persons and discrimination, the board has used the term “gender identity” (kønsidentitet) even though none of the anti-discrimination laws uses this term. This must be interpreted as though the Board interprets the ban on discrimination on grounds of gender as covering gender identity. The Board does not however state what they exactly mean by gender identity. There has not been any cases where the board has used the term “gender expression”, or any cases where it’s clear that the complainant identifies with the gender assigned to him or her at birth, but has a different gender expression (typically called a cross dresser) – and experienced discrimination on this ground.

The Danish anti-discrimination laws are mostly civic laws and are for the most parts implementations of the anti-discrimination EU directives. The Board of Equal Treatment can only decide cases that are within the scope of these laws.

Beside from these civic bans on discrimination, there is a Danish criminal law that also forbids and criminalize discrimination when buying goods and services on grounds of race, skin colour, national or ethnic origin, belief or sexual orientation.<sup>88</sup> Since being a criminal law, this law is enforced by the police and the public prosecutor.

There is one published case from 2007 regarding discrimination of a transperson handled after this law by the police. A cross dresser was discriminated against because of his gender expression in a television store by the director and member of the board of the business. The director was fined 2000 DKK and the company 1000 DKK.<sup>89</sup>

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<sup>88</sup> Denmark, Act on prohibition of differential treatment on grounds of race etc., Consolidated act no. 626 of 29 September 1987 (*Lovbekendtgørelse nr. 626 af 29. september 1987 om forbud mod forskelsbehandling på grund af race m.v.*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=59249>.

<sup>89</sup> Denmark, The Prosecutor General of Denmark (*Anklagemyndigheden*), Report on the use of section 81, no. 6 and 7 of the Danish Criminal Code and cases regarding violation of the Act on ban against differential treatment on the grounds of race etc. (*Redegørelse om anvendelse af straffelovens § 81, nr. 6 og 7, samt sager om overtrædelse af lov om forbud mod forskelsbehandling på grund af race m.v.*), available in Danish at: [www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=www.anklagemyndigheden.dk/sites/vidensbase/Documents/Redegørelse%20hatecrime.pdf](http://www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=www.anklagemyndigheden.dk/sites/vidensbase/Documents/Redegørelse%20hatecrime.pdf).

## 8. Miscellaneous

### 8.1 Parenthood

In 1999 Denmark was the first country in the world to allow two legal parents of the same gender, by allowing stepchild adoption by a parent's registered partner.<sup>90</sup>

In 2009 it was allowed for a co-mother to adopt a child from the time of birth if the child was conceived by artificial insemination with semen from an anonymous donor.<sup>91</sup> This is only possible if the insemination has taken place in a clinic and not at home.<sup>92</sup>

In August 2013 gay men was allowed to be known semen donors.<sup>93</sup>

In December 2013 it became possible for a co-mother to become the legal co-parent from the birth of the child even when the biological father is not anonymous. After the amendment of the Children's Act the co-mother and the biological father can make a binding agreement of who is to be the legal co-parent. Before this amendment it was only possible for the co-mother to adopt the child (after two and a half years after the birth of the child) if the father was not anonymous. After the amendment it also became possible for a known donor to become the legal father, if the partner of the mother gave her consent to this. It is still not possible to be three legal parents of one child.<sup>94</sup>

### 8.2 The Faroe Islands and Greenland

The Faroe Islands and Greenland are parts of the Kingdom of Denmark. According to the Danish Constitution (*Grundloven*)<sup>95</sup> Section 19, the government has the mandate to enter into international legal obligations (treaties) as well as the responsibility to carry out foreign policy. In certain limited areas, an enabling act has been entered into with Greenland and the Faroe Islands on acceding to

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<sup>90</sup> Denmark, Act no. 360 of 2 June 1999, amending the Act on Registered Partnership (amending the requirements on registration of partnerships and stepchild adoption for registered partners) (*Lov nr. 360 af 2. juni 1999 om ændring af lov om registreret partnerskab (Ændring af betingelserne for indgåelse af registreret partnerskab og stedbarns adoption for registrerede partnere)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=300>.

<sup>91</sup> Denmark, Act no. 318 of 28 April 2009, amending the Act on Social Service (Continuity in placing of a child etc.) (*Lov nr. 318 af 28. april 2009 om ændring af lov om social service (Kontinuitet i anbringelse m.v.)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=124538>.

<sup>92</sup> Denmark, LGBT- Denmark (LGBT- Ngo in Denmark), Comments on the draft for the bill amending the Act of Adoption, 20 January 2014 (*Høringssvar vedr. udkast til forslag til lov om ændring af adoptionsloven (Adgang for samlevende til at adoptere sammen)*), available in Danish at: [www.panbloggen.files.wordpress.com/2014/01/20140119\\_lgbtdk\\_sm\\_hoeringssvar\\_adoption.pdf](http://www.panbloggen.files.wordpress.com/2014/01/20140119_lgbtdk_sm_hoeringssvar_adoption.pdf).

<sup>93</sup> Denmark, The Danish Health and Medicines Authority, (*Sundhedsstyrelsen*), Guidance note for fertility clinics, 23 August 2013, available in Danish at: [www.panbloggen.files.wordpress.com/2013/08/20130823\\_screening\\_af\\_kendt\\_donor.pdf](http://www.panbloggen.files.wordpress.com/2013/08/20130823_screening_af_kendt_donor.pdf).

