



January 6, 2016

2nd Cycle - UPR Denmark

Suggestions to recommendations to the State of Denmark by LGBT Denmark

With background information

When it comes to LGBTI-rights, Denmark is in many ways in the first league. It is important, however, to understand that from a human rights perspective there are still areas where Denmark not only does not live up to the best practices, but even breaches fundamental rights.

A large number of Danish NGOs including LGBT Denmark filed a joint stakeholder submission to the UPR process with recommendations. Four of these are specifically LGBTI-related. The following lists these four recommendations and includes some background information. In the editing process of the joint submission two recommendations were merged into one. Below they are separated.

The full text of our Stakeholder Submission to Denmark can be downloaded here:

<https://panbloggen.files.wordpress.com/2015/06/20150622-upr-2nd-cycle-denmark-stakeholder-report-22-june-2015.pdf> (or <http://bit.ly/1Syk6gw>)

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Joint Submission recommendation no. 5

Discrimination on grounds of gender identity and gender expression

Gender identity (i.e., gender felt by a person) and gender expression (i.e., gender shown by a person outwardly) are currently not explicitly mentioned in the anti-discrimination and equal treatment legislation. There are court cases regarding discrimination and hate crime against trans persons, but decisions refer to sexual orientation not to gender identity and/or gender expression. Thus, the protection of the rights of trans persons hinges on a misinterpretation of the term sexual orientation.

[Recommendation: Explicitly prohibit discrimination on grounds of gender identity and gender expression.](#)

Background: The Danish anti-discrimination and equal treatment legislation refers to gender and sexual orientation. There are no references however to neither gender identity nor gender expression. Danish governments have argued it is not necessary to include gender identity and gender expression in the legislation because it is considered to fall under the term sexual orientation.

It is true that the legal bodies do interpret sexual orientation to cover all. This was seen in 2015 in a labour market case, where a conviction was made referring to the existing *Act on Prohibition of unequal treatment in the Labour Market*, which refers to sexual orientation:

<https://panbloggen.wordpress.com/2015/07/29/michelle-var-udsat-for-diskrimination-som-transkvinde/> (or <http://bit.ly/1Sy0M3c>). In a goods and services case a similar thing was seen, when a manager had violated the *Act on Prohibition of Unequal Treatment on the Grounds of Race etc.*, by refusing to serve a male transvestite who turned up in the store wearing a dress, on the same terms as others. The manager accepted a penalty notice: http://www.anklagemyndigheden.dk/sites/vidensbase/Documents/Redegørelse_hatecrime.pdf (or <http://bit.ly/1R9JnOM>) - sec. 4.4.1 (in Danish).

The reason why legal bodies in Denmark can make this interpretation is a misunderstanding in the preparatory legislative materials of the mid-80-ies revision of the Criminal Code (1986/1 LSF 196) adding sexual orientation to the protected grounds of discrimination. The only mentioning at all concerning gender identity is: “Also other forms of ‘sexual orientation’ than the homosexual, e.g. transvestitism, will according to the draft be protected against discrimination and unequal treatment.” Three decades later protection of trans persons against discrimination and unequal treatment is based on this evidently erroneous concept that gender identity and gender expression are covered under the term sexual orientation.

A consequence of this interpretation is an invisibility of the rights of trans persons in the protection laws. This invisibility permeates the practices in all legal areas including policymaking. In a modern context sexual orientation and gender identity are recognized as different dimensions cf. e.g. resolution adopted by the Human Rights Council 17/19 Human rights, sexual orientation and gender identity: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf> (or <http://bit.ly/1R9NPwQ>). See also the OHCHR campaign Free & Equal: https://unfe.org/system/unfe-8-UN_Fact_Sheets_v6_-_Equality.pdf (or <http://bit.ly/1OyfeXf>) - second action point.

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Joint Submission recommendation no. **19a**
Gender identity of children and young people

The quality of life of both children and youth would be better safeguarded if their self-experienced gender were recognized as authentic and legitimate. Even though the Danish gender recognition act is a milestone, it falls short of protecting the rights of the child regarding its integrity.

Recommendation: Lift the requirement of 18-years-of-age for legal gender change by allowing the person exercising parental authority over the minor to file an application.

Background: Denmark was the first country in Europe to make the legal gender a personal decision and not requiring sterilisation or declarations from any professionals for change of legal gender. Only persons of 18 years or more, however, have access to this administrative procedure. This is not in the best interests of the child.

It should be kept in mind that a legal gender change is completely reversible as it is simply an administrative registration. Should the minor regret the decision the registration can simply be changed again.

