

# **ATME e.V.**

Aktion Transsexualität und Menschenrecht

*(Campaign Transsexuality and Human Rights)*

## **Compliance with the Convention Against Torture in Germany - as relevant to transsexual people -**

A Human Rights Report

for the

Fifth State Report of the Federal Republic of Germany concerning measures to implement the Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

A transsexual Woman:

*"I had to walk naked through the room and be recorded on video. He said: this is unavoidable; otherwise he couldn't write an expertise. For the second expertise my penis was kneaded, and then he asked me if it was getting hard. For the third expertise I was asked if he could shove the foreskin several times back and forth."*

A transsexual Man:

*"It started in that he did not want to address me in the male form. ... Finally, after about two hours of talking, he announced that he had to examine me physically. I asked him, if I had to undress completely, and was this necessary to determine that my biological body is female, and wouldn't a presence of a gynecologist be appropriate? He answered, that I had to do that anyway {...}. He also would have to examine my body, that this is demanded. If he couldn't do that, he could not write a medical expertise. So I had to give in to my fate [...]*

*Then he said, when examining a woman he would need to have another woman {!!!} in the room, and called {...} his secretary into the examination room." ... "Finally came the point when I had to completely undress. He inspected me then frontal [...] so that he could look at my vulva without interference. Afterwards I could dress myself again and the whole thing was finished."*

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## 1. Background: The Convention Against Torture

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In the Convention against Torture any form of humiliation and degradation by state agents, such as by a court expert, is prohibited. It is stated in Article 16:

*"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."*

And Article 1, in which torture is defined in detail, we read something that reminds us in a frightening way of the court expert's opinion process:

*„For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [...] a confession, [...] or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."*

These two articles are violated in our view, by Germany, especially in the existence of the so-called transsexual law and by humiliating and degrading treatment by physicians, psychologists, court experts, police and judges.

A transsexual man:

*"[...] Questions about masturbation, clitoris growth, etc.*

*Since these questions were asked with an obvious sexual background, (I bet that he jacked off at least five times after the conversation ended.)*

*And the fact that he consistently stared one in the breasts while talking to him.*

*Especially, however, the demand to undress in front of him (possibly also an extortionist threat that otherwise the surgeries could not happen)".*

## 2. The Transsexual Law

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### A: In general - Force to declare yourself mentally ill

Despite the official claim that the Transsexual Law (Law about the Change of Forenames and the Determination of Sex in special Cases) had been introduced in order to give transsexual people the opportunity to make their "sexual Papers" easier to change, the reality is exactly the opposite. For transsexual people, it is in fact, because of the Transsexual Law, difficult and painful an innate sex (which may differ from the physical sex) to be recognized or to receive medical or psychotherapeutic assistance.

Though the Transsexual Law in accord with its title only governs changes of first names and sex marker, still it also contains demands for medical interventions that the transsexual person must take on himself or herself (which are not seldom paid out of pocket), demand for a real life experience trial and psychotherapy<sup>1</sup>

A law that compels a person to seek medical measures for themselves and to undergo psychotherapy violates not only human rights, is moreover by many considered to be humiliating and degrading. Therefore, many transsexual people avoid the law and neither change names nor gender entry. A life with the false identity papers is perceived as less humiliating than making use of the Transsexual Law and the court expert's opinion process. This inter alia means that these people are mostly unemployed, or working as prostitutes, where no identity papers are required.

Furthermore, it also appears to make little sense, to change first names and / or gender entry (which cost several thousand Euros), if one is recognizable as a transsexual person. And since most of the necessary medical measures are not usually covered by German health insurance, and whoever cannot afford to pay for facial hair epilation, hair transplantation, breast enhancement, voice therapy and facial feminization surgery themselves, has little use in having a change of name or sex entry.

Transsexual people feel it as particularly humiliating and degrading to be forced to have to themselves declared to be mentally disturbed people<sup>2</sup> - because exactly this is a consequence of the German Transsexual Law. Only if e.g. a transsexual woman accepts to be declared as a mentally disturbed man by two psychiatric experts and agrees on the diagnosis "gender identity disorder" she can change her first names or gender entry.

