



TRANSGENDER PERSONS' RIGHTS IN THE EU MEMBER STATES

NOTE

Abstract

The paper presents the specific situation of transgender people in the Member States of the European Union. It gives an overview of the existing EU legislation applying to transgender persons and lists the specific human rights issues that they face.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

AUTHOR

Ms Cristina CASTAGNOLI

RESPONSIBLE ADMINISTRATOR

Ms Cristina CASTAGNOLI
Policy Department C - Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

To contact the Policy Department or to subscribe to its newsletter please write to:
poldep-citizens@europarl.europa.eu
cristina.castagnoli@europarl.europa.eu

Manuscript completed in June 2010.
© European Parliament, Brussels 2010.

This document is available on the Internet at:

<http://www.ipolnet.ep.parl.union.eu/ipolnet/cms>

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy

INTRODUCTORY REMARKS AND METHODOLOGY

| | |
|--|-----------|
| Introductory remarks and methodology | 3 |
| 1. DEFINITIONS | 3 |
| 1.1. Definitions matter | 4 |
| 2. EU ANTI-DISCRIMINATION LEGISLATION | 4 |
| 2.1. Equal treatment between men and women | 4 |
| 2.2. General anti-discrimination directive | 5 |
| 3. GENDER REASSIGNMENT | 5 |
| 3.1. Gender reassignment in Member States | 5 |
| 3.1.1. Consequences of gender reassignment for family life | 6 |
| 3.2. Change of Name and or forename in cases of gender reassignment | 7 |
| 4. HEALTH CARE | 8 |
| 4.1. Transsexuality as a "mental disorder" | 8 |
| 4.2. Access to gender reassignment therapy as healthcare | 9 |
| 4.3. Access to social security and healthcare in general | 9 |
| 5. FREE MOVEMENT OF TRANSGENDER PERSONS IN THE EU | 9 |
| 6. TRANSGENDER ASYLUM SEEKERS | 10 |
| 7. TRANSGENDER'S RIGHTS IN THE EU NEIGHBOURING COUNTRIES | 10 |
| 8. EP RESOLUTION OF 1989 | 11 |
| Annex 1: General Table | 13 |
| Source: Data elaborated by the Policy Department C - DG IPOL - European Parliament. | 14 |
| ANNEX 2 | 15 |

On 12 September 1989 the European Parliament voted for a resolution on discrimination against transsexuals. More than twenty years later, the Committee on Civil Liberties, Justice and Home Affairs expressed the desire for an overview of the rights of transgender individuals in the 27 Member States and of the EU legislation that is applicable to transgender people.

Recent studies have been published by the Council of Europe¹, the European Union Agency for Fundamental Rights and by several other international organisations. The aim of this note is to give an answer to the Committee's request based on the available material. Annex 2 of the note is a compendium of the legislation in the Member States on transgender matters, taken from the Report "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation" drawn up by the European Union Agency for Fundamental Rights on 31 March 2009.

Collecting reliable data relating to the transgender population in Europe and to discrimination on grounds of gender identity is very difficult. The question of gender identity is a controversial emerging issue, which has been largely ignored in public discussion, as well as in the legislation of the Member States and at EU level, until very recently.

1. DEFINITIONS

Sex: the biological difference between women and men.

Gender: also includes the social aspect of the difference between sex in addition to the biological element.

Sexual orientation: is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.²

Gender identity: is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms³.

Transsexual person: is understood to refer to a person who has changed sex and /or has undergone hormonal therapy.

Transgender persons: this is a broader definition which includes pre-operative and post-operative transsexual persons, but also persons who do not choose to undergo or do not have access to

¹ Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe. For additional information on access to labour market and on transphobia and violence against transgender persons, see the issue paper.
² Yogyakarta Principles on the application of International Human Rights Law in relation to sexual orientation and gender identity.
³ Yogyakarta Principles on the application of International Human Rights Law in relation to sexual orientation and gender identity.

0

3

operations and/or hormonal therapy. The definition also includes cross-dressers, transvestites and other people who can not fit the categories of 'male' or 'female'.⁴

Gender reassignment: the term used to define the legal process whereby a person is formally recognised by the State in his/her "new" gender role.

1.1. Definitions matter

Member States often use the definitions above differently. 14 Member States (**BE, DK, ES, FR, IT, LV, HU, NL, AT, PL, SK, FI, SE, UK**) treat discrimination on grounds of transgenderism as a form of **sex discrimination**. 2 Member States treat that discrimination as **sexual orientation discrimination** (**DE, CY**) and 11 Member States (**BG, CZ, EE, IE, EL, LT, LU, MT, PT, RO, SI**) do not have legislation or case law to set out the form of discrimination⁵.

The Court of Justice of the European Union, on 27 April 2006⁶, confirmed that discrimination on grounds of gender reassignment has to be considered as discrimination on grounds of sex.

The most advanced legislations on this issue are the Hungarian Act on Equal Treatment which includes sexual identity as one of the grounds of discrimination and the UK Gender Recognition Act 2004 which considers that a person who has a full Gender Recognition Certificate cannot be discriminated against other than on grounds that would apply to anyone else of his/her acquired gender (with the exception of religious organisations where there are genuine religious reasons to discriminate).

The distinction between sex discrimination and sexual orientation discrimination is very important, because in the first case the legislation on equal treatment between men and women applies.

2. EU ANTI-DISCRIMINATION LEGISLATION

2.1. Equal treatment between men and women

In 2006, the European Union adopted the so called "Recast Directive" (2006/54/EC)⁷ aimed at consolidating the existing provisions on the implementation of the principle of equal treatment between women and men. Recital 3 of the Preamble to the Directive introduced an explicit reference in relation to discrimination based on "gender reassignment" for the first time in EU law.

The Recast Directive has taken into account the Court of Justice of the European Union's jurisprudence on gender identity. The Court affirmed that equal treatment legislation in matters of employment and occupation, on equal pay and social security benefits, is applicable to transgender people. In addition, theory Court pronounced that equal treatment for transgender people has to be applied on the basis of the acquired gender after a gender reassignment and not the sex given at birth⁸.

⁴ Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe.
⁵ These categories are based on existing legislation and case law.

⁶ ECJ, Case C-423/04.

⁷ Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJEU L204, 26 July 2006, pp. 23-36.

⁸ Case of P. v. S. and Cornwall County Council, Case C-13-94 (1994); Case K.B. v. National Health Service Pensions Agency, Case C-117/01 (2004); Case of Sarah Margaret Richards v. Secretary of State for Work and Pensions, Case C-423/04 (2006).

By 15 February 2011, Member States will be expected to send all the necessary information about the transposition of the Recast directive to the European Commission. Subsequently, the Commission will present a report to the European Parliament and to the Council.

According to the jurisprudence of the Court of Justice of the European Union, the only transgender persons covered by the European legislation so far are the ones who have undergone a gender reassignment⁹. This covers only about 10 % of the transgender population. The European Union's Agency for Fundamental rights (FRA) study on "Homophobia and discrimination on grounds of sexual orientation in the EU Member States" concluded that there is no reason "not to extend the protection from discrimination beyond the persons who had gender reassignment, to cover cross dressers, and transvestites, people who live permanently in the gender 'opposite' to that of their birth certificate without any medical intervention and all those people who simply wish to present their gender differently".

This position has been adopted by the Finnish Ombudsman for Equality, the Dutch Equal Treatment Commission, and the Swedish Inquiry Commission set up by the Swedish Government.

2.2. General anti-discrimination directive

The European Commission presented a Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation¹⁰ on 2 July 2008, which does not cover discrimination on the ground of gender reassignment.

3. GENDER REASSIGNMENT

Having the possibility of changing one's sex and one's first name in identity documents is vital for the everyday life of a transgender person (driving licence, health care, job application, travelling).

The European Court of Human Rights (ECHR) has said in several cases that states should provide transgender persons with the possibility of undergoing surgery leading to full gender reassignment. The Court also ruled that states should recognise the change of sex in identity documents¹¹.

The UN Yogyakarta Principle number 3 states: *'everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity...No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity'*.¹²

3.1. Gender reassignment in Member States

Legal recognition of the preferred gender is not dealt with in the same way in all 27 Member States.