<sup>94</sup> Denmark, Act no. 652 of 12 June 2013, amending the Children's Act, the Act on Adoption, the Administration of Justice Act and others (Co-motherhood etc.) (*Lov nr. 652 af 12. juni 2013 om ændring af børneloven, lov om adoption, retsplejeloven og forskellige andre love (Medmoderskab m.v.)*), available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=152306](http://www.retsinformation.dk/Forms/R0710.aspx?id=152306).

<sup>95</sup> Denmark, the Danish Constitution, act no. 169 of 5 Juni 1953 (*Danmarks Riges Grundlov, Lov nr. 169 af 5. juni 1953*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>.

international treaties. This arrangement does not include international treaties that apply to Denmark or which are negotiated by an international organisation with Denmark as a member. Human rights are specifically exempt from these agreements.

Home rule was established in the Faroe Islands in 1948 and in Greenland in 1978. In the case of Greenland, some areas have not been taken over by the home rule government. These include administration of justice, police, prison and probation service, criminal justice and matters concerning aliens. In the case of the Faroe Islands, administration of justice, police, prison and probation service and criminal justice are among the areas not transferred.

Act no. 285 of April 29, 1992 on Incorporation of the European Human Rights Convention is put into force by Order no. 814 of 18 September 2001 and for the Faroe Islands by Order no. 136 of 25 February 2000. Neither the Faroe Islands nor Greenland are members of the EU.

### **The rights of homosexuals in the Faroe Islands.**

In the autumn of 2006, the Danish media devoted substantial attention to discrimination against homosexuals in the Faroe Islands. Whereas Article 266 b of the Danish Criminal Code (*Straffeloven*)<sup>96</sup> prohibits hate speech based on race, colour, and national or ethnic origin, as well as sexual orientation (since 1987), Faroese legislation only prohibits hate speech based on religion and ethnicity. An amendment was adopted by the Faroese Parliament (*Lagting*) to include prohibition of hate speech on the ground of sexual orientation in the Faroese Criminal Code.

### **The rights of homosexuals in Greenland**

In 1994, the Ministry of Justice in Denmark in consultation with the Cabinet of the Greenland Home Rule Government (*Landsstyre*) appointed a joint Danish and Greenland commission to review the Greenland justice system. The primary task of the Commission on Greenland's Judicial System (*Den Grønlandske Retsvæsenkommission*) was to review the Administration of Justice Act for Greenland (*Retsplejelov for Grønland*) and the Greenland Criminal Code (*Den Grønlandske Straffelov*) and to propose measures for modernisation and adjustments where appropriate in accordance with international human rights standards. The final report of the Commission on Greenland's Judicial System (*Den Grønlandske Retsvæsenkommission*) was submitted to the Danish Government and to the Greenland Home Rule Government in August 2004. According to section 71 (a) of the Greenland Criminal Code, a person who publicly or with the intent of dissemination to a wider circle expresses or in any other way proclaims a statement by which a group of persons is threatened, ridiculed, or demeaned because of race, skin colour, national or ethnic origin or belief shall be sentenced. The Commission on Greenland's Judicial System proposed that the section should be amended to include 'sexual orientation', corresponding to the parallel section of the Danish Criminal Code.

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<sup>96</sup> Denmark, the Danish Criminal Code, Consolidated act no. 1028 of 29 August 2013 (*Straffeloven, lovbekendtgørelse nr. 1028 af 29. august 2013*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152827>.



## 9. Good practices

Section 81 no. 6 was inserted into the Danish Criminal Code<sup>97</sup>. This provision now spells out explicitly that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation, etc., of other individuals.

An amendment to Act on Artificial Insemination in connection with medical treatment, diagnosis, research, etc. (extent of treatment in regional hospitals; assessment of parental unfitnes; relaxation of the rules regarding egg donation; and extension of the storage of frozen human eggs) (*Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.*)<sup>98</sup> was adopted in 2006. This amendment relates to the availability of treatment in regional hospitals; assessment of parental unfitnes; relaxation of the rules regarding egg donation; and extension of the storage of frozen human eggs. An amendment was adopted in the course of parliamentary debate allowing single and lesbian women the same access to artificial insemination as women in heterosexual relationships. Accordingly, women would have the same access to artificial insemination regardless of their marital status and sexual orientation. The Act entered into force on 1 January 2007<sup>99</sup>.

A Parliamentary proposal was adopted the 17 March 2009 allowing adoption of children (both foreign and Danish) by homosexual couples<sup>100</sup>. Same-sex couples are now also able to get married, and hns registered partnerships are no longer the only way for same sex couples to adopt.

A research institution under the Ministry of Social Affairs, SFI - Det Nationale Forskningscenter for Velfærd (the Danish National Institute of Social Research) published a report entitled *Indsatser mod Æresrelateret Vold* ('The Efforts Against 'Honour-related' violence'). The report describes efforts and methods applied in Sweden, Denmark, the Netherlands, Norway, U.K., and France. To some extent the survey also touched upon the conditions related to 'honour-related' violence against homosexuals, bi-sexuals and transsexuals (primarily in relation to Sweden and the Netherlands). The report concluded that for the moment efforts primarily target female victims<sup>101</sup>.

Copenhagen Police, Copenhagen Municipality, The Danish Institute for Human Rights, The Society of Gays and Lesbians as also World Outgames have in 2009 initiated cooperation and a campaign with the aim of stopping or reducing hate crimes. The webpage: <http://www.stophadforbrydelser.nu>

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<sup>97</sup> Denmark, the Danish Criminal Code, Consolidated act no. 1028 of 29 August 2013 (*Straffeloven, lovbekendtgørelse nr. 1028 af 29. august 2013*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152827>.

