

GUIDANCE no 9399 of 04/06/2014 (Effective)

Ministry: The Ministry of Children, Gender Equality, Integration and Social Affairs

File number: The Ministry of Children, Gender Equality, Integration and Social Affairs,
file no. 2014-1420

Subsequent amendments to the stipulations

CIS no 9298 of 05/05/2015

Rules of guidance on the processing of matrimonial proceedings

Chapter 9

Recognition of foreign marriages and recognition of foreign partnerships between two persons of the same gender

9.1. In general about foreign marriages

Many married couples who married abroad need their marriage to be recognised in Denmark.

This chapter addresses both citizens and the numerous authorities who may find themselves in the position in which the authorities are to decide on recognition of a foreign marriage. Danish law does not include statutory provisions on recognition of foreign marriages. Accordingly, the practice observed by courts and administrative authorities on recognition of foreign marriages is described. Marriages entered into in the other Nordic countries, however, are recognised without further investigations (see appendix 1, section 2).

In the following, firstly, the practical approach on recognition of foreign marriages is described. Secondly, particular situations in which there may be a reason for not recognising a foreign marriage are described. In relation to these two sections, some additional elements of the processing of cases on recognition of foreign marriages are described. These are situations in which an authority should not request the production of foreign documents and also situations in which a foreign marriage may or should be presented to the Danish National Social Appeals Board, the Family Law Department.

Further, the website www.ast.dk contains a range of information that may be useful when recognising a foreign marriage. The website contains information, among other things, about the marriage regulations in a number of countries.

Recognition of foreign partnerships between two persons of the same gender has been described in this chapter, section 9.6.

Finally, we refer to appendix 1, which includes comments on individual sections of this chapter.

A marriage has major legal implications for both spouses. The marriage, among other things, has implications for the spouses' property matters, succession rights, maintenance obligations, paternity to and custody of children of the marriage.

Recognition of a foreign marriage means that the parties are considered spouses according to Danish law. Among other things, this means that a couple who married abroad has the same rights and duties in Denmark as a couple married in Denmark.

Due to the legal implications of a marriage to the spouses, it should be an exception that a foreign marriage is not recognised in Denmark. According to the practice observed by the courts and administrative authorities, the starting point therefore is that a foreign marriage will be recognised in Denmark. An authority processing a case in which the emphasis is on a foreign marriage should always ensure that such marriage may be recognised in Denmark.

In the following, it is described how Danish authorities should process cases on recognition of foreign marriages.

9.2. Conditions of recognising a foreign marriage

9.2.1 Documents

An authority which is to consider recognition of a foreign marriage should ensure it is in possession of the documents and information necessary. It is recommended that the parties complete the form "Information about a foreign marriage". The form is available on www.ast.dk. The parties are to respond to all of the items on the form.

In addition, the authority should be in possession of the following documentation and information:

- The original marriage certificate. A transcript or a copy of the marriage certificate certified by the authority issuing the original document, may, however, be used instead. Marriage certificates from abroad are to be produced as originals and may accordingly not be submitted digitally to the authority.
- The authenticity of the marriage certificate may be certified through legalisation or apostille. However, this does not apply to documents from a large number of countries. See the description of legalisation and apostille in guidelines on documentation of the authenticity of documents concerning family law from abroad. These guidelines are available from www.ast.dk.
- Documentation of the marriage being registered or similar, if the marriage is only valid when it is registered or similar according to the law in the country in which the marriage was performed.
- Translation of the documents. The documentation does not, however, need to be translated if it is possible to process the case satisfactorily without translation, for instance, because the employees of the authority master the foreign language.

In certain situations, a Danish authority should not request the production of foreign documents. This has been described in this chapter, section 9.3.

9.2.2 In general about the conditions for recognising a foreign marriage

When the documents mentioned above have been produced, the authority is to ensure that the foreign marriage complies with the conditions for recognition in Denmark. In practice, a foreign marriage is recognised when the following conditions have been met:

- The marriage has been performed by an authority or a person authorised to perform such marriage in the country in which the marriage was performed.
- The marriage observes the formal requirements made in the country in which the marriage was performed.
- The marriage does not contradict fundamental Danish public policy. In practice, this means that in particular the following two conditions must be met: Both parties shall have been present at the marriage, and both parties shall have reached the age of 15 at the time of the marriage.
- The marriage shall not be invalid in the country in which it was performed.

If the above conditions are not met, the marriage will not be recognised, not even if both parties declare that they are married to each other.

It is not a condition for recognising a foreign marriage that the marriage complies with the legal requirements of a Danish marriage.