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1 Stability and failure of therapy of transsexuality must be proven. So is stated in the Transsexual Law: "In their opinion they also have to determine if [...] the sense of belonging of the applicant with a high probability not change." (§4, (3), Law about the Change of Forenames and the Determination of Sex in special Cases)

Furthermore it stands in §1:

"§1 Conditions

(1) The forenames of a person are upon their petition from the court to be changed, when  
 1. he [...] stands for at least three years under the compulsion conform to his presentation of living, and  
 2. can be assumed with a high probability, that his feeling of belonging to the other sex will no longer change."

2 Thus oddly the diagnosis Transsexualism is insufficient, what already counts as a heavy personality disturbance according to WHO, but in addition the diagnosis "Gender identity disorder" gets determined

*"[...] can the finding that the conditions required by law [...] are given, only then be made if the [...] criteria for a diagnosis of [...] gender identity disorder are met."<sup>3</sup>*

The change to documents is not even sure, but depends on the verdict of a judge who may reject the applications as well. Therefore, in Germany there are also transsexual women who, following the rejection of their request for changes to their "sex papers" are legally men. There are in Germany even transsexual women who have had genital surgery and on the basis of this discriminatory practice with identity documents must live with identity papers in which they are listed as a man.

Considering that according to official German figures there should be only approximately 2000 to 8000 transsexual people in Germany<sup>4</sup>, however, on the basis of international comparative figures, there must be, as estimated by ATME approximately 160,000 people in Germany<sup>5</sup>, lets one imagine what a large number of transsexual people there are who shy away out of the fear of humiliation through the Transsexual Law.

A transsexual woman:

*"He pressed me to agree that several homosexual practices which he exactly described were pleasant as he and I were alone in the room. Among other things, he meant I really needed to give a man a blow job so as to be certain of my identity. And anal sex would also be very important, no matter whether I was keen on it or not. It would only be important for me to have tried this once, he said. Then I would know whether I was truly transsexual.*

*Since he encouraged me to do this as I was alone with him in the room and he forced me to agree to this (otherwise I would not receive a positive expertise from him), I was afterwards thoroughly traumatized. What had he made me? What was written in my expert's opinion? About two weeks long I considered whether I should take my life, until someone helped me to overcome this trauma."*

3 Beier, Klaus M., Hartmut A. G. Bosinski, Uwe Hartmann (2005): Sexualmedizin. Grundlagen und Praxis. Urban & Fischer Verlag/Elsevier GmbH; Auflage: 2 (1. September 2005). S. 391

4 cf. Focus.de: Im falschen Körper. Transsexualität. (ohne Datum) ([http://www.focus.de/gesundheit/ratgeber/sexualitaet/sexlexikon/im-falschen-koerper\\_aid\\_7512.html](http://www.focus.de/gesundheit/ratgeber/sexualitaet/sexlexikon/im-falschen-koerper_aid_7512.html)) or: stern.de: „Kims Kindheit im falschen Körper“ vom 11.04.2011 (<http://www.stern.de/wissen/mensch/transsexualitaet-kims-kindheit-im-falschen-koerper-586766.html>)

5 According to Lynn Convay (<http://ai.eecs.umich.edu/people/conway/TS/TSprevalence.html>) the fraction of transsexual people in the population is at about 1:500, what gives about 160,000 people in a population of 82 million, This also corresponds with our experiences, because we always meet transsexual people "by any chance", what after the official figures could not occur in this frequency.

## **B: The procedure for calling in expert opinion (Transsexual Law and in general)**

### **a) The German „Gutachten-Mania“ and its Tradition**

In Germany there is a long bureaucratic tradition that administrative decisions be made with support of so-called expert's opinion. An "opinion" is a detailed document by an expert who undertakes investigations and issues findings and recommendations on a particular issue. In Germany it is called "Gutachten". This administrative tradition can be traced well into the Empire (before 1918).