<sup>98</sup> Denmark, amendment act on Artificial Insemination in connection with medical treatment, diagnosis, research, etc. (extent of treatment in regional hospitals; assessment of parental unfitnes; relaxation of the rules regarding egg donation; and extension of the storage of frozen human eggs) no. 460 of 10 June 1997 (*Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=84963>. Newest amendment no. 923 of 4 September 2006, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=10319>.

<sup>99</sup> Denmark, Act no. 535 of 8 June 2006 amending Act on Artificial Insemination (*Lov om kunstig befrugtning*)

<sup>100</sup> Denmark, B 36 Proposal for Parliament decision on the access to apply for foreign adoption for couples in registered partnerships. (*Forslag til folketingsbeslutning om adgang til at ansøge om fremmedadoption for par i registreret partnerskab*)

<sup>101</sup> Denmark, The Danish National Centre for Social Research (*Det nationale forskningscenter for velfærd, SFI*) Initiatives against honor related violence- a study on of initiatives in six European countries. *Indsatser mod æresrelateret vold - En undersøgelse af indsatsen i seks europæiskelande* (2006), available (in Danish) at the website of the Danish National Centre for Social Research <http://www.sfi.dk/>

(en English: stop hate crimes now) is a webpage established to ease the reporting to the police by victims or witnesses of hate crimes and in general to raise awareness of the issue.

In February of 2013, Copenhagen municipality launched the Stemplelet (*Branded*) campaign, aimed at combatting hate crimes and discrimination through allowing citizens to anonymously register cases of either online<sup>102</sup>. If the users request so, they will also be contacted by the Danish Institute for Human Rights, offering guidance on how to proceed further with their case and make an official complaint with the Board of Equal Treatment or the police, depending on the nature of the case.

The aggregate submissions are used to generate statistical material for use by local and national government institutions, including Copenhagen municipality, as well as for use in publications and by the press for articles and similar. As discrimination and hate crimes often go unreported in Denmark, the goal of the project is to anonymously register cases that would otherwise not be registered by any official institution.

In May of 2013, the Ministry of Children, Gender Equality, Integration and Social Affairs issued a call for bids on a project concerning the mapping of hate crimes. The project is to encompass all types of hate crimes within a wide interpretation of the concept and will result in a description of key indicators usable to measure the development in the situation over time as well as a baseline analysis of these indicators, and a broader analysis of the situation regarding hate crimes.<sup>103</sup>

The call for bids ended on 5 August 2013 and the project is currently being managed by a private contractor.

### **Courses for the police regarding hate crimes**

The Police of Funen has since November 2012 educated 250 police officers in handling hate crimes. The background of this focus was a report made by the Danish Institute for Human Rights regarding hate crimes stating that the Danish Police force lacked knowledge about hate crimes and how to handle these.<sup>104</sup>

The Danish Institute for Human Rights has in March 2014 in cooperation with the municipality of Copenhagen, the Danish Security and Intelligence Service (PET) and the Police of Copenhagen held courses for approximately 140 police officers of Copenhagen in handling hate crimes and cases of discrimination.<sup>105</sup>

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<sup>102</sup> Denmark, “Stemplelet”-campaign against discrimination, 2013, information available in Danish at: [www.sigfranu.dk/stemplelet/](http://www.sigfranu.dk/stemplelet/)

<sup>103</sup> Denmark, Call for bid posted on the official website for the purpose of seeking public funding, 2013, ([www.udbud.dk](http://www.udbud.dk)), available in Danish at: [www.udbud.dk/Pages/Tenders/ShowTender?tenderid=9296](http://www.udbud.dk/Pages/Tenders/ShowTender?tenderid=9296)

<sup>104</sup> Denmark, Funens Local newspaper, article “The Danish Police, The Police of Funen, combat hatecrimes” (*Dansk Politi, Fyens Politi, Fyns Politi bekæmper hadforbrydelser*), 14 November 2012, available in Danish at: [www.politi.dk/Fyn/da/lokalnyt/Nyheder/Fyns-Politi-bekaemper-hadforbrydelser.htm?wbc\\_purpose=Ba](http://www.politi.dk/Fyn/da/lokalnyt/Nyheder/Fyns-Politi-bekaemper-hadforbrydelser.htm?wbc_purpose=Ba).

<sup>105</sup> Denmark, The Danish Institute for Human Rights, news, “The Police is getting prepared for investigating hate crimes” (*Institut for Menneskerettigheder, nyhed, Politiet rustes til efterforskning af hadforbrydelser*) 21 March 2014, available in Danish at: <http://menneskeret.dk/nyheder/politiet-rustes-efterforskningen-hadforbrydelser>.

## 10. Intersex

Intersex is not explicitly covered in national non-discrimination legislation. It is unclear, to what degree intersex people are protected under existing law, but The Board of Equal Treatment has decided on at least one case in which the complainant was a transsexual man who had previously received a sex-change operation from female to male, indicating that the Board considers the protection under Danish non-discrimination laws afforded on account of gender to be expanded beyond a binary gender system<sup>106</sup>. In the case in question, the Board ruled that no discrimination had taken place, but even though the complainant lost the case on the substance, the case does show that the Board does not refuse cases like this on account of competence/mandate, as they frequently do with regards to other matters not within the scope of current non-discrimination legislation. As mentioned, it is unclear whether the Board would also consider intersex discrimination to be a gender issue, although the above case would suggest that it is at least a possibility.