9.2.3 Information about rules of marriage in other countries

Recognition of a foreign marriage may depend upon the rules of marriage, etc., in the country in which the marriage was performed. On www.ast.dk, the Danish National Social Appeals Board, the Family Law Department, publishes known information about marriages in other countries. Decisions on recognition of a foreign marriage accordingly imply that the relevant authority investigates whether the website contains relevant information about marriage in the country in which the marriage was performed, unless the authority knows otherwise of the rules of marriage in the relevant country.

- If the website does not contain information about marriage in the country in which the marriage was performed, and the authority cannot obtain further information about marriage in the relevant country, the case should be presented before the Danish National Social Appeals Board, the Family Law Department.
- If the information on the website does not adhere to the documents and information about the marriage of which the authority is in possession, the case should be presented to the Danish National Social Appeals Board, the Family Law Department.
- The Danish National Social Appeals Board, the Family Law Department, may help procure information from other countries. This has been described in this chapter, section 9.5.

In addition to this, the authority may investigate whether Immigration Services have processed an application from the parties for family reunification. If this is the case, the authority may ask the parties for a copy of Immigration Services' decision. Immigration Services has stated that in such cases they generally always consider whether the parties have entered into marriage and the validity of such marriage. If Immigration Services has assessed that the foreign marriage may be recognised according to Danish law, Immigration Services will use the word "spouses" about the parties in the decision. If not, it will also appear from the decision that Immigration Services does not recognise the marriage. In such cases, i.e. of family reunification and such cases only, the authority may - without further presentation to the Danish National Social Appeals Board, the Family Law Department – apply the assessment as performed by Immigration Services.

If a marriage has been performed in the Faroe Islands or Greenland, it is a Danish marriage. Correspondingly, it is a Danish marriage if the marriage has been performed in a Danish embassy abroad (section 22(2) of the Danish Marriage Act). Accordingly, no case will arise on recognition of such marriages.

If the marriage has been performed abroad by a priest of the Danish national church, it is to be investigated whether the priest was so authorised by the Minister of Ecclesiastical Affairs (see section 22(1) of the Danish Marriage Act. Information to this effect is available from the Danish Ministry of Ecclesiastical Affairs.

9.2.4 Further details about the conditions for recognising a foreign marriage

This section contains a further description of the conditions for recognising a foreign marriage. The description contains examples of the typical situations in which there may be basis for not recognising a foreign marriage.

9.2.4.1. Marriage authority

In order for a foreign marriage to be recognised in Denmark, the marriage must either have been performed by an authority or a person authorised to perform the marriage in the country in which the marriage has been entered into.

If there is any doubt as to whether the person or authority performing the marriage was authorised to perform the marriage, this should be investigated. However, when the marriage document is legalised or apostilled there is usually no reason to doubt the marriage authority.

In some countries, a marriage is only valid if it has been performed by a public authority. This means, among other things, that a marriage only performed by a church authority in such country is not valid. Such marriage is therefore not recognised in Denmark.

In practice, problems arise especially in relation to marriage authority for marriages performed by:

- Church authorities.
- Authorities belonging to another country than the one in which the marriage was performed, for instance, a marriage performed in an embassy.
- Persons not having a clear affiliation with an authority.

A marriage performed in a foreign embassy in Denmark is invalid according to Danish law. However, this does not apply to marriages performed in the Swedish or Norwegian embassies in Denmark (see appendix 1).

9.2.4.2. Formal requirements

If a marriage does not meet the formal requirements of marriages in the country in which it was performed, and this means that such marriage is invalid according to the law of the relevant country, the marriage will not be recognised in Denmark.

In some countries, it is a requirement that a marriage is to be registered with a public authority before the marriage is considered valid. In such situations, the marriage is only recognised in Denmark if the marriage has been registered in accordance with the rules of the country in which the marriage was performed.

9.2.4.3. Entering into a marriage shall not contradict Danish public policy

Foreign decisions are not recognised in Denmark if they contradict Danish public policy. This is the case if the decision is incompatible with the fundamental policies on which the Danish society governed by law is based, and it is therefore impossible to recognise the decision in Denmark. This also applies on recognition of foreign marriages.

In Denmark, the issue of not recognising a foreign marriage because it contradicts fundamental Danish policies of law especially arises in relation to marriages in which one of the parties or both parties had not reached the age of 15 at the time of entering into the marriage, and marriages in which one or both parties were not present at the marriage ceremony.

