

NGO Shadow report
on the Country Report on the implementation of the Convention on the Elimination of
All Forms of Discrimination against Women (CEDAW)
about the situation of Transgender people in Switzerland

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1. INTRODUCTION

This report considers the situation of people who define themselves as women (Transwomen) as well as men (Transmen). Transgender is a term used here to also include gender variant people who neither wish nor need medical or psychological treatment, nor legal recognition of their gender. Their situation doesn't play a big part in this report, which does not mean that they do not face specific problems in Switzerland (mainly social discrimination).

2. LEGAL SITUATION

As mentioned as well in the shadow report of the Swiss lesbian organisations, sexual orientation and gender identity are not explicitly mentioned in the constitution as possible targets of discrimination. Currently, there is no law sanctioning acts of discrimination against these minorities.

As a result of federalism, the legal situation for transgender people can't be described in a way that would consider Swiss citizens and residents as equal. The conditions for change of first name and legal gender vary from Canton to Canton. There are no rules valid for all Cantons; some of them even have no rule at all on how to recognize transgender people. These differences lead to arbitrariness and a high degree of dependence on individual judgment and/or goodwill of the official in charge.

Holding legal documents that correspond with the physical appearance of the citizen is a basic condition for basic needs and human rights e.g. to move freely or apply for work. Denying the right to have one's legal document changed according to the expressed gender is therefore a breach of human rights granted to every Swiss citizen in the constitution and in international conventions.

2.1 Change of name

The first name of a person is an important part of their personality and social identity. Therefore it also impacts the quality of their relational interactions. This is even more important for a transgender person as she or he chooses their own first name as part of the recognition of their intimate and personal gender identity. Being allowed to present oneself

under a name that is congruent to one's gender is absolutely vital:

- a) not to be forced to constantly come out as transgender which makes it subsequently impossible to enjoy normal rights of privacy,
- b) to feel comfortable and safe in social interaction.

The Swiss Civil Code, art. 30 par. 1, allows a name change for „important reasons“, and puts the Cantons' administrations in charge of these cases. Transsexualism is generally recognized as an “important reason”, but the conditions differ. Some Cantons do allow transgender people to change their first name and set no specific additional conditions, which means that no gender reassignment surgery is needed. Other Cantons request proof that people have been living their daily lives known under their chosen name for a certain period of time. Many other Cantons do not recognize a transgender person's chosen name at all, no matter how long they have been using it, unless they go through surgery (defined as “irreversible sterilization”!).

Linking the legal change of name to sex reassignment surgery denies transgender persons the right to chose to undergo medical operations freely. In Switzerland, it is understood that each and every procedure affecting the bodily integrity has to be based on the free will of the person in question. It is therefore not consistent to deny this right to transgender people and consequently no administration should be given the right to request surgery.

We therefore urge Switzerland to allow all transgender people of all Cantons the right to chose their first name and pose no additional conditions, such as sterilization and/or surgery as a prerequisite for a legal name change.

2.2 Change of legal gender

Changing one's legal gender is only possible in all of the Cantons by providing proof of surgical sterilization. As said above this denies the right to privacy, to decide freely up-on which medical treatment one does or doesn't need or want. Physical integrity is the object of legal protection of highest worth. Forcing a minority to agree to harming their physical integrity is a sever offence against their human rights. Many transgender people in Switzerland do not want to get sterilized / castrated but they agree to undergo this surgery only to obtain the legal gender change that is conditional to a peaceful life in correspondence with their intimate identity and social role.

- *We therefore urge Switzerland to allow transgender people of all Cantons the same right to legally change their gender without having to prove surgical sterilization / castration or other medical procedures.*
- *We demand that change of first name and change of legal gender should not be connected to medical procedures at all and that everyone should have the right to change name and/or legal gender at a time that they seem most appropriate.*

3. MEDICAL TREATMENT

Access to health care for transgender people in Switzerland is provided under very limited conditions and at a very unsatisfactory level of quality. Some competent specialists exist but most of them do not perform surgeries in public hospitals. Access to them is therefore prevented for most transpeople as they do not fall under the requested categories of insurants.

Private companies offer insurance schemes in different categories. The most basic one is mandatory for, and available to, every resident. All insurance companies are obliged to accept anyone who applies. Additionally, for much higher premiums, one can get an

insurance covering a wider range of benefits. The decision of who they accept in these categories is up to the insurance companies. Many transgender people can not afford the higher categories of insurance and – when they can – are not even accepted by the insurance companies because of their gender identity.