In recent rulings regarding discrimination of trans persons, The Board of Equal Treatment has used the term “gender identity”, despite this term not being used in the legislation.<sup>107</sup>

There are no non-discrimination policies that explicitly cover intersex discrimination.

When a child is born, authorities must be informed within 14 days, at which point the child is issued a birth certificate and a civil registration number<sup>108</sup>. Civil registration numbers are as described gender-specific. As a result, children must be assigned a gender within 14 days of birth.

A new civil registration number (and as a result, a new registration of gender) can only be granted under two circumstances: Either if there was a (technical) mistake in the original registration or if the person in question has undergone and completed gender reassignment surgery<sup>109</sup>.

The Danish Government has presented a draft for a bill amending the Act on the Civil Registration System. The bill purposes that a person over the age of 18 can change his or her civil registration number by filing an application to the Ministry for Economic Affairs and the Interior where the person states, that the reason for the application is that the person identifies as the opposite gender and the person confirms the application six months later.<sup>110</sup>

On June 11 2014, this bill was adopted in the Danish Parliament. The amendment to the Act on the

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<sup>106</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*), decision no. 249/2013, 27 November 2013, available in Danish at:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=1325&type=Afgoerelse>

<sup>107</sup> Denmark, The Board of Equal Treatment (*Ligebehandlingsnævnet*) decisions no. 166/2011, 11 November 2011, no. 418/2012, 21 November 2012 and no. 171/2013, 28 August 2013, available in Danish at:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/default.aspx>

<sup>108</sup> Denmark, Citizen guidance website (*borger.dk*), available in Danish at:

<https://www.borger.dk/Sider/Foedselsregistrering.aspx?NavigationTaxonomyId=57056518-c549-4cf5-83d4-784785f5310a>

<sup>109</sup> Denmark, Guide to the peoples registry (*Vejledning om folkeregistrering*), 14 June 2013, available in Danish at:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=152201>

<sup>110</sup> Denmark, draft for bill amending the Act on the Civil Registration System (allocating civil registration numbers to persons identifying as the opposite gender) (*Udkast til forslag om lov om ændring af lov om Det Centrale Personregister (Tildeling af nyt personnummer til personer, der oplever sig som tilhørende det andet køn)*), information available in Danish at: <http://hoeringsportalen.dk/Hearing/Details/23614>.

Civil Registration System will come into effect on 1 September 2014<sup>111</sup>. On 18 June 2014, the new guide advising authorities on the requirements for the treatment of patients with gender identity issues was presented<sup>112</sup>. The old guide, written in 2006, dealt solely with the matter of castration as a prerequisite for juridical gender change. The new guide concerns all aspects of gender reassignment and treatment of gender identity issues and is targeted at medical professionals across multiple specialties, including psychiatry, gynecology, plastic surgery and paediatrics.

In the matter of surgical and medical interventions performed on intersex people, the questions are in the whole answered by the Danish Health and Medicines Authority<sup>113</sup>.

The Danish Health and Medicine Authority informs that the public medical system, on account of a concrete, medical assessment in each individual case offers surgical and medicinal treatment for intersex people, if there is a need for it. The assessment is made in a highly specialized pediatric department.

The legal foundation for the treatment of intersex people is partially the Act on Health (*Sundhedsloven*), which regulates the medical systems offers of treatment and contains rules on informed consent and Act on the Authorisation of Medical Personnel and on Medical Process (*lov om autorisation af sundhedspersoner og om sundhedsfaglig virksomhed*), which sets forth requirements with regards to the duty of medical personnel to exhibit diligence and conscience.

Intersexuality has different causes, and the Danish Health and Medicine Authority has not set clinical guidelines for the treatment of this.

All treatment is based on informed consent, meaning consent given on the basis of fully adequate information from a medical official. Consent for treatment must be given by a patient of at least 15 years of age. The patient must be capable of understanding the consequences of their action. The specific rules can be found in the Act on information and consent and on the spreading of medical information (*bekendtgørelse om information og samtykke og om videregivelse af helbredsoplysninger mv.*)<sup>114</sup>

When dealing with patients under the age of 15, the legal guardian is competent to give consent according to the Act on Health. The guardian (typically a parent), decides on the personal matters of the child, including in relation to potential treatment. The decision must be made in the best interests of the child.

The child must be informed and included in the considerations of the treatment, according to section 20 of the Act of Health, unless it could cause damage to the child, and the statements of the child

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<sup>111</sup>Denmark, Text to the amendments to the Act on the Civil Registration System (Lov om Det centrale personregistersystem) available in Danish at [www.ft.dk/samling/20131/lovforslag/1182/html\\_som\\_vedtaget.htm](http://www.ft.dk/samling/20131/lovforslag/1182/html_som_vedtaget.htm)

<sup>112</sup>Denmark, Danish Health and Medicines Authority ( Sundhedsstyrelsen) 2 June 2014, Draft of new guide Guide on Counseling on diagnoses and treatment of transgender (Udkast til Vejledning om udredning og behandling af transkønnede) available in Danish at [www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf](http://www.ft.dk/samling/20131/almdel/suu/bilag/471/1381570.pdf) (accessed June and July 2014)

<sup>113</sup>Denmark, Information provided by the Danish Health and Medicines Authority (*Sundhedsstyrelsen*) by e-mail to the Danish Institute for Human Rights on 4 February 2013.