9.2.4.3.1. Both parties shall have been present at the marriage ceremony

A Danish marriage is only valid when both parties are simultaneously physically present at the marriage ceremony (sections 20(2) and 21(1) of the Danish Marriage Act). This condition shall also be met in order for a foreign marriage to be recognised. Cases in which such questions arise should be presented to the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5.

In some countries, it is possible to get married even though one of the parties or both parties are not physically present at the marriage ceremony. This usually implies that the absent party is represented by a substitute or proxy, who consents to the marriage on behalf of the said party. Such marriage is called marriage by proxy.

Marriages by proxy are generally considered contradicting to fundamental Danish public policy, and such marriages are therefore not recognised in Denmark. The requirement of both parties being present also means that a marriage entered into over the telephone or by other means of communication is not recognised in Denmark.

9.2.4.3.2. Both parties must have reached the age of 15 at the time of the marriage

According to Danish law, you may generally only enter into marriage after having reached the age of 18. However, exemption for entering into marriage even if one of the parties has not yet reached the age of 18 is possible. No exemption is granted to a party who has not reached the age of 15. If it is a foreign marriage where one of the parties was under the age of 18, the case should be presented to the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5.

In some countries, the minimum age for marriage is lower than the minimum age for marriage in Denmark. If the parties had not yet reached the age of 15 at the time of the marriage ceremony, the marriage will not be recognised in Denmark as such marriage contradicts fundamental Danish public policy. See appendix 1.

9.2.4.3.3. Forced marriages

If, in the processing of a case on recognition of foreign marriage, an authority suspects that a party has been forced to enter into the marriage, the authority should specifically consider whether the case should be submitted to the Danish National Social Appeals Board, the Family Law Department.

9.2.4.4. The marriage is invalid in the country in which it was entered into

If a marriage is invalid in the country in which it was entered into because the conditions for marriage in such country were not observed, the marriage will generally not be recognised in Denmark either. A foreign marriage is not recognised in Denmark, for instance, in the following situations:

- At the marriage ceremony, one of the parties was already married to another person, and in the relevant country, bigamous marriages are invalid.
- At the marriage ceremony, one of the parties did not meet the requirement of minimum age for marriage, and the marriage is therefore invalid in the relevant country.

This has been described in further detail in appendix 1.

Cases where questions arise as to the validity of the marriage in the country in which it was entered into should be presented to the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5.

9.3. Situations in which documentation of a foreign marriage is not requested to be produced

A Danish authority should not request the production of foreign documents if:

- The party is a refugee or an asylum seeker.
- It is impossible or very difficult or onerous for the party to procure such documentation.

The party is a refugee or an asylum seeker:

If a refugee or an asylum seeker is not in possession of the necessary marriage certificates, Danish authorities should not require that the relevant party contacts the authorities in the country from which the relevant person has escaped. The reason for this is the risk of the foreigner being exposed to (additional) persecution on such approach. For the same reason, Danish authorities shall not contact the relevant authorities to obtain information about this party. This also applies even if the party has subsequently become a Danish citizen. Accordingly, Danish authorities should not require that a refugee or asylum seeker produces documentation of a foreign marriage.

If the party has travelled to the country from which the party has escaped, after the party has obtained refugee status in Denmark, however, there will usually be no impediments to obtain information about the party from the relevant country. The party should be informed to this effect before an authority obtains information about the party from the relevant country.

Nothing prevents the authority from requiring documentation from countries in which a refugee or asylum seeker has lived but which the relevant party has not escaped from.

When an authority may not request that a refugee or asylum seeker produces documentation of a foreign marriage, the authority should present the case before the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5. This also applies in situations in which a refugee or asylum seeker produces documentation of a foreign marriage, but where the document is not legalised or apostilled, see this chapter, section 9.2.1, and where the authority may not request such apostille because the party is a refugee or asylum seeker.

Impossible or onerous for the party to procure the documentation:

In some situations, it is impossible or onerous for the party to procure documentation of a foreign marriage. The party is to document this.

If the authority assesses that it is impossible for the party to procure the requested documentation, the authority should, following a thorough assessment, avoid requesting the production of the documentation. An example of this could be the situation in which the foreign authority does not react to repeated inquiries about the documentation.

The fact that it takes a long time to procure the documentation, or that the party is to pay a fee for it, shall not prevent the authority from requesting production of the documentation.

If the authority assesses that it is not impossible or onerous for the party to procure the requested documentation, or that the parties do not wish to contribute actively to documenting the case, the authority may dismiss the application.

On www.ast.dk, the Danish National Social Appeals Board, the Family Law Department, publishes details about which countries it is not possible to procure documentation of a marriage from, to the extent the relevant information is known.

