

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

Christoffer Badse
Martin Futtrup
Copenhagen, Denmark
February 2010

Contents

EXECUTIVE SUMMARY.....	3
1. Implementation of Employment Directive 2000/78/EC.....	9
2. Freedom of movement.....	12
3. Asylum and subsidiary protection	14
4. Family reunification	16
5. Freedom of assembly	18
6. Criminal law	19
7. Transgender issues	21
8. Miscellaneous	25
9. Good practices	27
Annex 1 – Case law.....	29
Annex 2 – Statistics.....	44

Executive summary

Implementation of Employment Directive 2000/78/EC

The Employment Directive 2000/78/EC has been implemented through *Act no. 459 of 12.06.1996 No. 459 om forbud mod forskelsbehandling på arbejdsmarkedet m.v. [on Prohibition against Differential Treatment in the Labour Market, etc.]* with subsequent amendments. This Act prohibits direct and indirect discrimination on grounds of race, colour of skin, religion or faith, 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 01.01.2009. The board is an administrative organ which handled 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 not indirect discrimination and not harassment and not victimisation. 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. homosexual relationship) 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. For more information on statistics, please refer to section B.1. Statistics below.

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).

In general the term 'sexual orientation' is not perceived to fall within *Consolidated Act no. 785 of 10.08.2009 Udlændingeloven [The Aliens Act]* Section 7(1) (social group criteria), and therefore persecution on this basis is as a point of departure not considered to justify qualification as a refugee according to the understanding of the term as stipulated in the Geneva Convention. However, a person can obtain a B-Status (Protection-Status) residence permit if he or she risks the death penalty or torture if expelled. A few cases are known.

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.

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.

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. From a statistical view this is the only point of entry for statistical information on LGTB partnerships since registered partnership only is open to same-sex couples. In 2005, 5,282 (2,774 men and 2,508 women) persons were living in registered partnerships.

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 to certain groups of applicants: 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.

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."

Criminal Law

According to Section 266 b (1) of the *Straffeloven*³, 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*.⁴ 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.

The Justitsministeriet (Ministry of Justice) in 2007 established a new reporting system with reference to decisions in criminal cases where the crime has been committed on account of the victim's race, national or ethnic background,

³ The Danish Criminal Code (Act of 1930 No. 126).

⁴ Inserted by Act No. 218 of 31 March 2004 amending the Criminal Code.

religious beliefs or sexual orientation. The result of the reporting system will be published in spring 2008.

According to guidelines from Rigspolitichefen (Commissioner of Police), the Danish police districts have since 1992 reported to Politiets Efterretningstjeneste (PET) (the Danish Security and Intelligence Service) 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. No such arrangement has been initiated in relation to criminal acts deemed motivated by the sexual orientation of the victim.

Transgender issues

Gender reassignment is regulated in the Danish Health Care Act, section 115.

There is no official legal definition of 'transgender', 'transsexual' or 'transvestite' in Denmark.

Section 266 b of Straffeloven⁵ 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 Straffeloven⁶. 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.

In the Ministry of Health and Prevention's guidelines⁷ on castration in order to undertake a gender reassignment, it is mentioned that besides fulfilment of the requirements in section 115 in Sundhedsloven⁸ the applicant has to show that his or her wish for gender reassignment are consistent and that the applicant understands the consequences of the gender reassignment.

The Administrative Order on Names⁹ 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 may obtain a name change.

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

⁵ The Danish Criminal Code (Act of 1930 No. 126).

⁶ Act amending the Criminal Code, inserted by Act No. 218 of 31 March 2004

⁷ No. 10077 of 27 November 2006,

⁸ The Act on Health of 2005 No. 546.

⁹ No. 328 of 11 May 2007

Sundhedsloven¹⁰ and Administrative Order regarding sterilisation and castration¹¹, including in reference to gender reassignment. In section 115, subsection 1, of Sundhedsloven a person can receive permission for castration.

Ligestillingsnævnet (The Gender Equality Board –closed down as of 01-01-2009) has handled two complaints regarding discrimination towards transsexual persons.

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.

Good practices

Amendment to Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.¹² 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 will have the same access to artificial insemination regardless of their marital status and sexual orientation. The Act entered into force on 1 January 2007.

The 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

¹⁰ The Act on Health, of 2005 No. 546.

¹¹ No. 14, 10th of January 2006

¹² 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).

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.¹³

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.

¹³ L B 36 Forslag til folketingsbeslutning om adgang til at ansøge om fremmedadoption for par i registreret partnerskab.

1. Implementation of Employment Directive 2000/78/EC

In March 2004, the Danish Parliament adopted an amendment to the *Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.* [Act on Prohibition against Differential Treatment in the Labour Market, etc.], in order to implement anti-discrimination directives 2000/43/EC and 2000/78/EC.¹⁴ 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.¹⁵ The newest amendment to the Act on Prohibition against Differential Treatment in the Labour Market is consolidated act no. 1349 of 16.12.2008, with the same title.

