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Self-declaration of legal gender status in Denmark

Dr Chris Dietz

Background

Since 1968, each person registered as residing in Denmark has been allocated a 10-digit social security number in the Central Person Registry (CPR) system. In accordance with the 'odd/even rule', the final digit of this number determines the person's legal sex/gender. If the final digit is odd, the person's sex/gender status is certified as male; if it is even, it is certified as female. Since the Danish Parliament adopted the 'self-declaration model' of legal gender status in June 2014, it has been possible for any legal resident over the age of 18 to apply for a new CPR number based upon 'an experience of belonging to the other sex/gender'. This new number is assigned, without further pre-requisites, provided the applicant confirms that their desire remains unchanged after a six-month 'reflection period'.

This Briefing Paper reports the findings of Economic and Social Research Council (ESRC)-funded research, which examined two research questions:

- 1) How effective has self-declaration legislation been in Denmark in practice?
- 2) What can policymakers and activists learn from its successes and limitations?

Summary of Findings

The study revealed that while the adoption of self-declaration of legal gender status was welcomed in Denmark, its impact has also been limited in practice. Although respondents were generally positive about being permitted to self-declare their legal gender, they remained critical of how self-declaration was implemented in a way which:

- i) Excludes residents under the age of 18;
- ii) Requires applications to be confirmed following a six-month 'reflection period';
- iii) Continues to restrict recognition to within the male/female gender binary;
- iv) Does not include any provisions which would protect people at work, and
- v) Does not increase the accessibility of health care in Denmark.

Methods

1) Doctrinal analysis of legislative documents, including:

- L 182 Law amending the Act on the Central Person Registry (11 June 2014) (*L 182 Lov om ændring af lov om Det Centrale Personregister*)
- L 189 Law amending the Health Act (2014) (*L 189 Lov om ændring af sundhedsloven*)
- Legislative debates in the Danish Parliament (20th May 2014)
- Report of the inter-ministerial working group on legal gender change (27 February 2014) (*Rapport fra arbejdsgruppen om juridisk kønsskifte*)
- Guideline no 10353 on the treatment of transgender patients (2014) (*Vejledning nr 10353 om udredning og behandling af transkønnede*)

2) Empirical interviews conducted with:

- 15 gender diverse people
- 12 campaigners, politicians, and activists
- 4 civil servants
- 2 medical practitioners

Demographics

Self-defined demographics of the 15 trans and intersex people interviewed:

Gender	
Male/man/transman	7
Female/woman/transwoman	4
Non-binary	3
Intersex woman	1
Total	15

Age	
18-30	8
31-40	3
41-50	3
51-60	1
Total	15

Ethnicity	
White	14
Asian	1
Total	15

Employment	
In paid employment	5
Unemployed	3
Student	3
Retired	2
Looking after family	1
Self-employed	1
Total	15

Perspectives on the Danish reforms

In interviews, respondents who had amended their CPR number reported experiencing problems accessing social security services and other personal identity documents, as public- and private-sector administration systems struggled to process their new legal status. This led some interviewees to question why reforms required them to change CPR number in the first place. In addition to these practical issues, this also ensured the continuing division of residents into 'male' or 'female' categories in the CPR system – which formally excluded those who do not identify within this gender binary.

In accordance with recent academic interest in state 'decertification' of gender (Cooper and Renz 2016), most interviewees stated that they would have preferred the reforms to have involved abolishing the odd/even rule:

[I]t would be easier if the system had our ID number, but with the last number not depending on whether I was male or female. (Jakob, Male, 31)

[I]t is very problematic today with the numbers so separated – because it doesn't fit with how gender is. It's binary, in a way that gender is not. I wouldn't have changed it if it wasn't a binary system. (Adam, Male, 30)

I think that would be ideal; if the whole odd-even number system was just dropped. (Pippin, Non-binary, 42)

Yet attempts to allow applicants to declare belonging to 'another sex/gender' were dismissed during the reform process on the basis that this would be incompatible with the binary orientation of the CPR system. Interviews with respondents professionally involved in the reforms suggested that the Danish government was unwilling to commit, either politically or financially, to gender-neutral law reform – irrespective of the problems that their failure to do so might cause.