⁹ "Sex discrimination is restricted to transgender persons intending to undergo, undergoing or having undergone gender reassignment". See footnote 4.

¹⁰ COM(2008)0426 final

¹¹ ECHR, van Kück v. Germany, Judgment of 12 June 2003 and ECHR, B. v. France, Judgment of 25 March 1992 and Christine Goodwin v. U.K., Judgment of 11 July 2002.

The approach of the Member States can be divided into three groups:

- a) Member States where there is no requirement of hormonal treatment or surgery to obtain a gender reassignment: **ES, HU, FI, UK**. In these countries legal gender recognition is made possible by bringing evidence of gender dysphoria before a competent authority (e.g. Ministry of Health in Hungary, Gender Reassignment Panel in UK, doctor or clinical psychologist in Spain).
- b) Member States where hormonal treatment and/or surgery are required for gender reassignment: **BE, BG, CZ, DK, DE, EE, FR, IT, NL, AT, PL, PT**. In these countries the individual must demonstrate:
1. that (s)he has followed a medically supervised process of gender reassignment – often restricted to certain state appointed doctors or institutions;
 2. that (s)he has been rendered surgically irreversibly infertile (sterilisation), and/or
 3. that (s)he has undergone other medical procedures, such as hormonal treatment.¹²

According to the Commissioner for Human Rights of the Council of Europe these practices run counter to the principle of respect for the physical integrity of the person, in particular because transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation (see also article 3 of the Charter of Fundamental Rights on the "Right to the integrity of the person").

The Austrian Administrative High Court and the Federal Supreme Court of Germany recently ruled that mandatory surgery can not be a prerequisite for gender change¹³.

c) Member States where there are no provisions on this matter: **IE, EL, CY, LV, LT, LU, MT, RO, SI, SK, SE**. According to the Commissioner for Human Rights of the Council of Europe these countries are in breach of the established jurisprudence of the ECHR because there is no legal certainty.

The situation in Ireland has been criticised by an ECHR decision relating to the Birth Certificates law, which was considered to be incompatible with the European Convention on Human Rights, as it did not allow for birth certificates to be changed.

3.1.1. Consequences of gender reassignment for family life

3.1.1.1. Possibility for a transgender person to get married

The ECHR, in 1998, ruled against the possibility for a reassigned person to marry a person of the opposite gender to that of the gender newly acquired by the transsexual. However, in 2002 the Court overruled the previous case-law and stated that "post-operative transsexuals have not been deprived of the right to marry as, according to law, they remain able to marry a person of their former opposite sex".¹⁴ In light of this case-law, the United Kingdom adopted the Gender Recognition Act, which came into force in April 2005.

This possibility does not affect the existing legislation on same-sex marriage which in the majority of Member States prohibits same-sex marriages. In the recent ECHR case of *Schalk and Kopf v.*

¹² Additionally, people may also have to demonstrate that they have lived for a long period of time in the new gender – the so called 'real life experience'. The 'real life experience' preceding hormonal treatment and sex reassignment surgeries forms the three elements of the 'triadic therapy' often in place in member states as a requirement for recognition of the new gender. Source: Issue paper on Human Rights and Gender Identity or the Commissioner for Human Rights of the Council of Europe.

¹³ After the constitutional court ruled against the case (VfGH 29.09.2008, B 411/08, B 412/08), the Administrative High Court made the legal change possible in 2009 (VwGH 27.2. 2009). BVerfG, 1 BvL 3/03 (6 December 2005).

Austria¹⁵ of 24 June 2010 the Court does not oblige States to ensure the right to marry to homosexual couples. The Court notably ruled that there is no violation of article 12 (right to marry), article 14 (prohibition of discrimination) and article 8 (right to respect for private and family life) of the European Convention on Human Rights.

On this issue, the approaches of the Member States may be divided into three groups:

- a) 16 Member States permit a post-operative transsexuals to marry a person of the sex opposite to their acquired gender: **BE, DK, DE, EE, EL, ES, FR, IT, LV, LU, NL, AT, SK, FI, SE, UK**.
- b) 2 Member States do not allow such marriages: **IE, PT**.
- c) 9 Member States do not have legislation in place: **BG, CZ, CY, HU, LT, MT, PL, RO, SI**.

3.1.1.2. Obligation for a married transgender person to divorce

A different question concerns the legal obligation for a married transgender person to divorce in order to have his or her new gender recognised. This is particularly problematic in states which do not recognise same-sex marriage.

According to UN Yogyakarta Principle number 3 "No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity". This is not reflected in the practices of several Member States.

It is only possible to stay married after change of legal gender in Lithuania and in the Netherlands. In all other Member States this is not possible. For example in the UK and Poland, a married person should divorce prior to his/her new gender being officially recognised. In Bulgaria and Hungary, gender reassignment leads to the marriage being dissolved.

The end of a marriage has consequences for children's custody, state benefits, health care, etc.

The Austrian Constitutional Court has granted a transsexual woman the right to change her sex to female while remaining married to her wife. The German Constitutional Court has made a similar ruling¹⁶. Forced divorce may be in breach of Articles 7 and 9 of the Charter of Fundamental Rights (Respect for private and family life and Right to marry and right to found a family).

3.2. Change of Name and or forename in cases of gender reassignment

In the Member States there are similarities between the procedures for the change of the first name (and/or the forename in the countries where the name indicates the male or female gender of the person) and those for change of sex. The process can be easy (as in Belgium) or can potentially require lengthy procedures, that may include medical interventions, or the right can be denied entirely, as in Ireland.

The approaches of the Member states on this issue can be divided into 4 different categories:

- a) In 8 Member States it is easy to change the name, without medical evaluation: **BE, EE, LT¹⁷, LU¹⁸, MT, SK, SI, UK**.

¹⁴ *Christine Goodwin v. United Kingdom*, Appl. no.2897/95, Judgment of 11 July 2002.

¹⁵ *Schalk and Kopf v. Austria* (application no. 30141/04)

¹⁶ Austrian Constitutional Court, BVerfG, 1 BvL 1/04 (18 July 2006); German Constitutional Court, BVerfG, 1BvL 10/05 (27 May 2008).

¹⁷ A gender neutral name only.

¹⁸ A gender neutral name only.

b) In 14 Member States **CZ, DK, DE, EL, ES, FR, IT, LV, HU, NL, AT, PT, FI, SE¹⁹** the name can be changed after medical health evaluation and/or surgery, and/or hormonal treatment.

c) **Ireland** has a specific situation where the birth certificate cannot be changed and where there is no legislation regarding name changes for transgender persons, nor is there any prohibition in practice on a person adopting a new first name or surname by deed poll and using this on passports, driving licences, or for social security purposes.

d) In 4 Member States there is no legislation at all on this matter: **BG, CY, PL, RO**.

The uncertainty concerning a person's identity has huge consequences and could prevent a transgender person from his/her full participation in society, education, employment, travelling.

4. HEALTH CARE

According to the "transgender EuroStudy on the transgender experience of health care"²⁰, transgender persons suffer inequality and discrimination in accessing healthcare in the Member states of the European Union.

4.1. Transsexuality as a "mental disorder"

Existing international medical classifications still define transsexuality as a mental disorder. There are currently two established international systems for classifying mental illnesses: the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) which includes the term 'gender identity disorder' as a mental health disorder and uses it to describe persons who experience significant gender dysphoria, i.e. discontent with the biological sex they are born with.²¹ Secondly, the WHO *International Statistical Classification of Diseases and Related Health Problems* (ICD) lists transsexualism as a mental and behavioural disorder.²² The DSM and ICD systems are often reflected in national medical classifications in the Member States of the European Union.