<sup>114</sup>Denmark, Act on information and consent and on the dissemination of medical information (*bekendtgørelse om information og samtykke og om videregivelse af helbredsoplysninger mv.*) in Danish: [www.retsinformation.dk/Forms/R0710.aspx?id=21075](http://www.retsinformation.dk/Forms/R0710.aspx?id=21075)

must be weighted in the decision. As a result, the doctor must include the wishes of the child in his or her final assessment.

# Annex 1 – Case law

## Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	22 February 2008 - Western High Court
Decision date	22 February 2008 / 21 March 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vestre Landsret- Dom af 22. February 2008 [Western High Court - Decision of 22.02.2008] Byretten i Brønderslev - Dom af 21. marts 2007 [Brønderslev District Court – Decision of 21.02.2007]
Key facts of the case (max. 500 chars)	An apprentice at a bakery chose in the summer 2005 to announce that he was gay. From that moment his employer began to systematically harass the apprentice. He slandered the apprentice in front of other employees and customers, and called homosexuals the most disgusting people he knew. Furthermore he stated that homosexuals were mentally ill. The apprentice reported sick in February 2006. A medical certificate stated that the cause was poor psychological working environment.  The apprentice made contact with his trade union, who tried to solve the case at a mediation meeting. The trade union asked the employer for compensation equivalent to one year's salary. The employer refused to admit having slandered the apprentice and the trade union chose to take the case to the court.
Main reasoning/argumentation (max. 500 chars)	The injured party (the apprentice) claimed that he had been discriminated against on the ground of his sexual orientation and been harassed with reference to the Act on the Prohibition of Differential Treatment in the Labour Market, etc .
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Discrimination on the ground of sexual orientation, harassment, level of compensation
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Western High Court upheld the judgment of the District Court. The employer was ordered to pay DKK 100,000 (EUR 13,210) to the injured party.

Case title	Decision 370/2012
Decision date	10 October 2012

Reference details (type and title of court/body; in original language and English [official translation, if available])	The Board of Equal Treatment ( <i>Ligebehandlingsnævnet</i> )
Key facts of the case (max. 500 chars)	During a job interview conducted by telephone, the leader of a company had mentioned negative experiences with “someone like that”, referring to the complainants sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The leader of the company did not dispute the claims but explained that he had not meant the remarks to have a negative connotation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Many cases concerning discrimination and harassment are rejected by The Board of Equal Treatment as the Board cannot rule on cases requiring oral witnesses to be heard. In this case, the leader of the company did not the dispute the claims and as such the testimony of the complainant was taken as fact.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The company in questioned was sanctioned and had to pay the complainant a compensation of 25.000 DKK (€ 3350)

Case title	Decision 312/2012
Decision date	20 June 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Board of Equal Treatment ( <i>Ligebehandlingsnævnet</i> )
Key facts of the case (max. 500 chars)	A man with a medical degree received a rejection on his application to a position as a doctor in a Danish region. He complained to The Board of Equal Treatment as one of the persons in the hiring committee was his personal doctor who had knowledge of his sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The complainant argued that the person in the hiring committee who knew about his sexual orientation should not have been involved in the hiring process and that this was an impropriety.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The main question is whether the knowledge of a person's sexual orientation alone is enough to establish that the person has been discriminated against, in cases where a decision is made that is not in their favour.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Board found that complainant had not been discriminated against and that the mere knowledge of a person's sexual orientation does not automatically prove that discrimination has taken place.

#### Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	Child welfare worker
Decision date	21 December 2007 - Extrajudicial settlement
Reference details (type and title of court/body; in original language and English [official translation, if available])	Extrajudicial settlement between the trade union BUPL - Forbundet for pædagoger og klubfolk (BUBL – Union of Youth and Child Welfare Workers) and the board of a day care-centre.
Key facts of the case (max. 500 chars)	The child welfare worker was hired to work at a day care-centre. On an introductory visit to the centre before he started work, the manager asked the child welfare worker whether he was gay. He also warned him against telling gay jokes in the centre. The following day the manager told him that he was not sure whether he would have hired the child welfare worker if he had known that the latter was gay. The child welfare worker decided not to start the job and turned to his union (BUPL).
Main reasoning/argumentation (max. 500 chars)	The union contacted the board of the day care centre and made a compensation claim with reference to the Act on the Prohibition of Differential Treatment in the Labour Market, etc.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	With reference to Section 4 of the Act on the Prohibition of Differential Treatment in the Labour Market, etc: an employer is not allowed to – in connection to or during – the course of employment to ask for, obtain, receive or use information about an employee's sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The child welfare worker received DKK 30,000 Danish (EUR 4,030 ) in compensation.



Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1

Case title	No relevant case law
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	Iran/2005/15
Decision date	September 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Flygtningenævnet (the Danish Refugee Appeals Board)

Key facts of the case (max. 500 chars)	A male citizen from Iran had entered in a homosexual relationship with a school friend. The applicant had received threats from his own father and his boyfriends' family. He applied for asylum in Denmark.
Main reasoning/argumentation (max. 500 chars)	The Board decided that there was no reason to assume that the applicant would risk being persecuted by the authorities because of his homosexuality if he returned to Iran. The Board however found that the applicant would risk assaults as included in paragraph 7 (2) of the Danish Aliens Act if he returned to Iran. The decision was based on former assaults by the brothers of the applicant's boyfriend and the fact that the brothers and the applicant's father had threatened the applicants' life.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Asylum denied in accordance with section 7 (1) of the Danish Aliens Act (no risk of persecution from authorities). Asylum granted in accordance with section 7(2) because of risk of assault if returning to Iran.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Irak/2005/26
Decision date	June 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Flygtningenævnet (the Danish Refugee Appeals Board)
Key facts of the case (max. 500 chars)	Male from Iraq who had engaged in a homosexual relationship. The applicants family was very religious and the applicant left Iraq because of fear for his life.
Main reasoning/argumentation (max. 500 chars)	The Board could not exclude that the applicants life would be threatened by his own family because of his homosexual orientation if he was returned to Iraq.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Asylum granted in accordance with section 7(2) of the Danish Aliens Act (b-status refugee) because of risk to the applicants life if returned to Iraq.
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Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Irak/2005/13
Decision date	March 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Flygtningenævnet (the Danish Refugee Appeals Board)
Key facts of the case (max. 500 chars)	A female homosexual from Iraq applied for asylum in Denmark. She feared persecution because of her sexual orientation if returned to Iraq. She informed that she had only told some family members and some acquaintances in Denmark about her sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The Board found that the applicant wasn't in danger of persecution because of her sexual orientation since there was no reason to believe that the authorities in Iraq had knowledge of the fact that she was homosexual. Furthermore the Board concluded that homosexuality is not a crime in Iraq.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Asylum denied because the applicant wasn't in risk of persecution if returned to Iraq.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Usbekistan/2008/3
Decision date	October 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Flygtningenævnet (the Danish Refugee Appeals Board)

Key facts of the case (max. 500 chars)	The applicant (homosexual male from Usbekistan) received in October 2008 residence permit (so-called B-status). According to the applicant he and his boyfriend was assaulted by two police officers in a park in Tasjkent. The boyfriend of the applicant was detained by the police and died in detention. The applicant complained but was himself detained and abused. After being released he was harassed and threatened by the police and unknown persons. The applicant complained to the prosecution authorities but with no action or investigation being initiated.
Main reasoning/argumentation (max. 500 chars)	Based on the factual background information, the Danish Refugee Appeals Board found that the applicant had a substantiated risk for further abuse by the authorities, if he were to return to Usbekistan. The Danish Refugee Appeals Board found the risk was covered by the Aliens Act section 7 (2) and granted the applicant residence permit (B-status)
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Agents of Persecution, Sexual relations, Abuse by Police,
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Danish Refugee Appeals Board found the risk was covered by the Aliens Act section 7 (2) and granted the applicant residence permit (B-status)

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Statsløspal2009/3
Decision date	February 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Danish Refugee Appeals Board
Key facts of the case (max. 500 chars)	The applicant (a stateless Palestinian) claimed to be threatened by his family and religious people in Libanon after declaring that he was homosexual
Main reasoning/argumentation (max. 500 chars)	The Danish Refugee Appeals Board found the applicants documentation credible and established that the applicant had been the victim of threats and violent abuse by his family and religious groups based of his homosexuality and Western lifestyle.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Documentation, religious groups, rejection by family, agents of prosecution,, lack of protection by authorities, general circumstances.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Danish Refugee Appeals Board granted the applicant residence permit according to the Aliens Act section 7 (3) (K-status)
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Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Maro/2011/1
Decision date	July 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Danish Refugee Appeals Board
Key facts of the case (max. 500 chars)	The applicant (homosexual male from Morocco) claimed to be threatened by his family – was attempted murdered by his brother because his is homosexual. He was a member of a secret organisation fighting for homosexuals’ rights. He participated in demonstrations for gay rights in Marrakesh. Compromising information about his sexuality was put on the internet and send to his family.
Main reasoning/argumentation (max. 500 chars)	The Danish Refugee Appeals Board found that since the applicants had been able to stay in the country without problems up until fleeing the country, he could not be seen as persecuted. The family knew about his sexual orientation. There is nothing that indicate that the authorities knows. The Board put weight to the fact that, even though homosexuality is criminalized in Morocco, it is tolerated in the larger cities.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sexual orientation
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Danish Refugee Appeals Board denied the applicant asylum.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	Ugan/2013/4
Decision date	November 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Danish Refugee Appeals Board
Key facts of the case (max. 500 chars)	The applicant (homosexual woman from Uganda) claimed to be in risk of being murdered by the authorities and fear reproductions from the local population in Uganda because of her sexual orientation. She claimed to be attacked and threatened – together with her female partner and their friend - by the local population, because she and her partner lived together. She claimed that they were arrested by a security guard and two police officers and were during the arrest physically and sexually assaulted by them and threatened to confess to homosexuality on camera.
Main reasoning/argumentation (max. 500 chars)	The Danish Refugee Appeals Board found the applicants story and her sexual orientation credible and established that the applicant had been the victim of threats and violent and sexual abuse by the authorities because of her homosexuality.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sexual orientation, individual persecution, general circumstances.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Danish Refugee Appeals Board granted the applicant residence permit according to the Aliens Act section 7 (1).