Under national socialism this "Gutachter-mania" was driven to the extreme, in some cases fatale decisions against individual members of hated groups (Jews, mentally ill, homosexuals, mentally disabled, so-called "anti-socials") were prepared by the authorities through "Gutachten". This was the time of innumerable racial expertises, which led to the gas chambers, homosexuals were castrated or were housed in psychiatric hospitals as mentally ill<sup>6</sup>. A leading role in writing these "Gutachten" was played by psychiatrists.

After the end of the Nazi era, many of these psychiatric experts continued their career, begun in the Nazi era, with careers as forensic psychiatrists, A large number of them also worked in sexual medicine, or with sexual offenders and sexual perversions, among which at the time included homosexuality as under the Nazis. The "Gutachter-mania" could be carried on - this time on behalf of the courts.

This tradition continues today: transsexual people need in order to make changes to personal status in the passport, two psychiatric evaluations (called "Gutachten"). The most prominent and most called upon expert in courts (including issues involving transsexuality) are - and here there is the unbroken tradition - forensic psychiatrists who specialize in "sex offender" cases (f.e. Friedemann Pfäfflin, see chapter C: "The expert and the Judge").

Also the procedures of the German Transsexual Law seem to have sprung from forensic psychiatric thought: the whole process of the "juristic sex reassignment" lies in the hands of courts and court psychiatrists, the expert's effort is similar to that as for sex offenders in cases in which a future preventive detention is under consideration (dual review).

Moreover, it appears that many of these experts have not learned much from the disastrous German past with their rude Nazi psychiatrists.

### **b) The procedure for calling in expert opinion Today**

What is the expert's opinion ("Gutachten") other than the coercion to give evidence about ourselves that we would never have made if we could be ourselves? Many transsexual people refuse this procedure and live without the possibility of changing their first names

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<sup>6</sup> For details: Alice Halmi: Kontinuitäten der (Zwangs-)Psychiatrie. Eine kritische Betrachtung. 2008

and amending the record of their sex because they find life with a wrong passport as a condition less humiliating than to have to be declared by an "expert" as mentally disturbed.

*„the Diagnostic and Statistical Manual of Mental Disorders (DSM) which includes the term ‘gender identity disorder’ as a mental health disorder [...] Secondly, the WHO International Statistical Classification of Diseases and Related Health Problems (ICD) lists transsexualism as a mental and behavioural disorder. It is important to stress that transgender persons are thus labelled as having a mental disorder.“ (Thomas Hammarberg)<sup>7</sup>*

As we have already several times pointed out, the above mentioned harassment and humiliation in the context of the expert's opinion process, for which there have to date been no changes to the law, occur *"with the consent or acquiescence of a public official or other person acting in an official capacity."*<sup>8</sup>, i.e., with the consent of the legislative or authorizing agency.

Moreover, there is still no way for transsexual people to take legal action against such indignities. As a rule, judges and experts work closely together, so that in the event of a complaint about an expert at the district court, the judge has no interest to process against the "good friend" who acts as an expert at the behest of the court.<sup>9</sup> Others have had the experience that upon a complaint about an expert at the district court, the Physicians' Chamber or other institution, threaten the transsexual person with libel, or ensure that he / she receives no name change or change of sex entry. As previously mentioned, there are therefore, for this reason, also transsexual women in Germany who have been denied legal recognition.