According to the Issue paper of the for Human Rights of the Council of Europe on "Human rights and gender identity", "these classifications are in turn problematic and increasingly questioned by civil society actors and health care professionals. Such classifications may become an obstacle to the full enjoyment of human rights by transgender people, especially when they are applied in a way to restrict the legal capacity or choice for medical treatment...This question is a significant dividing line within the transgender movement itself. Many transgender people feel threatened by a possible change in the classification systems, since they fear it could result in further restrictions in accessing transgender health care. They consider that because health care systems require a diagnosis to 'justify' medical or psychological treatment, it is essential to retain a diagnosis to ensure access to care. Others, however, argue that being diagnosed as having a mental disorder stigmatises individuals in society and makes them objects of medicine, rather than subjects who are responsible for expressing their own health needs. Alternative classifications should be explored in close consultation with transgender persons and their organisations. From a human rights and health care perspective no mental disorder needs to be diagnosed in order to give access to treatment for a condition in need of medical care".

¹⁹ In Sweden the procedure is very heavy and requires Mental health evaluation, real life experience, hormone therapy, surgery to alter secondary sex characteristics, permanent sterility.

²⁰ Transgender Eurostudy by Prof Stephen Whittle OBE, Dr Lewis Turner, Ryan Combs, Stephanie Rhodes, published by ILGA Europe in April 2008, with the support of the European Commission.

4.2. Access to gender reassignment therapy as healthcare

The European Court of Human Rights has established that states must provide for the possibility of undergoing surgery leading to full gender-reassignment. According to the Court, transgender persons must have access to hormone treatment, gender reassignment surgery or other medical interventions, such as lasting hair removal and voice training. The case law of the European Court of Human Rights clearly requires states to provide the possibility to undergo surgery leading to full gender-reassignment, and also that insurance plans should cover "medically necessary treatment in general, which gender reassignment surgery is part of".²¹ However, the Transgender EuroStudy surveying the healthcare experiences of transgender persons in the EU found that 80% of transgender people in the EU are refused state funding for hormone treatments, and 86% of transgender persons in the EU are refused state funding for surgery to change their sex. As a result, over 50% of transgender persons undergoing surgery to change their birth sex pay entirely for the procedures at their own expense.

Transgender persons often have negative experiences with the healthcare system are often negative. The above-cited study found that only 30% of respondents, when seeking help or a referral for gender reassignment procedures, experienced what the survey defined as the "minimum acceptable level of assistance" – a practitioner wanting to help, but lacking information about transgender healthcare. One third reported that they were refused treatment because a medical practitioner did not approve of gender reassignment.²²

4.3. Access to social security and healthcare in general

The case law of the Court of Justice of the European Union on employment, dismissal, survivor's pension and retirement age has confirmed that discrimination against transgender people is covered by gender discrimination law.

Another aspect concerns general access to non-transgender related healthcare. The European Union Agency for Fundamental Rights (FRA) reports that "a quarter of the respondents in the EuroStudy reported adverse treatment by healthcare professionals because they were transgender persons. A fifth reported that being a transgender person affected the way they access healthcare. As a result many transgender people report avoiding doctors' visits as much as possible for fear of inappropriate behaviour".

The problems that transgender persons encounter in accessing their right to healthcare are reflected in health statistics. Several studies referenced in the FRA study show that a quarter to one third of transgender people surveyed had attempted suicide. In research carried out in Ireland 26% of transgender persons had attempted suicide at least once and half of the transgender respondents in a large-scale study into the health situation for LGBT people in Sweden had at one point or another in their lives considered taking their own life - 21% had actually tried to do this²³.

5. FREE MOVEMENT OF TRANSGENDER PERSONS IN THE EU

There is no case law as yet at EU level that addresses the issue of mutual recognition when a transgender person wishes to exercise his/her right of the freedom of movement within the EU. The problem may arise when gender recognition takes place in one Member State and the person seeks recognition in another Member State. Transgender persons face problems in obtaining new identity documents with the appropriate name and sex change and this can prevent them from travelling.

²¹ Van Kück v. Germany (Application no. 35968/97) - paragraphs 47, 73 and 82 and L. v. Lithuania (Application no. 27527/03) - paragraphs 59 and 74.

²² Transgender EuroStudy loc. Cit. p.55 and 58.

²³ Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe.

Problems may also arise in the field of family reunification. The country of citizenship sometimes forces the transgender person to divorce after gender reassignment, which can become an obstacle to family reunification and the possibility to go on living with the former spouse in another country.

In family law, the question of mutual recognition of same sex marriage is covered by the directive 2004/38.

6. TRANSGENDER ASYLUM SEEKERS²⁴

The UN High Commissioner for Refugees has addressed the problems that transgender persons encounter when applying for asylum or to be recognised as a refugee, for example, where they present identity documents which do not correspond to their physical appearance. The UNHCR has confirmed that asylum claims relating to gender identity may be recognised under the 1951 United Nations Convention Relating to the Status of Refugees provided the criteria in the refugee definition are met.²⁵ Transgender persons are considered under the Convention to be members of a "particular social group". In some Member States (FR- AT) transgender persons are defined as a distinctive "social group", while other countries do not have such a definition.

Transgender persons who have applied for asylum sometimes face problems in detention and reception centres from other asylum seekers (often from their home country) and there is a serious risk of traumatisation for transgender asylum-seekers.²⁶ Sometimes transgender persons are not placed in the men's/women's living quarters they wish to be in, leading to potentially dangerous situations, including heightened risk of sexual violence, harassment and other forms of ill-treatment. Another problem is the lack of access to healthcare which can lead to an interruption of the continuous hormonal treatment some transgender persons need.²⁷

7. TRANSGENDER'S RIGHTS IN THE EU NEIGHBOURING COUNTRIES

The situation of transgender's rights in the EU neighbouring countries is not clear. The lack of data makes very difficult to analyse the issue in details.

The report on progress in Turkey for the accession to the European Union of 14 October 2009 the European Commission set out: "The legal framework is not adequately aligned with the EU acquis... Homophobia has resulted in cases of physical and sexual violence. The killing of several transsexuals and transvestites is a worrying development. Courts have applied the principle of 'unjust provocation' in favour of perpetrators of crimes against transsexuals and transvestites".

No laws exist in Turkey that protect Lesbian, gay, bisexual and transgender (LGBT) people from discrimination in employment, education, housing, health care, public accommodations or credit.

²⁴ From the "Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe".
²⁵ UN High Commissioner for Refugees, UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008. This Guidance Note supplements UNHCR's earlier Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees from May 2002. Both guidelines are relevant for the assessment of asylum claims made by transgender individuals.

²⁶ See for example research conducted by the Helsinki Citizens Assembly and the Organisation for Refugee, Asylum & Migration (GRAM): Unsafe haven – the security challenges facing lesbian, gay, bisexual and transgender asylum seekers and refugees in Turkey (2009).

²⁷ Similar problems are faced by transgender people in prison who may face periods of time without hormone therapy. This may result in a long time without treatment and may cause serious health problems, such as the development of osteoporosis in transsexual men, and irreversible physiological changes to take place such as the development of baldness in transsexual women. Transsexual people will frequently face difficulties in accessing assessment, hormone therapies, or surgery as many prisons or prison systems feel they do not have the facilities to manage transsexual prisoners, or in some cases they are seen as forging their right to such treatments because of their conviction.

The Commission's above report stated: "There have been several cases of discrimination at the workplace, where LGBT employees have been fired because of their sexual orientation. Provisions of the Turkish Criminal Code on 'public exhibitionism' and 'offences against public morality' are sometimes used to discriminate against LGBT people. The Law on Misdemeanours is often used to impose fines against transgender persons".

According to Human Right Watch, the killing of Ebru Soykan, a prominent transgender human rights activist, on March 10, 2009, showed a continuing climate of violence based on gender identity. In May 2010, on the 6th International Day Against Homophobia, uniformed police forces violently attacked five transgender activists from Pink Life Association in Ankara.

According to a recent study²⁸, transgender persons are among the most vulnerable asylum seekers and refugees in Turkey today.

In Croatia, gender reassignment is possible after mental health evaluation, psychotherapeutic treatment, real life test, hormonal treatment, sex reassignment and infertility surgery. Following reassignment, a name change is possible.

According to a study²⁹ of October 2009, although Croatia has taken serious steps to combat discrimination through the enactment of anti-discrimination provisions of existing laws as well as the 2008 Anti-Discrimination Act, the legislation remains meaningless without true enforcement and protection of the rights of LGBT individuals. In fact, Croatia's commitment to the principle of the equality of all its citizens is called into question when discriminatory statements and actions can be attributed to state actors at all levels.