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1  
No relevant case law

Chapter E, Freedom of assembly, case 1  
No relevant case law

Chapter F, Hate crimes, case 1

Case title	For the moment no official statistics. However, please note Ugeskrift for Retsvæsen UfR 1990.636 V (Western High Court)
Decision date	29. March 1990
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ugeskrift for Retsvæsen UfR 1990.636 V (Western High Court)
Key facts of the case (max. 500 chars)	Letter to the Editor, reference to the Bible and the Bible's view on homosexuality, strong condemnation of homosexual behaviour
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Reference to the Bible, freedom of expression considerations
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Acquittal



## Chapter F, Hate crimes, case 2

Case title	Cecilia Mundt case
Decision date	24 October 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Københavns Byret, dombogen, SS 2-16484/2013 Copenhagen City Court, court book, SS 2-16484/2013
Key facts of the case (max. 500 chars)	A transgender woman, Cecilia Mundt, was assaulted with a hammer on a public street. The defendant claimed that Cecilia Mundt had made defamatory remarks about his ethnicity prior to the assault, but no witnesses had heard this.
Main reasoning/argumentation (max. 500 chars)	The defendant argued that he had assaulted Cecilia Mundt due to remarks she had made. Cecilia Mundt herself, as well as two witnesses, denied having made/heard such remarks.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue became whether it could be proven that the assault was motivated by Cecilia Mundts gender identity and more directly appearance, that is, of a transgender woman wearing typically female clothing. As described previously, the Danish penal code carries a section that allows for extended sentencing for hate crimes.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendant was found guilty of the assault and the court further found it proven that the defendant had assaulted Cecilia Mundt on the grounds of her gender identity, because of which the judge found it suitable to give an extended sentence of 1 year and 3 months in prison.

## Chapter G, Applicability of legislation on trans gender issues, case 1

Case title	Drama school
Decision date	Decision No. 32/2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Gender Equality Board ( <i>Ligestillingsnævnet</i> )
Key facts of the case (max. 500 chars)	The complainant was a transsexual who was admitted to drama school. After the first year, the school recommended that the complainant reconsider his future at the school.

Main reasoning/argumentation (max. 500 chars)	The complainant claimed that the reason for school's recommendation was the complainant's transsexuality. The school denied this and stated that the complainant had not achieved the skills necessary for further study at the school.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Gender Equality Board found that the complainant had not presented convincing evidence that the recommendation from the school was due to his transsexuality.

#### Chapter G, Applicability of legislation on trans gender issues, case 2

Case title	Derogatory remarks from hospital staff
Decision date	Decision No. 23/2001
Reference details (type and title of court/body; in original language and English [official translation, if available])	Gender Equality Board ( <i>Ligestillingsnævnet</i> )
Key facts of the case (max. 500 chars)	The complainant was admitted to a hospital in order to receive gender reassignment surgery.
Main reasoning/argumentation (max. 500 chars)	The complainant reported that hospital staff had made derogatory remarks, e.g. a nurse had refused to treat the complainant because the latter was 'different', and a doctor had asked why the complainant needed a vagina since no one would sleep with the latter. None of the hospital staff admitted to the above-mentioned statements.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Gender Equality Board did not find it sufficiently established that the hospital staff had made the alleged derogatory remarks.

Chapter G, Applicability of legislation on trans gender issues, case 3

Case title	Decision no. 171/2013
Decision date	Decision no. 171/2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Board of Equal Treatment ( <i>Ligestillingsnævnet</i> )
Key facts of the case (max. 500 chars)	Complainant was born as a man but lives as a woman. Complainant was offered a trial-position ( <i>arbejdsprøvning</i> ) with a company B, through a jobcentre, A, but was corrected on her style of clothes and make-up.
Main reasoning/argumentation (max. 500 chars)	The jobcentre argued that they had not discriminated against complainant, as they had simply helped her get a job with company B, but it was company B that had made the remarks about her clothes and make-up.  The Board of Equal Treatment could not proceed with a case against company B as it required oral testimony, which is outside the jurisdiction of the court.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In the case, the court for the first time in Danish case law defined a transsexual, as “a person who, for example, is born as a man and who wears female clothes and over a number of years desires another gender identity, evidenced by undergoing medicinal and surgical actions”.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Board of Equal Treatment did not find, on the substance of the case, that complainant had been discriminated against. The important consequence of the case was the included definition of the term transsexual.

Chapter G, Applicability of legislation on trans gender issues, case 4

Case title	Decision no. 166/2011
Decision date	Decision no. 166/2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Board of Equal Treatment ( <i>Ligestillingsnævnet</i> )

Key facts of the case (max. 500 chars)	Complainant was born as a man but now lives as a woman. Complainant lives with her former wife, renting a room. Complainant was in contact with the local municipality in relation to social services including early retirement payments and child allowances.
Main reasoning/argumentation (max. 500 chars)	Complainant argued that the municipality had considered complainant and her former wife to be living together in a way, the complainant felt was reserved for relationships, and as a result, the complainant felt she was incorrectly deducted in both early retirement payments and child allowance.  The defendant argued that the live-in status assigned to complainant and her former wife is not exclusive to romantic relationships and as such, the deductions were correct.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Board of Equal Treatment ruled on the case under the heading of (potential) discrimination on account of gender identity. In the ruling, the Board referred to protections under an act promoting the equality of men and women. In this case, the Board demonstrated that transgender issues should be considered issues of gender identity included under protections of gender equality.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Board of Equal Treatment did not find, on the substance of the case, that complainant had been discriminated against. The important consequence of the case was the applicability of gender equality legislation on transgender issues.