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

¹⁴ Act No. 253 of 7. April 2004 om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet [[amending act on Prohibition against Differential Treatment in the Labour Market, etc.]

¹⁵ Fifth Periodic Report of Denmark concerning the International Covenant on Civil and Political Rights (April 2007)

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.

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

Equality Bodies

Ligebehandlingsnævnet [The Board of Equal Treatment] is an administrative body established 01.01.2009.¹⁶ 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 parties¹⁹. The intervening party will however not be able to appeal the case independently.

¹⁶ The board was established by *Act no. 387 of 27.05.2008 om Ligebehandlingsnævnet [on the Board of Equal Treatment]*

¹⁹ Retsplejeloven § 252 (The Administration of Justice Act section 252).

Non-Governmental Organisations

A civil society organisation which should be mentioned is *Landsforeningen for bøsser, lesbiske, biseksuelle og transpersoner (LGBT Danmark)* [the Danish National Association of Gays & Lesbians]. LGBT Danmark is a sexual and gender political interest group that for example gives guidance to victims of discrimination on the ground of sexual orientation. In Denmark there are also other groups which focus on interests of transgender people, e.g. *Transseksuel.dk* and *Patientforeningen For Transseksuelle (PFT)* [Patient Association of Transgender People].

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 Danmark and other NGOs is concentrated at the earlier stages by helping collecting documentation, by contacting the trade union or other relevant guidance.

2. Freedom of movement

An EU/EEA citizen may bring his/her family members, e.g. spouse, registered partner (i.e. homosexual relationship) 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.²⁰

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.

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 Udlændingeloven (the Aliens Act), 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.

Danmarks Statistik [Statistics Denmark] 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 Centrale Personregister (Central Population Register (CPR)). 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 Folkekirken (the Danish National Church). 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

²⁰ Cf. *Administrative order no. 322 of 21.04.2009 om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)* [on residence in Denmark for foreigners included by the European Union regulation (the EU-residence order)]

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 etc²¹.

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. This is the only point of entry for statistical information on LGTB partnerships. In 2005, 5,282 people (2,774 men and 2,508 women) were living in registered partnerships. One partner is not a Danish resident or is an immigrant in Denmark in between approximately 20 to 30 per cent of all registered partnerships²².

²¹ Towards Common Measures for Discrimination (2005, Part 1): Exploring possibilities for combining existing data for measuring ethnic discrimination.

²² Danmarks Statistik (2005): *Vielser og skilsmisser - børn i skilsmisser*, I have formatted this reference in line with the instructions for a report, but this would need to be changed for a book.

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 of consolidated act no. 785 of 10.08.2009 *Udlændingeloven [The Aliens Act]*.

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 *B-status (Protection-Status)*.

In general the terms ‘sexual orientation’ is by Danish authorities not deemed to fall within section 7(1) of the Aliens Act (the social group criteria), and therefore those persecuted on this basis are not considered ‘refugees’ according to the understanding of the term as stipulated in the Geneva Convention.²³ A person may however obtain a B-Status residence permit if he or she risks death penalty or torture if expelled. Hence, an LGBT person may be returned to his/her country of origin even if homosexuality or transgenderism is a criminal offence in that country, as long as that person does not risk death penalty or to be subjected to torture.

Asylum applications based on the applicant’s sexual orientation is – as any other application for asylum – considered under section 7 of the Danish Aliens Act.

If the applicants claim to be at risk of being exposed to persecution or other forms of harm because of the applicant’s sexual orientation this will 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

²³ Confer Annex 1 C for case law by the Danish Refugee Appeals Board

with reference to their sexual orientation have been granted a residence permit according to section 7 (2) (subsidiary protection). This practice is the result of the assessment the authorities have made of the specific circumstances of each individual case and not a decision in principle.

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 *Flygtningenaevnet [the Refugee Appeals Board]* publishes selected cases on their website.²⁴ 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.

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.²⁵ The applicant was therefore granted b-status residence permit.

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.

²⁴ www.flygtningenaevnet.dk

²⁵ 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

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 10.10.2005 om registreret partnerskab [on registered partnership]* section 3, registered partnerships have the same legal consequences as traditional different sex marriages.²⁹

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

²⁹ 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;

requirement that a person's spouse/partner has not received certain types of public assistance within the past 12 months.

According to Danish law, two persons of the same sex can register their relationship (in a 'registered partnership') and with some few exceptions obtain the same legal status as a traditional different-sex marriage.

5. Freedom of assembly

No particular legislation or incident of particular relevance.

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.

³¹ Inserted into the Criminal Code by Act No. 218 of 31 March 2004.