*21. [...] States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above. (Committee Against Torture)<sup>10</sup>*

In contrast to the Economic and Social Council (General Comment no. 20, passage 20/26/32), which is of the opinion that transsexual people should not be discriminated against because of their transsexuality, known experts in Germany have successfully worked against the implementation that "sexual identity" be included as a prohibited ground of discrimination in the Constitution.<sup>11</sup> Transsexual people are not recognised as a

7 Strasbourg, 29 July 2009 CommDH/IssuePaper(2009)2 Original version, Human Rights and Gender Identity, Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Page 44, [http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg\\_dt.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg_dt.pdf)

8 CAT, Article 1 and 16

9 Experience of some members of ATME

10 COMMITTEE AGAINST TORTURE. GENERAL COMMENT No. 2. Implementation of article 2 by States parties

11 *"This is likely to be the background, why it now is so important for some groupings, to anchor the sexual identity, [...] in the anti-discrimination article of the constitution. In my opinion this is unnecessary."* (Friedemann Pfäfflin (2010): Sexuelle Identität ins Grundgesetz? Recht und Psychiatrie. R & P (2010) 28 . S. 123 - 131.



„group[] made vulnerable by discrimination“ as by the Committee Against Torture:

*„V. Protection for individuals and groups made vulnerable by discrimination or marginalization*

*20. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. [...]*

*21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, [...]<sup>12</sup>”*

That experts may give opinion, but not human rights organizations, such as ATME or transsexual people themselves, show the close entanglement amongst law, justice and experts. The welfare of transsexual people or the protection of their human dignity is never the issue.

Thus to this day, several calls of the various committees of the United Nations (CEDAW 2009<sup>13</sup>, CESCR 2011<sup>14</sup>) for the governments to get in contact with organizations of transsexual people and to work together to solve problems has not occurred. More than that: every contact has been shunned.

A transsexual man:

*"[...] I'd] also like to report that 'P' [Note: name has been removed] [...] during the examination for the expertise leading to my mastectomy and hysterectomy, committed a serious sexual infringement. The experience definitely traumatized me. I know from other sure sources [...] that he did this systematically.*

*Upon my written complaint, I received a very aggressive letter from 'P's lawyer in which he accused me of slander and demanded that I pay €5000 and sign a prohibitory injunction. [...] I find it important to initiate legal steps against 'P'. I have however no idea, if I can afford it"*

12 COMMITTEE AGAINST TORTURE. GENERAL COMMENT No. 2. Implementation of article 2 by States parties

13 Committee on the Elimination of Discrimination against Women, Forty-third session, 19 January-6 February 2009, Concluding observations, observation 61 & 62  
(<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/50/PDF/N0923650.pdf?OpenElement>)

14 Committee on Economic, Social and Cultural Rights, Forty-sixth session, Geneva, 2-20 May 2011, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding Observations, Germany, Passage 26

## C: The Expert and the Judge: An unusual Marriage

German experts, such as Friedemann Pfäfflin, consider transsexuality to be an invention of the last century ("what we now call transsexuality was invented around the same time as psychoanalysis."<sup>15</sup>). Transsexual women, like Christine Jorgenson, are humiliated in principle by him and referred to as "he" (*"Famous is the autobiography of George / Christine Jorgensen [...], an American soldier [...]. As his family came from Denmark [...]"*<sup>16</sup>), Pfäfflin denies that Christine knew who she was (*"His [sic] thesis was: I'm born as a woman. [...] that no man knows from birth, whether he is woman or man"*<sup>17</sup>). Pfäfflin also claims the treatability of transsexuality, if the therapist indicates acceptance of transsexual people (*"If the patient feels being accepted, he can develop his own doubts and may give up the goal of a sex change."*<sup>18</sup>). Friedemann Pfäfflin holds transsexualism for a subculture, a "scene" (*"the scene of the afflicted"*<sup>19</sup>) and calls transsexual people *"the oscillating, negating, and transcendent."*<sup>20</sup> These views are shared by the majority of German experts.

It should be clear that a person who understands transsexual women as "sex-changed men" and considers transsexuality not to be a variation of human life, but rather holds that it is a mental state, something *"oscillating, negating and transcending"*, has no understanding of transsexuality.

Gender stereotypes and absurd views on transsexuality are shared by many German "experts" Thus one can have an idea of what a transsexual person must experience in a forced assessment or in therapy can undergo. We hope that the experiences described in this text show this clearly.