Violence and hatred directed towards LGBT persons remains persistent. Violence during the Zagreb Pride events in 2007, 2008 and 2009 seriously questions the ability of citizens to exercise their right to freedom of assembly and expression.

8. EP RESOLUTION OF 1989

The Parliament adopted a resolution on discrimination against transsexuals on 12 September 1989³⁰. The resolution calls on member States to take steps for the protection of transsexual persons and to pass legislation to further this end.

Notably the European Parliament:

- called on Member States to enact provisions on transsexuals' right to change sex by endocrinological, plastic surgery, and cosmetic treatment, on the procedure, and banning discrimination against them;
- called on the Council of Europe to enact a convention for the protection of transsexuals;
- called on the Member States to ensure that the cost of psychological, endocrinological, plastic surgery, and cosmetic treatment of transsexuals is reimbursed by the health insurance institutions;
- called on Member States to grant public assistance to transsexuals who have through no fault of their own lost their jobs and/or accommodation because of their sexual adaptation;

²⁸ "Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey" by Helsinki Citizens' Assembly – Turkey, Refugee Advocacy and Support Program & GRAM – Organization for Refugee, Asylum & Migration

²⁹ Global Rights International Human Rights Clinic, Human Rights Program, Harvard Law School LORI Zagreb Pride Ženska soba – Women's Room – Center for Sexual Rights

³⁰ Official Journal of the European Communities No C 256/33-37 of 9.10.1989.

- called on Member States to set up advice centres for transsexuals and to give financial support for self-help organisations;
- called on Member States to disseminate information on the problems of transsexuals, especially among the staff of their social services, police, frontier authorities, registration offices, military authorities and prison services;
- called on the Commission and the Council to make it clear that Community directives governing equality of men and women at the workplace also outlaw discrimination against transsexuals;
- called on the Commission, the Council and Member States to devise identity documents which would be recognised throughout the Community and in which, where applicable, the holder's transsexuality could be indicated during the period of sexual adaptation if so requested;
- called on the Council and Member States, when harmonising the right of asylum, to recognise persecution on the grounds of transsexuality as grounds for asylum;
- called on the Commission to make funds available under its aid programmes for further study of transsexuality in the medical field;
- called on the Commission to urge Member States to adopt special measures to find employment for transsexuals;
- called for the setting-up of an office at the Commission to which cases of discrimination may be reported.

More general resolutions on homophobia in Europe in 2006 and 2007³¹ have also addressed the situation of transgender persons.

ANNEX 1: GENERAL TABLE

| | Discrimination law | Gender reassignment requirements | Possibility to Change name in case of gender reassignment | Possibility to change Birth Certificate | Possibility to marry in new gender | Obligation to divorce to get a new gender |
|----|-----------------------------------|---|---|---|------------------------------------|---|
| BE | sex discrimination | hormonal treatment and/or surgery | Easy, without medical evaluation | Yes, after gender recognition certificate (including Mental Health evaluation, hormonal treatment and sterility required) | yes | yes |
| BG | no law | hormonal treatment and/or surgery | no law | no law | no law | no law |
| CZ | no law | hormonal treatment and/or surgery | After evaluation and/or surgery | Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required | no law | yes |
| DK | sex discrimination | hormonal treatment and/or surgery | After evaluation and/or surgery | Yes, but Mental Health evaluation, hormonal treatment and sterility required | yes | no |
| DE | sexual orientation discrimination | hormonal treatment and/or surgery | After evaluation and/or surgery | Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required | yes | yes |
| EE | no law | hormonal treatment and/or surgery | Easy, without medical evaluation | Yes | yes | yes |
| IE | no law | no provision | no law | no | no | no law |
| EL | no law | no provision | After evaluation and/or surgery | Amended, but Mental Health evaluation, hormonal treatment and secondary sex characteristics surgery required | yes | no law |
| ES | sex discrimination | no hormonal and/or surgery requirements | After evaluation and/or surgery | No | yes | yes |
| FR | sex discrimination | hormonal treatment and/or surgery | After evaluation and/or surgery | Amended, but Mental Health evaluation, hormonal treatment and sterility required | yes | yes |
| IT | sex discrimination | hormonal treatment and/or surgery | After evaluation and/or surgery | no | yes | yes |
| CY | sexual orientation discrimination | no provision | no law | no law | no law | yes |

³¹ European Parliament resolution of 18 January 2006 and of 26 April 2007 on homophobia in Europe

| | | | | | | |
|-----------|--------------------|---|--|---|--------|--------|
| LV | sex discrimination | no provision | After medical evaluation and/or surgery | no law | yes | no law |
| LT | no law | no provision | Easy, without medical evaluation ³² | Yes, but Mental Health evaluation, hormonal treatment and sterility required and after genital surgery | yes | no |
| LU | no law | no provision | Easy, without medical evaluation ³ | no law | yes | no law |
| HU | sex discrimination | no hormonal and/or surgery requirements | After medical evaluation and/or surgery | yes | no law | yes |
| MT | no law | no provision | Easy, without medical evaluation | no law | no law | no law |
| NL | sex discrimination | hormonal treatment and/or surgery | After medical evaluation and/or surgery | yes | yes | no |
| AT | sex discrimination | hormonal treatment and/or surgery | After medical evaluation and/or surgery | Yes, but Mental Health evaluation, hormonal treatment and sterility required | yes | yes |
| PL | sex discrimination | hormonal treatment and/or surgery | no law | no law | no law | yes |
| PT | no law | hormonal treatment and/or surgery | After medical evaluation and/or surgery | no | non | yes |
| RO | no law | no provision | no law | no law | no law | no law |
| SI | no law | no provision | Easy, without medical evaluation | no law | no law | no law |
| SK | sex discrimination | no provision | Easy, without medical evaluation | no law | yes | no law |
| FI | sex discrimination | no hormonal and/or surgery requirements | After medical evaluation and/or surgery | Yes, but Mental Health evaluation, hormonal treatment and sterility requirement | yes | yes |
| SE | sex discrimination | no provision | After medical evaluation and/or surgery | no, but under review | yes | yes |
| UK | sex discrimination | no hormonal and/or surgery requirements | Easy, without medical evaluation | Yes, but gender recognition certificate (including Mental Health evaluation, and real life experience required) | yes | yes |

Source: Data elaborated by the Policy Department C - DG IPOL - European Parliament.

³² A gender neutral name only

ANNEX 2

TRANSGENER ISSUES IN THE EUROPEAN UNION'S MEMBER STATES³³

BELGIUM

Discrimination against transgender persons is largely covered in Belgian legislation under the ground of 'sex' (rather than under the ground of 'sexual orientation'). With the exception of federal legislation, this makes little difference to the applicable principles and procedures. On the federal level, where discrimination on the ground of sex is the object of a separate piece of legislation (the Sexdiscrimination Act of 2007), it does entail a number of discrepancies as compared with discrimination on the ground of sexual orientation. One such peculiarity results from the fact that an entirely different equality body is responsible for combating gender discrimination, namely the Institute for the Equality of Women and Men.

A recent Act (May 2007) provides for a legal basis for the change of sex and name for transgender persons.

The law structures the administrative procedure and should provide transgender persons with a faster, cheaper and psychologically less burdensome way of changing their official documents.

There are, however, some preconditions for an official change of sex: the existence of a constant and irreversible inner conviction to belong to the other sex; a physical adaptation to the other sex; and the incapability of the person to beget children in accordance with his/her former sex. These conditions need to be confirmed by a statement from a psychiatrist and a surgeon.

For a change of name, a transgender person must give proof of medical treatment, but this does not need to include a sex change operation.

Transgender persons have mainly been studied from a pathological and medical perspective, and little or no information is available on their health and well-being. Attention to transgender issues is new in Belgium, and the transgender movement is in its early years.

BULGARIA

Domestic anti-discrimination legislation (the PADA, bans discrimination on sexual orientation grounds and guarantees equal treatment for women and men. However, neither of these pieces of legislation mentions transgender persons. There are as yet no legal cases brought under anti-discrimination legislation and no case law to interpret the applicability of the legislation to transgender persons.