Despite this limitation, binary-oriented self-declaration legislation was still welcomed by most interviewees (including some non-binary people). Its impact was felt most strongly by those who had already gained recognition from institutions outside of civil registration systems – for example, after being supported by their employer during transition, or being granted access to hormonal or surgical body modification technologies (if desired) by gatekeepers in the health care system. For these interviewees, self-declaration was received in a largely positive light:

[T]he demand for you to get surgery or hormone therapy is no longer there, so if you don't need that, you can just do as I have done and ask for a new social security number with the right number at the end [...]. And now I have this, so I am a female in a legal sense. (Kirsten, Female, 57)

I recently got a new job, and being able to apply for a job with the right school papers and my social security number [...] – that means a lot to me. [...] I have my social security number in place, I've secured my hormone therapy treatments through the Sexological Clinic. So, right now, that's enough for me to move on. (Jon, Male, 40)

Yet for interviewees who faced challenges in institutions like the workplace and health care system, the impact of self-declaration was much less pronounced. One interviewee described how seeking recognition may have effectively 'outed' him to his employer:

I had to go and talk to my boss about my contract, because I needed a new copy with my new CPR on it. [...] I haven't told him why, but [...] I think he put two and two together. Because [...] he can see that it has gone from an even to an odd number – so I suppose he figured it out. (Peter, Male/FtM, 27)

The prospect of recognition affecting workplace relations was not considered in the legislative materials; and the legislation itself includes no employment protections. Nor does it consider access to health care; leaving it to trans individuals to assert their rights within the clinical setting. This failure to designate any patients' rights was compounded several months later, when new medical guidelines (Guideline no 10353) formally centralised authorisation for technologies considered to be 'sex/gender modification treatments' at the Sexological Clinic of the National Hospital in Copenhagen in December 2014. These guidelines confirm that the medical practitioners who had been willing to prescribe hormones and perform minor surgeries on an informed consent basis were prohibited from doing so with any

new trans patients. So, although the Danish Parliament has since moved 'transsexualism' out of the section of the Danish diagnostic code covering mental disorders (in 2016), this does not amount to the 'depathologisation' of trans phenomena called for in recent academic literature (Theilen 2014; Davy et al. 2018), as access to hormonal and surgical body modification technologies remains dependent upon being granted this diagnosis at the Sexological Clinic.

The effect of increasing psychiatric oversight over access to surgical and hormonal body modification technologies effectively prohibits trans people who are unable to gain authorisation via the officially-sanctioned process of psychiatric evaluation from undergoing body modification within Danish borders. This adversely affected over a third of interviewees. Some had previously been rejected by the Sexological Clinic or had another negative experience there that would prevent them from returning. Others objected to the psychiatric route on principle, as they disagreed with the way this pathologised gendered embodiment (Dietz 2018).

A psychiatric conception of gender caused problems for several interviewees; including one transwoman living with depression and anxiety, who describes being turned away from the Sexological Clinic:

I was taking anti-depressants and anxiety medication [...] [and] because of my medication I was rejected. I actually went home and talked with my doctor, and started getting off the medication – which was really hard and made me sick. [...] I just couldn't get out of bed for two weeks. (Freyja, Transwoman, 46)

As it is no longer possible for those unable or unwilling to undergo psychiatric evaluation at the Sexological Clinic to turn to the private sector in Denmark, several interviewees reported considering seeking treatment abroad. Yet even the viability of this possibility was dependent upon access to financial resources:

Of course it's easier to get your operation when you pay for it yourself. You can still do that; I can still travel to Thailand or Canada, wherever, if I pay for it myself. It's no problem, nobody can stop me. I just need the money, and I don't have it – so I have to go through the Danish system. (Anita, Female, 46)

The process of psychiatric diagnosis has been criticised for scrutinising trans people under out-dated (Hird 2003), middle-class, and white (de Young 2010; Roberts 2012; Metzl and Hansen 2014) gender norms (Davy 2015). These include the depth and assertiveness of the

patient's voice, the length and tidiness of their hair, and their sartorial style. It may also discriminate against subjects who are in receipt of another psychiatric diagnosis such as depression or anxiety. Although trans people continue to receive a formal offer of access to health care in Denmark, many are effectively excluded, and left to consider how to privately fund access abroad. In contrast with the purportedly inclusive intentions of self-declaration, then, the result of the ongoing relevance of psychiatric diagnosis is that the effect of the 2014 reforms will vary according to a person's age, class, (dis)ability, ethnicity, gender, and sexuality.