If an authority is in doubt as to whether, or not, it is impossible or onerous for the party to procure the documentation, the authority may present the case to the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5. This also applies in situations in which the party has presented documentation of a foreign marriage, but where the document is not legalised or apostilled, see this chapter, section 9.2.1, and where the authority is in doubt as to whether it is impossible or onerous for the party to obtain such authorisation of the document.

9.4. Situations in which documentation of a foreign marriage has been produced, but the authority doubts the authenticity of the document

If an original marriage certificate has been submitted to the authorities, but there are doubts about the authenticity of the document, for instance, due to the circumstances in the country in which the document has been issued, and irrespective of whether, or not, the document has been certified by legalisation or apostille, or whether, for instance, for reasons mentioned in this chapter under section 9.3, it is impossible to obtain such authorisation, the authority should present the case to the Danish National Social Appeals Board, the Family Law Department, see this chapter, section 9.5. For further details about documents from different countries, see www.ast.dk/born-familie/aegteskab-og-skilsmisse/aegteskab/anerkendelse-af-udenlandsk-vielse-skilsmisse-eller-dodsattest.

9.5. Presentation before the Danish National Social Appeals Board, the Family Law Department

As it appears from the above, there are situations in which an authority should submit questions on recognition of a foreign marriage to the Danish National Social Appeals Board, the Family Law Department.

The Danish National Social Appeals Board, the Family Law Department, does not have the authority to approve foreign marriages or to decide if a foreign marriage is to be recognised or not recognised in Denmark. The Danish National Social Appeals Board, the Family Law Department, may only assist other authorities in clarifying whether a foreign marriage complies with the conditions of recognition in Denmark and may issue a statement to this effect.

Such presentation is to include the following documents, etc.:

- 1) The Authority is to state the reason for the case being submitted, including which questions the authority requests clarified.
- 2) The form "Information about foreign marriage", available on www.ast.dk. The parties are to respond to all items on the form.
- 3) The original documents which appear from this chapter, section 9.2.1. The documents are to be translated into Danish or English by a certified translator, however, see no. 4.
- 4) If the case is presented because a party claims that it is impossible or onerous to procure such documentation from abroad, documentation or further details are to be presented to this effect, see this chapter, section 9.3.
- 5) If the State Administration submits a question on the recognition of a foreign marriage for use in the processing of a case of separation or divorce, documentation is to be produced showing that the conditions for granting separation or divorce are met, either by way of extracts from records or a correctly completed application form from both parties.

If the above documentation, etc. is not presented, the Danish National Social Appeals Board, the Family Law Department, will refuse to make a statement on recognition of the marriage in Denmark.

Clarification of the questions, which the authority has submitted often requires that the Danish National Social Appeals Board, the Family Law Department obtain information from other countries. This may be subject to costs. The authority submitting the case must reimburse the Danish National Social Appeals Board, the Family Law Department for any expenses incurred, while investigating the case and it should therefore appear from the submission that the authority will bear any related costs.

It must appear from the submission that the submitting authority has informed the persons, whose personal details are being submitted, of their rights according to the Danish Data Protection Act, and that the case has been referred to the Danish National Social Appeals Board, the Family Law Department.

9.6. Specifically about foreign marriages and (partnerships between two persons of the same gender)

For recognition in Denmark of foreign marriages or partnerships between two persons of the same gender, the same conditions generally apply as for recognition of foreign marriages, see above.

However, the recognition assumes that the legal effects of the foreign marriage or partnership correspond to the legal effects in Denmark of a marriage or a registered partnership between two persons of the same gender entered into in Denmark.

Marriages or partnerships between two persons of the same gender entered into in a number of countries may be immediately recognised in Denmark, if the conditions mentioned above have been met. These countries comprise the Nordic countries as well as Belgium, Holland, Great Britain, the Czech Republic and Germany. The reason is that the legal effects of a marriage or a partnership between two persons of the same gender from these countries correspond to the legal effects of a marriage or partnership between two persons of the same gender entered into in Denmark. If a municipality receives a request for registration of a marriage or partnership between two persons of the same gender entered into in another country than the ones mentioned above, the municipality is to submit the case to the Danish National Social Appeals Board, the Family Law Department, which will investigate whether the legal effects of a marriage or partnership from the relevant country corresponds to the legal effects of a marriage or partnership entered into in Denmark. If the marriage or partnership is recognised, it is to be registered in the Danish Central National Register. If it is a registered partnership entered into abroad, it is registered in the Central National Register as a registered partnership. If it is a marriage between two persons of the same gender, it is registered in the Central National Register as a marriage.