6. Criminal law

Hate speech and criminal law

According to Consolidated Act no 1034 of 29.10.2009 *Straffeloven [The Danish Criminal Code]* 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 Code³¹ 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.³²

The Ministry of Justice in 2007 established a new reporting system with reference to decisions in criminal cases where the crime has been committed on account of the victim's race, national or ethnic background, religious beliefs or sexual orientation. The result of the reporting system will be published in the spring 2008.

According to guidelines from Rigspolitichefen (Commissioner of Police), 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. No such arrangement has been initiated in relation to on criminal acts which are deemed motivated due to sexual orientation of the victim³³

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.

³² Fifth Periodic Report of Denmark Concerning The International Covenant On Civil and Political Rights – April 2007

³³ Politiets Efterretningstjeneste -The Danish Security and Intelligence Service:
<http://www.pet.dk/Publikationer/RACI-indberetning.aspx>

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.³⁴ 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 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.

According to *Administrative order no. 511 of 20.06.2005 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) [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)]* 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.

³⁴ Karnov, Information om LBKG 2009-10-29 nr 1034 Straffeloven, note 929 (available at www.thomson.dk)

³⁶ Lehtonen & Mustola 2004

7. Transgender issues

The Gender Equality Board has handled two complaints regarding discrimination towards transsexual persons. The task of the Gender Equality Board is to handle complaints about specific cases of differential treatment on the basis of gender. This may indicate that discrimination towards transgender persons is dealt as discrimination on the grounds of sex. See also paragraph 56

There is no official judicial definition on transgender or transsexual persons or transvestites in Denmark. 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)³⁶.

Gender reassignment is regulated in the Danish Health Care Act, section 115.

The medical designation for transsexual is 'Gender Identity Disorder'³⁷. 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 *Harry Benjamin International Gender Dysphoria Association* has drawn up medical and ethical guidelines for treatment of transsexuality. Observation and treatment of transsexuals in Denmark take place in conformity with these guidelines³⁸.

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, legal commentators generally consider that this probably includes transvestites/transsexualism and sadomasochism, but not prohibited sexual behaviour such as paedophilia). However, it has also been argued that the area of protection as it is interpreted according to the preparatory works is too broad and it should be interpreted as gender orientation only (homo-, hetero-, and bi-sexual orientation). There is no case law shedding light on this issue.

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

³⁷ WHO's Diagnosis System ICD10

³⁸ www.sexologi.rh.dk

Section 81 no. 6 of the Straffeloven.³⁹ 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). Yet, it has been argued that the area of protection as it is interpreted by the explanatory notes is too broad and it should be interpreted as gender orientation only. There is no case law shedding light on this issue.

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 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 witnesses⁴⁰.

In accordance to section 13, subsection 2 of the Danish Act on Names (Act no. 524 of the 24 June 2005) 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. Familie- og forbrugsministeren (the Minister for Family and Consumer Affairs) may specify rules that exempt transsexual individuals from the abovementioned provisions. The Administrative Order on Names (No. 328 of 11 May 2007) 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, can obtain a name change. If the evaluation from the Sexological Clinic raises any doubts

³⁹ Amending the Criminal Code by Act No. 218 of 31 March 2004

⁴⁰ Lov om ligestilling mellem mænd og kvinder (Ligestillingsloven) - Lovbekendtgørelse nr. 1095 af 19. september 2007 (§ 20) og Lov om Ligebehandlingsnævnet nr. 387 af 27. maj 2008.

about whether the person is transsexual, a supplementary evaluation can be obtained from the Retslægerådet⁴¹.

In the period 2000-2007, 20 persons were approved for a first name change equating to their new gender by the Sexological Clinic. As mentioned above, the Clinic has to confirm that the person is transsexual, and they may have gender reassignment surgery later⁴².

In Denmark there is no specific law regarding gender reassignment operations. Sundhedsstyrelsen (The Danish National Board of Health) handles application for gender reassignment surgery with reference to chapter 33 in Sundhedsloven⁴³ and Administrative Order No. 14, 10th of January 2006 regarding sterilisation and castration, including in reference to gender reassignment. According to section 115, subsection 1 of the Act on Health, a person can receive permission for castration⁴⁴ 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, No. 10077 of 27 November 2006, 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.

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

⁴¹ The Medico-legal Council (Retslægerådet) is placed under the Danish Ministry of Justice.

⁴² Information received by email from *Familiestyrelsen* (Family Administration of the Ministry of Justice).

⁴³ The Act on Health, No. 546, 24 June 2005.

⁴⁴ 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 Sundhedsloven (the Act on Health)

another administrative authority. He or she has to go through the normal judicial system, i.e. the courts.