Therefore, anti-discrimination law is unspecific concerning transgender persons, giving so far no indication whether discrimination against them is to be considered on sexual orientation grounds or on grounds of gender.

There is no legal definition of the concept of transsexuality in any Bulgarian law. Bulgarian legislation also lacks any regulations or procedures concerning the establishment of the status of a person who wishes to undergo sex reassignment surgery or hormonal treatment to that effect. The sole document containing mention of this term is a regulation issued by the Ministry of Defence

³³ SOURCE: Report "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation". European Union Agency for Fundamental Rights, 31/03/2009.

identifying transsexuality as a sexual disorder making individuals unfit for military service. Despite legislative gaps regarding medical interventions and follow-up activities concerning gender alteration, the Bulgarian law does not prohibit hormonal treatment and surgery with the aim of sex reassignment. However, it is highly expensive and not covered by health insurance.

Gender and name alteration should be recognised by the court in two different procedures which are not specifically provided for in the legislation. Under the current legislation, gender reassignment and name change will have a number of consequences: Transsexual individuals will be expected to have employment contracts reendorsed and obtain a new driving licence and passport. It is possible to change documents without surgery, but the process may take years.

CZECH REPUBLIC

Czech law provides for the possibility of sex reassignment. The Health Care Act stipulates that surgery on transsexuals is performed at the request of the individual concerned, following approval by a commission. The commission is composed of five persons: a lawyer, two physicians specialising in this field and two physicians who do not participate in the surgery.

There is no case law on transgender issues and it is not possible to say whether transgender discrimination is likely to be classified as discrimination on the grounds of gender or of sexual orientation.

Likewise, it is not clear how many transsexual and transgender persons live in the Czech Republic, however a study carried out in 2007 reported that 331 sex reassignment surgeries (77 female to male, FtM), 254 (male to female, MtF) had been carried out and 761 patients had been diagnosed with gender identity disorder.

While the research illustrating the experiences of transgender persons is not available, transgender persons face multiple problems, inter alia, access to the labour market and administrative problems with changing birth certificates in private and public databases. Custody rights of children are also highlighted as a significant problem.

Data suggest that in the past it was required that transsexuals renounce their parenting rights in writing and were pressured to give up their parenting rights and/or have only limited contact with their children in order to get their sex reassignment surgery approved by the medical advisory boards. While this practice largely appears to have been abandoned, one case exists of the Department of Social and Legal Protection of Children played some part in the pressuring of a transsexual person male to female (MtF) to give up custody of her child.

The affected person succumbed to the pressure and relinquished a right to appeal. She only later found out that she was the victim of discriminatory behaviour. Court proceedings dealing with another case are currently being held, in which the Department of Social and Legal Protection of Children is demanding that the children in question not be entrusted to their transsexual parent FtM, despite the fact that their biological father can't take them into their care. In both described cases, the Department of Social and Legal Protection of Children interfered in these cases, even though an agreement existed between the parents.

DENMARK

According to Guideline No. 10077 of November 27, 2006, from the Ministry of Health and Prevention's guidelines on castration, in order to undertake a gender reassignment the applicant, in addition to fulfilling the requirements in section 115 in the Act on Health, has to show that his or her

wish for gender reassignment is permanent and that the applicant understands the consequences of the gender reassignment.

The Administrative Order on Names (No. 328 of 11 May 2007) states in section 13 that persons who have not had gender reassignment surgery, but who have been judged transsexual by the Sexological Clinic at the National Hospital of Denmark, may obtain a name change.

In Denmark there is no specific law regarding gender reassignment operations. The Danish National Board of Health handles applications for gender reassignment operations with reference to two instruments.

The first is Chapter 33 of the Act on Health, No. 546, 24th of June 2005. The second is the Administrative Order No. 14, 10th of January 2006, regarding sterilisation and castration which includes reference to gender reassignment. A person is entitled to undergo castration under section 115(1) of the Act on Health.

The Gender Equality Board has handled two complaints regarding discrimination towards transsexual persons. In one case the person reported derogatory remarks were used by hospital staff and another reported being subject to discrimination at a drama school. Both complaints were turned down due to lack of evidence.

In 2006, one incident of transphobic discrimination reached media headlines. The incident involved a transvestite being refused service and told to leave a Bang & Olufsen hi-fi-store in the city of Viborg. The incident received significant attention and the company's headquarters apologised the incident, and the organisation *Trans-Denmark* chose to press charges against the store manager.

GERMANY

Despite their special situation, issues of transgender and transsexual persons are commonly and legally subsumed under antidiscrimination settings that consider sexual orientation.

According to the *Law on Transsexuals*, transgender persons may obtain a given name for their desired gender. The prerequisite for this is that the person concerned feels that she or he belongs to the other gender and has done so for at least three years. Furthermore, it is necessary for two medical experts to confirm that the applicant's feeling of belonging will not change. With the change in given name, transsexuals have a right to new official documents issued with their new name. This applies to employers and government institutions.

However, despite the change in given name, the law still regards the transsexual as belonging to the gender to which he or she does not identify (para. 1(1) of the Law on Transsexuals). Under paragraph 7 of the Law on Transsexuals, the change in given name is nullified if the person in question gives birth to a child or marries.

For the determination of belonging to the other gender/sex (paras. 8- 12 of the Law on Transsexuals), the law also demands that the transsexuals are unmarried and have undergone a sex reassignment operation making them incapable of reproduction (para. 8(1) of the Law on Transsexuals).

Provided that appropriate experts state that the person affected suffers a psychological strain due to his/her transsexuality that can only be remedied or alleviated by a sex reassignment operation and not through psychotherapeutic measures, health insurance must pay the cost of the sex reassignment process.

The standard of care in the reassignment process, although relatively high in comparison to other European countries, needs a more affirmative and respectful perspective. For example, personal

competence must be respected and the diverse lifestyles of transsexual and transgender persons should be considered more comprehensively (Recla, 2008).

In its current version, the Law on Transsexuals does not only apply to Germans and persons entitled to asylum, but also to foreigners who have their legal domicile or usual residence in Germany, and whose home law contains no comparable regulation (para. 1(1)(3) of the Law on Transsexuals).

There is no data specifically on living conditions for transgender persons. However, the *Federal Anti-Discrimination Agency*, which regards transgender as a gender issue, has accounts of problems related to the labour market (including termination) during the time of sex reassignment process, and with regard to problems getting health insurance, since insurance companies regard transsexuality as an illness.

ESTONIA

There is no practice, reported cases or statistics on transgender issues.

However, according to the Gender Equality Commissioner, an application was submitted at the end of 2007 claiming discrimination in the employment application process owing to the applicant's transsexuality and 'the way she looked'. The case was dismissed on the grounds that discrimination could not be proven and other job applicants had better qualifications.

There are a number of legal acts that include provisions regulating specific acts on transgender issues. [The regulation of 07.05.1999 no. 32 by the Ministry of Social Affairs *Soovahetuse arstlike toimingute ühtsed nõuded* [Common requirements to medical acts of sex change] provides the basis for medical and legal acts related to gender/sex change.

According to the regulation of 07.05.1999 no. 32, the precondition for deciding a person's gender and allowing medical acts necessary for gender/sex change is a decision by the medical expert commission appointed by the Minister of Social Affairs. The applicant must submit an application to the Ministry of Social Affairs requesting a decision by the expert commission. He/she must present the following evidence:

- Certification of transsexual identity during at least two years prior to the application;
- A psychiatrist's decision that excludes the possibility that the wish to undergo gender/sex change is caused by psychiatric disorder;
- Compatibility of chromosomal and gonad gender/sex certified by genetic research.

The medical expert commission's decision is the basis for a decree by the Ministry of Social Affairs, which authorises medical acts to change a person's gender/sex. At least two years must pass from the beginning of the medical treatment before the expert commission will issue a decision on the change of gender/sex. This will be a basis for subsequent legal changes necessary for a person to wholly acquire the new gender.