#### Chapter G, Applicability of legislation on trans gender issues, case 5

Case title	Decision no. 418/2012
Decision date	Decision no. 418/2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	The Board of Equal Treatment ( <i>Ligestillingsnævnet</i> )
Key facts of the case (max. 500 chars)	Complainant was born as a man but lives as a woman. Complainant experienced harassment from neighbours in her apartment complex as well as from other people living in the area, and filed a complaint with the housing company that owns her apartment complex.
Main reasoning/argumentation (max. 500 chars)	The housing company argued that they had not discriminated against complainant in the processing of her complaint about her neighbours, as they had followed due process and issued warnings or annulments of leases where appropriate to the neighbours in question.  Complainant argued that the housing company had not done enough and as such had violated her rights.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	As above, The Board of Equal Treatment ruled on the case under the heading of (potential) discrimination on account of gender identity. In the ruling, the Board referred to protections under an act promoting the equality of men and women. In this case, the Board demonstrated that transgender issues should be considered issues of gender identity included under protections of gender equality.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Board of Equal Treatment did not find, on the substance of the case, that complainant had been discriminated against. The important consequence of the case was the applicability of gender equality legislation on transgender issues.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 1

No relevant case law

Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation,

No relevant case law

## Annex 2 – Statistics

### Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	No official statistics							
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	No official statistics							
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	No official statistics							
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	No official statistics							

Statistics Denmark only carry statistics on court cases within the area of criminal law. The Board of Equal Treatment does not carry statistics in general, but releases yearly reports that include (some statistics). However, the Board only classifies its cases into three categories: gender (which includes gender identity), ethnicity and an “other” category that includes age, disability and sexual orientation among others. As such, there are no clear statistics available on sexual orientation.

Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	-2014
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	No official statistics							
Number of LGBT partners who claimed their right to residence but were denied this right	No official statistics							

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2000	2001	2002	2003	2004	2005	2006	-2014
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	No official statistics							
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	No official statistics							

Chapter C, Asylum and subsidiary protection, protection of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	-2014
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	No official statistics							
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	No official statistics							

Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	-2014

Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	No official statistics							
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	No official statistics							

Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001	2002	2003	2004	2005	2006	-2014
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	No official statistics							
Number of demonstrations against tolerance of LGBT people.	No official statistics							

Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	-2014
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	No official statistics yet							
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	No official statistics yet							
Range of sanctions issued for homophobic hate speech	No official statistics yet							
Number of non-criminal court cases initiated for homophobic statements	No official statistics yet							
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	No official statistics yet							

Chapter F, Homophobic motivation of crimes as aggravating factor

	2000	2001	2002	2003	2004	2005	2006	2007 -2014
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	No official statistics yet							



Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007
Number of name changes effected due to change of gender								
Number of persons who changed their gender/sex in your country under the applicable legislation	3 <sup>54</sup>	6	3	4	4	1	5	-
	2008	2009	2010	2011	2012	2013	2014	
	3	5	5	9	6	13	4	

**Table 1: Requirements for rectification of the recorded sex or name on official documents**

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK						✓	✓			Change of CPR-number (civil registration number)
DK						✓	✓			Change of gender marker in passport to the opposite gender
DK			✓			✓				Change of gender marker in passport to "x"

DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for

legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

**Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies**

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>115</sup>	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓	✓		✓	<p>Cases decided by The Board of Equal Treatment</p> <p>Discrimination on grounds of sexual orientation is in regards of employment is covered by the Act on Ban of Different Treatment in Employment etc. (lov om forbud mod forskelsbehandling på arbejdsmarkedet mv.), Consolidated act no. 1349 of 16 December 2008 witch is the Danish implementation of Council Directive 2000/78 and parts of 2000/43.</p> <p>Discrimination on grounds of sexual orientation is in regards of access to and supply of goods and services which are available to the public, including housing, is covered by the Act on Ban of Different Treatment on the Grounds of Race etc. (Lov om forbud mod forskelsbehandling på grund af race mv.), Consolidated act no. 626 of 29 September 1987 witch is a criminal act.</p> <p>The Board of Equal Treatment does not have the mandate to make decisions based on the criminal act.</p>
EE	✓			✓	New anti-discrimination legislation adopted

<sup>115</sup> Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>115</sup>	All areas of RED*		
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>115</sup>	All areas of RED*		
					Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
<b>TOTAL</b>	<b>9</b>	<b>7</b>	<b>11</b>	<b>20</b>	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

**Table 3: Discrimination on grounds of gender reassignment or identity in national legislation**

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Cases decided by The Board of Equal Treatment.
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
<b>TOTAL</b>	<b>10</b>	<b>3</b>	<b>15</b>	

Note: ✓ = applicable; positive development since 2008



**Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation**

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

**Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification**

Country Codes	Free movement <sup>116</sup>		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships. Since 2013, the law on Freedom of Movement puts registered partner and spouses equal. Family reunification/asylum: equal treatment.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU <i>acquis</i> , confirms the notion that a family member includes the <i>de facto</i> partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.

<sup>116</sup> In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement <sup>116</sup>		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
<b>TOTAL</b>	<b>8</b>	<b>15</b>	<b>8</b>	<b>13</b>	<b>8</b>	<b>12</b>	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.

<sup>54</sup> The statistics represent the number of castrations in Denmark based on the medical diagnosis of transsexualism. The statistics were provided by the Ministry of Interior and Health in May 2007 to the Parliament's Health Committee. (*Besvarelse af spørgsmål nr. 14 (Alm. del – B 142), som Folketingets Sundhedsudvalg har stillet til indenrigs- og sundhedsministeren den 24. maj 2007*)

The statistics for 2008-2014 (up to and including 4 April 2014) received by email from the Family Administration of the Ministry of Justice (*Familiestyrelsen*).