The Argentinean Gender Identity Law of 2012, which was the first piece of legislation to implement self-declaration of legal gender status, was cited in the report of the inter-ministerial working group tasked with framing the Danish reforms. Yet its Article 11 right to access health care, including hormonal and surgical body modification technologies on an informed consent basis, was not discussed in the working group's report. As with the politicians in the parliamentary debates, policymakers interviewed about their involvement in the legislative process were keen to distinguish between civil and medical laws. Yet the two spheres were not so easily separated by interviewees whose embodiment is affected by them both (Dietz 2018). From this embodied perspective, self-declaration tended to be criticised more for what it does not do than for what it does:

[I]nstead of focussing on access to health care, or more effective health care, there's a focus on documentation which is less important, in a way. [...] [N]ow – at least in Denmark – you can change your CPR number [...] but the access to health care has got worse. (Sasha, Non-binary, 23)

The explicit legislative intention that 'situations will become easier when there is consistency between CPR number and physical appearance' (Bill for amending the Act on the Central Person Registry) is undermined where access to body modification technologies is denied, for reasons explained by one activist:

It would never be the first step for anyone to change your CPR number – you would just come in a lot of trouble every time you go out and get work with the wrong CPR number, or the wrong name, that you're not passing as. (Elias Magnild, Trans Political Forum)

So, although the CPR law permits anyone the opportunity to declare 'an experience of belonging to the other sex/gender' (L 182 Law amending the Act on the Central Person Registry), interviews suggest that

making this declaration will not always be experienced as a viable option in the absence of accessible health care provision. Even following its adoption of self-declaration of legal gender status, then, Danish law continues to exclude those unable or unwilling to amend this status without sufficient levels of material support.

Conclusions

While Denmark's decision to adopt self-declaration of legal gender status has been welcomed, its impact has been restricted in practice. Findings demonstrate that self-declaration fails to address the difficulties people face in their everyday lives – particularly in challenging spaces such as the workplace or the clinic. Within institutions characterised by unequal power dynamics, the new Danish law makes almost no effort to ensure that self-declared gender status will be respected in practice. When self-declaration is assessed in the context of the broader reforms of the regulation of gendered embodiment passed in Denmark in 2014, it is severely limited. The impact of civil reform is ultimately undermined by medical regulations, which have different aims and objectives in mind.

Though policymakers involved in the legislative process were keen to distinguish between reforms of civil and medical regulations, both affect trans embodiment in interrelated ways. In some cases, gaining recognition from one system is dependent upon being authorised by the other. So, while all Danish residents over the age of 18 are now permitted to self-declare their legal gender status, many have been left without the necessary support to access the benefits of recognition in practice – and the needs of those who experience socio-economic marginalisation are no more likely to be met than they were before 2014.

As well as formally excluding non-binary people and people under the age of 18 from legal recognition, self-declaration fails to address problems accessing health care, employment protections, and other issues of material concern to trans people. Whether structural inequalities are likely to be better addressed by other states seemingly keen to follow the Danish route remains a cause for concern. In future, the strategic problems caused by separating civil and medical issues out within the legislative process in Denmark ought to be considered by campaigners and policymakers tasked with responding to proposals to reform gender recognition legislation in the UK and elsewhere. Otherwise, the needs and demands of more marginalised groups of trans people will not be addressed, and inequalities amongst gender-diverse communities will continue to be reproduced in law.

Dr Chris Dietz

Chris Dietz is a Lecturer in Law and Social Justice at the School of Law, University of Leeds. Prior to this, he completed a PhD in Socio-Legal Studies at the School of Law, University of Leeds, in 2016. Chris' research addresses the regulation of embodiment, with a specific focus upon the effect that jurisdictional divisions in gender recognition laws have had upon gender diverse people (Dietz 2018). He has previously undertaken visiting fellowships at the Unit of Gender Studies, Linköping University (Sweden), the Center for Gender Studies, Karlstad University (Sweden), and the Centre for Gender Studies, University of Copenhagen (Denmark).

Contact details: c.p.dietz@leeds.ac.uk

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UNIVERSITY OF LEEDS

School of Law

Tel: +44 (0) 113 343 5033

Email: law@leeds.ac.uk