Name change is performed by the vital statistics office. This possibility is provided by § 15 of *Nimeseadus* [Names Act]: 'If the gender of a person is changed, on the basis of a written application of the person, the parent(s) of the minor or of the guardian of the minor ward, a new given name shall be assigned to the person and a foreign-language surname of the person may be changed if the gender feature is reflected in the surname pursuant to the national tradition of the person'.

Section 49 of *Rahvastikuregistri seadus* [Population Register Act] regulates the formation and granting of the new personal identification code for persons who have undergone the gender/sex change, because the code is formed on the basis of a person's sex and date of birth. According to §

18

52 of this Act, the new personal identification code will be formed and granted by an authorised processor 'upon amendment of the data on the sex of a person on the basis of an application of the person and a certificate of a medical institution holding a corresponding licence'.

The formation and granting of the new personal identification code is also the basis for the issuance of a new birth certificate, which will be organised by the vital statistics office (§ 52 of the Population Register Act). The birth certificate is the basis for a new passport.

Additionally, the regulation of 18.01.2002 no. 28 '*Riikliku pensionikindlustuse registri' pidamise põhimäärus* [Statute for managing the 'state pension insurance register'] is important because it regulates the state pension insurance register. The data in this register is the basis for accounting for social tax paid by or on behalf of persons, their years of pensionable service and accumulation period and the procedure of determining and paying their state pension and benefits (§ 4 (2)). Paragraph 31 of this regulation provides for a change of data and personal identification code upon a change of gender/sex.

IRELAND

In Ireland, there is no provision for transgender persons to be officially recognised in the gender with which they identify. As a consequence, transsexuals do not have the right to marry in their reassigned gender, change their birth certificate or enjoy any right legally confined to the gender to which they belong.

There is little research in Ireland on transgender persons. One study was published in 2004 by the *Equality Authority* on access to health and the health needs of transsexuals. The findings showed that the experiences of transsexual persons were characterised by stigma and exclusion. Furthermore, policy and practice relating to meeting the health needs of transsexual persons was underdeveloped.

Health services did not specify any particular experience or expertise around meeting the needs of transgender persons.

Respondents also highlighted the negative impact of lack of health service on their lives. This included depression, suicidal tendencies and in some cases accessing hormones on the black market, which were expensive and potentially dangerous without medical supervision. On the other hand, where respondents did access services that they felt were appropriate to their needs, the impact was positive in all cases. Some people described accessing to service 'at last' as being literally life-saving.

According to O'Connell (2008), the level and intensity of stigma attached to issues of gender variance means that transsexuals are often hidden from and invisible to both the general population and to service providers. This not only makes it difficult to establish the extent of the transsexual population, it also makes it extremely difficult to access this population in order to develop an understanding of their circumstances, needs and experiences.

GREECE

There is no mention of transgender persons in Greek law, and it is not clear whether trans persons are covered by legislation prohibiting discrimination on the basis of sexual orientation or on the basis of sex.

Yet sex reassignment is practiced in Greece and has, at least once, been covered by the general healthcare and pension fund, IKA. After sex modification is successfully completed, the individual has the right to change his/her name, following a relatively straightforward procedure.

19

There is no official research carried out or scientific data available on the situation for transgender persons. According to LGBT activists, transsexuals face serious everyday life problems, often due to society's reaction to their gender appearance. Transsexuals face problems finding employment and are subject to violence and harassment from the general public and the police. Some are thrown from their family homes and forced to live on the streets.

SPAIN

A new law from 2007 provides for the rectification of ones gender in the public registry as well as for change of name. In order to grant such a change of name and sex in the registry, an individual must submit a doctor's certificate stating that the previously registered gender shows a discrepancy with their gender identity, as well as proof of medical treatment for at least two years. This medical treatment does not have to include gender reassignment surgery. If anything hinders such medical treatment, the registry may be changed without the fulfilment of this requirement. There has been one case before the High Court in Catalonia concerning a discriminatory dismissal of a transgender woman. The court established that the employee had given sufficient facts to at least presume a discriminatory dismissal, and the employer was not able to prove otherwise.

FRANCE

There has been a lack of information about transgendered persons in the fields studied in the report. No statistics can be found.

Transsexuals have the right to change their civil status, first name and the sex stated on their birth certificate, but this right does not appear in law, only in jurisprudence.

LGBT NGOs describe the procedures in the healthcare system regarding sex reassignment as very long and complicated.

An analysis of case law shows that any discrimination based upon a person's transsexuality is equivalent to discrimination on the basis of sex. There are known cases of transgender discrimination on the labour market.

ITALY

As far as sex reassignment proceedings are concerned, a transsexual person must make two requests to a judge: First, he/she must be authorised to have the required surgery. This judicial authorisation allows the person to obtain this surgery in public hospitals free of charge. Secondly, he/she can ask for a judicial order which gives consent to change the details of sex and name in the records of the *Ufficio dello Stato civile* [Registrar of Civil Status].

It is very difficult to collect case law on this subject. It seems that:

- The lack of a judge's prior authorisation for surgery cannot preclude a subsequent recognition of the individual's right to sexual identity, if authorisation could have been given in such a case.
- Male to female reassignment is usually authorised only when the male has had complex surgery including orchidectomy, penectomy and vaginoplasty. If the person is not able (for example due to illness) or unwilling to undergo these complex procedures, he cannot obtain the judicial order and the consequent sex reassignment, even if he takes prescribed sex hormones. Only in two cases, it seems, has a judge ordered a sex reassignment after a simple orchidectomy, and only in one case did a judge order a sex reassignment without any operation, as the transsexual concerned was very ill and probably near to death.

20

- Female to male change is usually authorised when the female has had surgery, including mastectomy and hysterectomy. By contrast, surgery for penile reconstruction is not requested because it is a very difficult operation, with a high failure rate.

Those who marry after the transition have the possibility of proposing themselves as adoptive parents. According to transsexual and transgender organisations, however, prejudices in the assessment process undermine this possibility.

Qualitative sociological research on transsexual and transgender persons' living conditions has highlighted the many forms of social and economic distress which characterize the transition period before legal sex reassignment. This period can last several years or be a permanent status for those who do not want to undergo sex reassignment surgery.

Work is one of the main areas of distress. Research has shown the high risk of being a victim of harassment at the workplace or being fired, and the difficulty of transsexual persons in finding a job when their appearance does not fit with their documents.

According to *Arcigay* and *Arcilesbica*, the lack of access to the labour market relegates a relatively large number of transgender persons (particularly transgender women) to prostitution, and the ban on prostitution in Italy further marginalizes transgender sex workers.

CYPRUS

There is hardly any information specific to transgender persons living in Cyprus. In the one case that is known a transgender woman was granted refugee status because of problems faced due to her gender identity. Otherwise the issue is basically unknown to society.

Although transgender persons are not explicitly covered by any laws, it is assumed that the issue would be treated as discrimination on the ground of sexual orientation rather than gender.

The procedure for changing one's sex and name is quite simple and straightforward, but it also provides that the new documentation following the change of name/gender shall not replace the previous one, meaning that both the old and new certificate shall thereafter be valid concurrently.

LATVIA

The situation of transgender persons receives little attention in Latvia and there is little research on the issue. This is complicated by the fact that only 8 persons have registered gender change in recent years.

There is no provision in Latvian legislation which could indicate whether discrimination against transgender persons shall be dealt with as discrimination on the grounds of sexual orientation or as discrimination on the grounds of gender. However, following a recent judgment of the Administrative Court in a case on change of sex in the birth register, it can be deduced that such discrimination will be more likely understood as discrimination on the grounds of gender.

Gender reassignment surgery falls under the general regulation of medical treatment, and there are no more specific regulatory enactments governing it. Legislation regarding registration of sex change and change of name and documents due to sex change is incomplete and thus leads to legal uncertainty.

Sex change is not considered a necessary health-related medical treatment and is highly expensive. It is currently unclear whether the costs of sex change operations are tax-deductible.