Several countries allow for minors to change legal gender:

In *Argentina* for a person less than 18 years old an application for legal gender change can be filed by the legal representative of the minor and with the explicit agreement of the minor:
<http://tgeu.org/argentina-gender-identity-law/> (or <http://bit.ly/1JslVcR>)

In *Malta* for a minor the persons exercising parental authority over the minor or the tutor of the minor may file an application for change of legal gender: <http://tgeu.org/wp-content/uploads/2015/04/Final-Gender-Identity-Gender-Expression-and-Sex-Characteristics-Act.doc> (or <http://bit.ly/1mA5Ury>)

In the *Netherlands* a person below 16 can apply for change of legal gender. A statement from an expert is required: <https://www.government.nl/latest/news/2013/12/18/easier-to-change-gender-in-birth-certificate> (or <http://bit.ly/1OL5LOn>)

In *Norway* a current law proposal is being processed. According to this anyone below 16 years old can apply for legal gender change with the consent of his or her parents. For children under 7 years documentation from a health person is required that the child is intersex.
<https://www.regjeringen.no/no/dokumenter/horing---forslag-til-lov-om-endring-av-juridisk-kjonn/id2423028/> (or <http://bit.ly/1Z41Vzc>)

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Joint Submission recommendation no. **19b**
Gender characteristics of children and young people

Intersex children are subject to irreversible, non-consensual medical treatment to adapt their body to the gender decided by their parents. This runs counter to recommendations from e.g. EU's Fundamental Rights Agency, the Council of Europe and the UN High Commissioner for Human Rights.

Recommendation: To ensure the right to bodily integrity of intersex person, coerced surgical gendering must be outlawed.

Background: In recent years the international awareness of intersex issues has increased significantly, cf. e.g.:

UN interagency statement (May 2014): Eliminating forced, coercive and otherwise involuntary sterilization, http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/ (or <http://bit.ly/1kGw5Lf>)

EU Fundamental Rights Agency publication (May 2015): The fundamental rights situation of intersex people, <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people> (or <http://bit.ly/1S0DELp>)

Council of Europe Commissioner for Human Rights: Human rights and intersex people. Issue Paper (May 2015), [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/IssuePaper\(2015\)1](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/IssuePaper(2015)1) (or <http://bit.ly/1OLb8Nx>)

According to the latter report approx. 1.7% of human births are intersex (p. 16).

In spite of this massive recognition by human rights institutions intersex persons and intersex persons rights are largely invisible and ignored in the general population. This makes room for coerced, non-consensual, irreversible medical treatment of children.

From the UN interagency statement:

Intersex persons may be involuntarily subjected to so-called sex-normalizing or other procedures as infants or during childhood, which, in some cases, may result in the termination of all or some of their reproductive capacity. Children who are born with atypical sex characteristics are often subjected to cosmetic and other non-medically indicated surgeries performed on their reproductive organs, without their informed consent or that of their parents, and without taking into consideration the views of the children involved. As a result, such children are being subjected to irreversible interventions that have lifelong consequence for their physical and mental health. (p. 7)



Joint Submission recommendation no. **29**
Barriers in health care for LGBT persons

For a trans person to get any treatment concerning gender it is necessary to subject oneself to years of psychological scrutiny for gender profiling. This is the case, for instance, for cosmetic breast surgery for woman, whereas other women have direct access to treatment with no questions asked. Even hormone treatment is only accessible to trans people after such lengthy investigation.

Recommendation: Document and stop unequal treatment of LGBT people in health care.

Background: In 2014 a new administrative guideline on assessment and treatment of transgender persons was issued. This made it significantly more difficult than earlier to obtain medical treatment including hormone treatment and different kinds of cosmetic surgery.

Furthermore, in general treatment in the Danish health system is subject to a waiting time guarantee setting an upper limit for how long a patient has to wait for medical treatment. Treatment with gender confirming surgery, however, is specifically excluded from the guarantee.

The restricted access to health services for trans persons results in deteriorated health. A recent study shows that alarmingly many trans persons suffer from bad health: *LGBT health - health and well-being among lesbians, gays, bisexuals and trans persons*, National Institute of Public Health: [http://www.kk.dk/sites/default/files/LGBT-sundhed %20si-folkesundhed%29 %202015%29.pdf](http://www.kk.dk/sites/default/files/LGBT-sundhed%20si-folkesundhed%29%202015%29.pdf) (or <http://bit.ly/1PzXWe>)(summary in English).

Another example of unequal treatment of LGBTI-persons is a case where an HIV-positive gay man is denied access to fertility treatment. In contrary an HIV-positive straight man has access to the same treatment: <https://panbloggen.wordpress.com/2015/06/29/access-to-sperm-washing-for-hiv-positive-gay-men/> (or <http://bit.ly/1mEmTZI>)



Joint Submission recommendation no. **32**

Gender identity, gender expression and sexual orientation in education

Numerous professions work with people e.g. nurses, teachers or lawyers. Over and over professionals will be in situations where their work affects the life of LGBT persons. Yet, no educations have LGBT-related curricula. Consequently, even among professionals in Denmark, knowledge of the conditions of LGBT people is appallingly small.

Recommendation: Add gender identity, gender expression and sexual orientation to the curriculum of professions concerning people, e.g. medical professionals, health care workers, teachers, lawyers, judges, police, and social workers.

Background: Combating discrimination and ensuring inclusion and equal treatment in all areas requires the efforts of professionals in a large number of professions. But LGBT-competencies are not in the curriculum of any education.

The importance of this point is underpinned by the fourth action point of the OHCHR Equal & Free campaign, cf. the fact sheet Equality and non-discrimination, https://unfe.org/system/unfe-8-UN_Fact_Sheets_v6_-_Equality.pdf (or <http://bit.ly/1OyfeXf>):

Ensure that law enforcement, healthcare, education, judiciary and other service sector personnel are sufficiently trained to be able to ensure equal treatment of LGBT persons.