3.1 Access to paid care, health insurances

Theoretically, approximately 90% of gender transition treatment is covered by the insurances. But – except for those few transgender patients with voluntary better coverage – the patient can not choose the surgeon.

Gender reassignment surgeries, being highly complex and specialized, should only be practiced by highly trained specialists capable of reaching the highest internationally recognized standards. If this training and these skills are lacking, the patients are exposed to high risks of severe complications and psychological problems. At the moment, most surgeons practicing these surgeries in public hospitals do not have sufficient competence and experience to reach acceptable results. Transgender people who can not afford to choose their surgeons therefore end up having to choose between a bad chop job or no gender reassignment surgery at all.

Since a judgment by the Swiss Federal Court in 1988, health insurances require two years of psychotherapy before gender reassignment surgery has to be refunded. In January 2009, the European Court for Human Rights declared that this is a breach of the European Convention of Human Rights in the Schlumpf vs Switzerland judgment. At this point in time it is still unclear if and how this ruling will be respected by health insurance companies as well as Swiss and Canton courts.

As for the hormonal treatment, the health insurance companies and the state of Switzerland make an arbitrary difference between the preparations. For neither economic nor medical reasons only a few specific ones are refunded by the health insurances. This leaves again mainly transgender people on basic insurance coverage with no choice of preparation. As not every patient tolerates all hormonal preparations, getting the choice is basic for the effectiveness and appropriateness of this treatment.

We therefore urge Switzerland

- *To identify surgeons, especially those working in university hospitals, who do not reach the internationally recognized standards of best practice and results in the treatment of transgender patients, and subsequently stop them to practice these specific operations*
- *To force health insurance companies to cover the costs of the treatment that is best for each individual patient and to broaden the choice of surgeons, preparations and time when she or he needs and wants treatment.*
- *To recognize and refund gender reassignment surgery in foreign countries when the level of expertise and cost-effectiveness are better than treatment in Switzerland.*

3.2 The „Centers of Competence“

Several public university hospitals are offering psychological care, hormonal and surgical treatment for transgender people in so called “Centers of Competence”. These centers are usually the places no current or past patient would recommend. Psychologists are known to treat transgender people with disrespect and as objects rather than capable adults who need support. Transgender people often do not get supportive and dignified treatment. Strangely, some of the Swiss surgeons providing gender reassignment surgeries in these centers are those obtaining the worst and most shameful results.

Transgender people who, on their own or through recommendations from competent professionals or other transgender people, chose qualified specialists outside of these "Centers of Competence", are usually more satisfied, happier and healthier. In the best interest of transgender people, the Cantons and the health insurances should neither support these self-proclaimed "Centers of Competence", nor force patients to get treated there.

We therefore urge Switzerland and the Cantons to:

- urgently evaluate the currently deplorable state of affairs in consultation with transgender people and organizations*
- subsequently stop those public university hospitals operating at substandard levels from "treating" transgender patients*
- force the health insurance companies to cover treatment for all transgender people with the most qualified (national or international) specialists, instead of those working in these centers*

3.3 Recognition of minors as patients and access to puberty inhibitor

Many transgender people are fully aware of their gender identity at a young age and are able to clearly express their wish. They need not only support from their families and specialized psychologists/psychiatrists, but also the chance to get early medical treatment. Treated with appropriate medicine to delay the physical changes of puberty (which are, especially in the case of transwomen, hard to change later on) does save them a lot of pain, as well as costs to the public healthcare system. Treated adequately, these children gain important years of their development until they can make an informed decision about which gender they will most happily live in – thus avoiding the suffering caused by the undesired and irreversible effects of puberty such as lowering of the voice or growing of beard in the case of young transwomen.

Puberty inhibitors are available in Switzerland but most specialists refuse to inform parents and children of this possibility, not even considering the monitoring of such treatment. Additionally, some psychologists still speak out in public against such state of the art treatment and deny the children and young teenagers of their right to understand their gender variance.

We therefore urge Switzerland to also care for its youngest transgender citizens and to offer the possibility of early puberty delaying treatment, later followed –at the age of informed consent- by hormonal treatment to trigger late puberty in their gender of choice.

3.4 Young adults (age 18 - 25)

Young adults under the age of 25 are often turned down by health insurances and courts on their wish of hormonal treatment and are usually denied surgical treatment. Even if they get hormones, in most cases legal recognition of their gender as well as change of name is denied by the Cantons. As 18 is the age of adulthood in Switzerland, this is a discrimination of young adults on the sole basis of gender, lacking any reasonable ground and explanation.

We therefore urge Switzerland to respect the full rights and wishes of young transgender adults to get medical treatment, legal recognition of their gender and change of name.