21

Change of name is regulated by the Regulation of the Cabinet of Ministers.⁶⁵ Section 120.4.4 of the Regulation states that 'form of name and surname corresponding to a person's gender shall be entered into record in case of change of gender on basis of an administrative act [about change of person's gender in the Birth Register]'. The Regulation does not state specifically whether the individual has a right to indicate the name he/she would like to have after change of gender or whether the Registry Office authority simply changes the gender of the name the person had before the change of gender, as in Latvian grammar endings of names differ depending on gender.

According to information provided by *Tieslietu ministrijas Dzimtsarakstu departamenta Dzimtsarakstu nodalas vadītāja vietniece* [Deputy Head of the Register Office's Unit of the Department of Civil Registers of the Ministry of Justice] A. Akmentina, in practice, the Registry Office simply changes the ending and thereby gender of the name. In many cases the name created in such way sounds unusual for the acquired gender. The person can later apply for change of name according to the Law on the Change of a Given Name, Surname and Ethnicity Record.⁶⁸ Accordingly to Art. 1 of that law, there are nine reasons for the change of the given name or surname. However, none of these explicitly invokes change of gender.

In a recent litigation, a transgender person sued the Riga Registry Office for its refusal to register change of sex. The registrar made its decision based on the fact that the change of sex had been 'incomplete'. The case was reviewed in all three instances by the Administrative Court. The final judgment overruled the decision of the Registry Office.

LITHUANIA

The 2000 Civil Code of the Republic of Lithuania for the first time provided for an individual's right to change his/her sex. To realize this right fully a law on sex change was necessary. The project for *the law on sex change in the Republic of Lithuania* was prepared in 2003. However, it has not yet been considered by the Lithuanian Parliament and has not been passed. Due to this legal vacuum, persons cannot change their sex by medical means in Lithuania. National legislation permits the change of documents in case of gender reassignment (including the change of name and sex in the identity documents). However, when a person applies to the competent institutions willing to change his/her documents due to gender reassignment, the gender sensitive personal code remains legally unchangeable.

The discussion about transgender persons started only recently in Lithuania following transgender persons' complaints against the state for the infringements on their rights. In 2007, a transgender person initiated a case against Lithuania in the European Court of Human Rights. The Court acknowledged that the Lithuanian state violated the right to privacy because the Lithuanian Parliament still had not passed the law on sex change.

Transgender persons remain the least visible and discussed group among LGBT persons.

LUXEMBOURG

Transgender issues are not specifically mentioned under the law of Luxembourg. If they are interpreted to be included in the Employment Directive's broad definition of sexual orientation, or regarded as a gender issue, they would be effectively dealt with. If not, then only the criminal law provisions would apply, as transgender individuals would be considered as belonging to a particular 'social group'. Presently there are neither statistics nor is there any case law to provide further substantive guidance on this issue. There are no doctors in Luxembourg with specialised training or experienced which would qualify them to undertake gender reassignment surgery. Thus, a Luxembourg national seeking this operation must to seek to have it undertaken abroad. However, should the individual seek to have the state pay for such surgery this person is required to undergo psychiatric treatment. Once an affirmative response is received, the individual would then be

22

allowed to conduct the surgery abroad, usually this takes place in Belgium or Germany, but also sometimes in France. Following the surgery, the individual would undergo psychological treatment with the foreign medical team as to assist them with their adjustment to the newly-assigned sex.

In addition, individual would be required to change his/her identity under Luxembourg law. However, there are no legal provisions to accommodate this in the *Etat civil et population du Luxembourg* [the Luxembourg Civil Status and Population Administration]. The most urgently needed provisions are those allowing a change of sex and name on public records.

Due to no standard procedure concerning change of name and documents, the procedure may take years, causing immense psychological and social pressure on the individual. The lack of accordance between physical appearance and one's official name can create serious difficulties and negative social consequences. For example, such individuals have trouble acquiring necessary documents and obtaining things like credit cards.

HUNGARY

The Equal Treatment Act also covers discrimination on the ground of sexual identity in all fields. As for the possibility to change one's birth certificate or civic and progressive practice.

Transgender persons must provide a certificate from a psychiatrist, confirming their gender identity. The Ministry of Health will then process an expert opinion, which will be sent to the birth registry. After this, the person involved can have his/her gender and name changed in the birth registry. Once the registry has been changed, it will appear as though the person always had this gender, and it will be almost impossible to track the change of the gender in the registry. As the provision of other documents is based on the birth registry, transgender persons can apply for a passport or driver's license without problems once their gender has been adjusted.

It may be recommended, though, to have consistent guidelines and legal regulation regarding the process of obtaining the necessary documents (forensic expert opinion, medical records) needed by the Ministry of Health before they can issue their expert opinion.

As for sex reassignment surgery, the patient must pay 90 per cent of the cost. This is problematic, as the aim of sex reassignment surgery is to alter one's sex so as to correspond to his/her true sexual identity.

Another problem is that the new Civil Code, entering into force in 2009, states that a marriage or registered partnership automatically terminates if one of the partners changes sex. This idea has been criticised, as it would circumscribe the parties' right to self-determination.

MALTA

Maltese law does not take into consideration transgender issues. In case law Maltese courts have consistently held that Maltese law does not formally provide a procedure for the change in legal status of transgender persons sex constitutes a violation of the right to respect for private life, as protected under Article 8(1) of the European Convention. In such judgments, the courts have ordered the Director of the Public Registry to effect changes on the birth certificate of the transgender person (see below).

In these cases, the courts have considered whether or not such changes should be clearly marked on the relevant certificate. The final decision has been that the changes should be marked on the formal certificate, but not on the publicly accessible informal certificate.

23

The following transgender issues have been identified:

- Lack of access to hormone therapy and gender reassignment therapy. Therapy and operations are not covered by national health insurances;
- Lack of knowledge about transgender issues in the health system – especially with regard to the mental health sector;
- Absence of law specifically recognising gender identity;
- Gender segregated secondary schooling causes problems;
- High unemployment rates of transgender people;
- Risky lifestyles in terms of health and personal safety;
- A case of a transgender woman who succeeded in getting her documents changed to reflect her gender identity but was refused marriage by the registry office – a following court decision found in favour of the registry office.

THE NETHERLANDS

In Dutch law discrimination on the ground of 'transsexuality' and 'transvestism' are regarded as forms of sex discrimination. Public incitement to hatred on the basis of sex (thus including transsexuality) is outlawed by several articles of the Penal Code.

The Civil Code provides that courts may authorise a person to change his/her sex on his/her birth certificate, but only after the requesting person has undergone sex change surgery and/or treatment – as far as this is possible and sensible from a medical and psychological point of view. After the sex change, the person must be sterilised (i.e. incapable of bearing or conceiving children). This latter precondition has generated strong opposition from some NGO's that consider this to be a humiliating requirement.

Once an appeal for a change of sex has been granted, the civil courts have the competence to order the change of the applicant's first name(s). There has been a case where the request for a change of name was rejected by the court, as the physical sex change operation had not been fully completed, which according to court meant the person's sex therefore could not be officially adjusted.

The university hospital connected to the *Vrije Universiteit* in Amsterdam has a specialised gender team. About 150 persons approach this team every year, of whom two-thirds start treatment. About 0.5 per cent of the population considers themselves to be transgender, which counts for approximately thirty to a hundred thousand persons. Very little is known about the problems they are facing due to their gender identity.

AUSTRIA

According to a 2006 Constitutional Court decision, persons can rectify their name in the Register of Births and change their name after a change of sex. Nevertheless, there is currently no specific legislation on changing sex/gender or changing names after a change of sex/gender. In 2006, the *Transsexuellen-Erlass* [Transsexual Order] that prohibited married persons from changing their name after a change of sex/gender was annulled by the Constitutional Court.

In the course of 2008, Council Directive 2004/113/EC prohibiting gender discrimination in access to and supply of goods and services will be transposed into national law. The respective provisions will be incorporated into the Equal Treatment Act. According to the explanatory notes to the government bill, transgender persons will be protected from discrimination in the field of goods and services, as this is considered discrimination on grounds of gender.

If transgender persons feel discriminated against, their complaint is filed as discrimination on the ground of gender.

24

Transgender issues have received increasing media attention in recent years thanks to more transgender persons being prepared to speak out in public. There has also been increasing awareness among politicians about the specific issues and demands of transsexuals in Austria.