In March 2007, two members of the Danish Parliament presented a resolution which urged the government to put forward a bill to ensure the rights of transsexuals and transgender people. The resolution stated that the bill should make sure that adults have a legal right to decide their own name and the gender identity of their passport and civil registration number; and – after thorough guidance – to decide for themselves whether they wish gender reassignment surgery. Finally the resolution urged the government to make sure that everyone, regardless of their sex and sexual orientation, has the same options e.g. the option to adopt a child⁴⁵. The decision is being handled by the Health Committee. The present 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 child⁴⁶.

Ligestillingsnævnet (The Gender Equality Board) has handled two complaints regarding discrimination towards transsexual persons. The cases are described in annex 1. The task of the Gender Equality Board is to handle complaints about specific cases of differential treatment on the basis of gender. Any citizen may complain free of charge to the Board, e.g. regarding job advertisements seeking applicants of one specific gender, differences in salary, or dismissal due to the gender of the employee. This free access aims to give the citizen easy access to a hearing of a complaint about gender discrimination. A decision may order that the complainant is granted compensation or that a dismissal is overruled. The Gender Equality Board decides cases concerning discrimination on grounds of gender within the scope of Lov om ligestilling af kvinder og mænd Ligestillingsloven (Act on Gender Equality) and other Acts which deal with gender discrimination. The Board may award damages for the violation of the prohibition against gender discrimination. The Gender Equality Board will be dismantled when the new Ligebehandlingsnævn (Equality of Treatment Board) is established in 2009.

⁴⁵ B 142 - Forslag til folketingsbeslutning om transseksuelles/transkønnedes rettigheder – 30. marts 2007 (Proposal to resolution on the Rights of Transsexuals No. 142 30 March 2007).

⁴⁶ 1. behandling af B 142 den 11. maj 2007. Indenrigs- og Sundhedsministerens tale (Minister of Interior and Health speech on 11 May 2007).

8. Miscellaneous

The Faroe Islands and Greenland are parts of the Kingdom of Denmark. According to Grundloven (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 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 Straffeloven (the Danish Criminal Code) 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 *Lagting* [Faroese Parliament] 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 *Landsstyre* [Cabinet of the Greenland Home Rule Government] appointed a joint Danish and Greenland commission to review the Greenland justice system. The primary task of Den Grønlandske Retsvæsenkommission (the Commission on Greenland's Judicial System) was to review Den Grønlandske Retsplejelov (the Administration of Justice Act for Greenland) and Den Grønlandske Straffelov (the Greenland Criminal Code) and to propose measures for modernisation and adjustments where appropriate in accordance with international human rights standards. The final report of Den Grønlandske Retsvæsenkommission (the Commission on Greenland's Judicial System) 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.

9. Good practices

Section 81 no. 6 was inserted into Straffeloven.⁴⁷ 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 Lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v.⁴⁸ was adopted in 2006. This amendment relates to the availability 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. 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 2007⁴⁹.

A Parliamentary proposal was adopted the 17 March 2009 allowing adoption of children (both foreign and Danish) by homosexual couples.⁵⁰ The Government is now required to draft the necessary legislation and propose the amendments in Parliament.

The Ministry of Justice in 2007 established a new reporting system for decisions in criminal cases where the crime has been committed on account of the victim's race, national or ethnic background, religious beliefs or sexual orientation. The result of the reporting system will be published in the spring 2008.

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

⁴⁷ Amending the Criminal Code by Act No. 218 of 31 March 2004

⁴⁸ 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).

⁴⁹ Act no. 535 of 8 June 2006 amending Lov om kunstig befrugtning.

⁵⁰ B 36 Forslag til folketingsbeslutning om adgang til ansøge om fremmedadoption for par i registreret partnerskab.

⁵² SFI (2006) *Indsatser mod æresrelateret vold - En undersøgelse af indsatsen i seks europæiske lande* (2006), available (in Danish) at the website of the Danish National Centre for Social Research <http://www.sfi.dk/>

relation to Sweden and the Netherlands). The report concluded that for the moment efforts primarily target female victims⁵².

The City Council has agreed on a grant to the Copenhagen Pride for their annual gay parade for the year 2008. The parade applies for funding each year and last year received a grant of DKK 150,000 (€ 20,000)⁵³.

The Gay Olympics: Copenhagen has been awarded the 2009 World Outgames.

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> (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.

⁵³ <http://www.cphpost.dk/get/105729.html> (15.02.2008)

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)	<p>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.</p> <p>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.</p>
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.

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.

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)

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/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 E, Freedom of assembly, 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 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 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])	<i>Ligestillingsnævnet</i> [Gender Equality Board]
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])	<i>Ligestillingsnævnet</i> [Gender Equality Board]
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, Name change and/or sex change of transgender people, relevant case law, 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 I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, 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)	

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							

Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007
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	2007
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	2007
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	2007
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	2007
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	2007
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
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								In total :20
Number of persons who changed their gender/sex in your country under the applicable legislation	3 ⁵⁴	6	3	4	4	1	5	

⁵⁴ 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*)