Though cooperation and mutual support occur, the transgender movement has traditionally been separated from the gay and lesbian movement.

Discrimination against transgender persons continues, especially in the labour market, but there is a lack of research on the matter.

Transgender persons who are married and have undergone reassignment surgery are no longer forced to divorce in order to be legally recognised in their new gender. Thus, cases of same-sex marriage have been produced by gender reassignment of one spouse in a marriage. Although legislation prohibits same-sex marriage, the authorities have not dissolved these marriages.

POLAND

Discrimination of transgender persons is treated as discrimination on the basis of sex. In a judgment of 1978, the Supreme Court accepted that it is not only external physical features and organs which define an individual's sex, but also a person's emotional association with the gender opposite to that assigned at birth. The Court found that no one could be forced to be a man (or woman) if s/he internally denies it.

However, this judgement was followed by several other judgments which created uncertainty regarding the procedures to be followed for officially changing one's sex. There is a great need for comprehensive legislation establishing the rights of transsexuals in the health service, as well as regulating the procedure for name changes and acts of civil status. Currently there are varying kinds of procedure in place, and sex reassignment surgery is not covered by public health insurance.

There is one publicly known transgender person in Poland who is increasing the otherwise very limited visibility of this section of society.

PORTUGAL

At present in Portugal, there is no law related to gender identity. As a consequence it is not possible to determine whether transgender issues are to be dealt with as gender discrimination or as sexual orientation discrimination. Existing regulations were approved by the *Doctors' Public Association* or are court decisions.

According to a resolution approved by the executive branch of the Doctors' Public Association on 19.05.1995, operations to change an individual's sex are prohibited except where adequate diagnosis confirms a case of transsexualism or gender dysphoria.

The regulation also stipulates that operations will only be performed after a medical diagnosis has been made by two psychiatrists and a mandatory opinion has been issued by one 'ad hoc commission' whose members are appointed by the Doctors' Public Association.

The candidate for surgery must be over 18, of sound mind and not married.

The birth certificate contains gender information. In the absence of any law regulating name changes, transsexuals wishing to change their names are compelled to initiate a legal proceeding before the state. Courts have expressed the view that a gap exists in this area.

25

Therefore, they accept name changes provided the candidate satisfies the following prerequisites:

- over 18;
- not in a position to procreate;
- has undergone the operation;
- the changes are irreversible;
- has been living for a year with the new identity;
- has no children.

Transgender persons who have not undergone genital surgery or have children can only change their names to those used for both genders, such as J6 or Zara.

ROMANIA

Romanian legislation does not mention the term 'transgender' or equivalent terms. Transgender persons are theoretically protected by provisions in anti-discrimination legislation, but there are no clear guidelines for changing registration status or undergoing sex reassignment surgery. Changing civil status requires a court decision based, in practice, on a certificate issued by the *Institutul National de Medicina Legală* [National Institute for Legal Medicine] following an intrusive and arbitrary procedure that was developed *ad hoc* to fill a legal vacuum.

Transgender persons face structural barriers in accessing appropriate health services due to limited access to insurance policies, the costs of therapies and the widespread prejudice and discrimination in the medical system. Overall, the medical community has limited experience and knowledge in this area. Transgender persons are often treated as psychiatric patients, and there are few endocrinologists who are willing to provide hormonal treatment to transgender persons.

SLOVENIA

The discrimination of transgender persons is encompassed in a constitutional prohibition of discrimination on the basis of 'any other personal circumstance'. However, there are no laws explicitly addressing the status and position of transgender persons. Neither is the change of name following a possible gender reassignment specifically regulated.

It is up to individual doctors to decide whether to refer transsexual clients to specialists who then decide on the appropriate sex reassignment process. The treatment is free of charge.

No research has been conducted on transgender issues in Slovenia.

Transgender persons are largely invisible in Slovenia, except from one transsexual and one transvestite celebrity. The latter was a member of a transvestite trio *Sestre* [Sisters] who won the selection for the national representative at the Eurovision Song Contest in 2002. Their victory triggered homophobic and xenophobic responses in public and in the Slovenian Parliament

SLOVAKIA

Legislation regarding transgender individuals stipulates that discrimination due to their sexual or gender identification is considered discrimination on gender grounds.

There are legislative provisions relating to administrative issues such as change of name and identification number. Legislation concerning medical aspects such as hormonal treatment or sex reassignment, however, is almost nonexistent. Transgender individuals often travel to the Czech Republic for such procedures.

FINLAND

26

The issue of discrimination against transgender persons is not specifically addressed in Finnish law. The prevailing legal opinion, as well as the practice of the Ombudsman for Equality, supports the interpretation that the law regarding equality and non-discrimination between women and men applies to discrimination against transgender persons.

There is a specific piece of legislation that governs the official recognition of the sex of a transsexual person. The new *de facto* sex of a person shall be legally recognised *ex officio* (i.e. there is no room for discretion), provided that certain conditions laid down in law are met. A person whose new *de jure* sex has been recognised by the competent authorities is to be treated as a person of that sex for all purposes under the law, including change of name.

Statistics about the number of individuals who have changed their *de jure* sex is not readily available, nor are statistics about the number of persons who have changed their name for these reasons. However, the Population Register Center intends to prepare these statistics in 2008.

No case law interpreting the laws in question could be found from the case law database FINLEX or the pertinent legal literature.

At the time of writing The Equality Ombudsman is handling 5-6 cases regarding transgender persons. An example of a pending case is a transsexual's need for a separate changing room when attending a public swimming pool.

SWEDEN

Today's law dates back to 1972 and contains demands that persons requiring sex reassignment must be sterilised, unmarried and a Swedish citizen. This has been criticized by *RFSL* and *KIM*, an organisation working on gender identity diversity issues. In 2007, an official investigation suggested changing this law.

Swedish law presents a further problem for transgender persons, as it strictly divides names into male or female categories. A transgender person wishing to have a name that corresponds with their gender identity must choose from a list of gender-neutral names. This law has been criticized by *RFSL* and other organisations.

A Swedish law prohibiting transgender discrimination has been adopted by the Swedish Parliament and will enter into force on January 1, 2009. It is the first time that the vulnerability of transgender persons has gained attention in major legislation. A proposal in the final report of the Committee of Inquiry (SOU 2006:22)⁴⁶ introducing an obligation to promote equality regardless of sexual identity or sexual orientation was not included in the government's proposal, and thus not adopted by parliament.⁴⁷ The new legislation defines gender more widely and includes gender identity and expression as a new ground for discrimination.

UNITED KINGDOM

The *Gender Recognition Act 2004* (GRA), which came into force in April 2005 and applies throughout the UK, enables transgender individuals who satisfy certain criteria to apply to a Gender Recognition Panel for a *Gender Recognition Certificate*. From the date of the grant of a full Certificate an individual is afforded legal recognition of his or her acquired gender, and can obtain a new birth certificate which does not disclose the fact that he or she changed gender.

In the UK, discrimination in employment or training on grounds of gender reassignment is regarded as sex discrimination. In addition, in Great Britain (England, Wales and Scotland), public authorities have a gender equality duty which places an obligation on them to promote gender equality and eliminate sex discrimination. Furthermore, there is no requirement to carry an identity card or other

27

form of identification displaying one's name. Individuals are also free to use a name of their own choosing. No medical treatment of any kind is needed in order to change one's name or to change it on statutory documents such as a driving licence or a passport.

A research project commissioned by the *Equalities Review* (2007) used a mixed quantitative/qualitative approach to collecting and analysing information on transgender and transsexual persons' experiences of inequality and discrimination in the UK. Findings from the research show that the sectors in which discrimination impacted trans persons' lives the most were employment and workplace, healthcare access and leisure and education. Forty-two per cent of persons not living permanently in their preferred gender role were prevented from doing so because they feared it might threaten their employment status. More than 10 per cent of trans persons experiences being verbally abused at work and 6 per cent were physically assaulted at work.

28



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents

Visit the European Parliament website: <http://www.europarl.europa.eu/studies>

PHOTO: OMBUDSMAN FOR EQUALITY