A major problem is the system of court experts in general. To become a court expert, a judge must simply be satisfied that a person is suitable to be an expert. A special skill or training is not necessary. In this way, anyone who holds to the same ideology, as the judge responsible for the trial becomes an expert quickly.

An attorney told us that the problems with the expertise system in other legal areas are also very large. As judges, often know the experts well, they can choose the expert they want - and because they usually know how he will decide, since he so decided in similar cases - determine the outcome of the proceedings. Because the choice of the expert lies in the responsibility of the judge, the judge is judge and executioner in one person.

A somewhat different absurd sounding commission for an expert's opinion was experienced by our member Christina Schieferdecker, of whom was demanded by a Stuttgart court to go to Hamburg for the expertise - over 800 km away from her home. Considering that in

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15 Quotations in this paragraph are taken from the text: Pfäfflin, Friedemann (2008). *Transsexuelles Begehren*. In: Springer A, Münch K, Munz D (Hrsg) *Sexualitäten*. Psychosozial-Verlag, Gießen, 311-330

16 ibid

17 ibid

18 ibid

19 ibid

20 ibid

the vicinity of her residence about 100 qualified physicians, psychologists, etc. worked, one must pose questions concerning the motivation behind the judge and the question "Who knows whom?" is quickly raised. The request of Ms Schieferdecker, to be evaluated in the Stuttgart area, if only because of the associated costs and loss of work time, was rejected.

That even the Federal Constitutional Court is not independent as it should be, but also obviously "sympathizes" with the experts against transsexual people, is shown in the verdict of the Court already criticized by us. It is written in the decision of 11 January 2011 with regard to the expert's opinion process (1 BvR 3295/07):

*"that a person who feels that he belongs to the other as the already determined sex, proves by opinions of two independent experts, [...] is shown to have for at least three years under the compulsion that he must live according to his ideas about gender. In addition, it must be assumed with high probability, that the sense of belonging to the opposite sex will not change. It is not constitutionally objectionable, to establish the civil status recognition to such conditions."*<sup>21</sup>

Interestingly with regard to this is the opinion of the Committee on Economic, Social and Cultural Rights, which states clearly:

*"26. The Committee notes with concern that transsexual and inter-sexed persons are often considered to be persons with mental illness and that the State party's policies, legislative or otherwise, have led to discrimination against these persons as well as to violations of their sexual and reproductive health rights. (art. 12, 2.2)"*<sup>22</sup>

Thomas Hammarberg, the Human Rights Commissioner of the Council of Europe notes on the expert's opinion process:

*"In addition, access to gender reassignment surgery is further complicated or conditioned by so-called "protocols" and conditions regarding childhood, sexual orientation, or clothing tastes, which are highly questionable. There are accounts of transgender people having to undergo genital examinations by psychiatrists, having to tell a set story of their childhood which is the only acceptable one; sometimes their claims are only considered genuine if they have at least one proven suicide attempt. Other transgender persons are being forced to stereotype themselves to the extreme in their preferred gender to fit eligibility criteria, leading to ridicule in daily life. The examples are too numerous to list, but it is safe to state that the majority of tests and processes conducted in most countries will usually include aspects that can at best be called incomprehensible."*<sup>23</sup>

The experienced humiliation and degradation caused by the expert's opinion procedure are thus well known.

21 [http://www.bverfg.de/entscheidungen/rs20110111\\_1bvr329507.html](http://www.bverfg.de/entscheidungen/rs20110111_1bvr329507.html)

22 Committee on Economic, Social and Cultural Rights, Forty-sixth session, Geneva, 2-20 May 2011, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, Passage 26

23 Strasbourg, 29 July 2009 CommDH/IssuePaper(2009)2 Original version, Human Rights and Gender Identity, Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Page 45, [http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg\\_dt.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg_dt.pdf)

Considering that it reads in Article 1, sentence 1 of the German constitution: *"Human dignity is inviolable"* and that the Federal Constitutional Court is of the understanding: *"It is not objectionable constitutionally for the civil status recognition to be subject to such conditions"*<sup>24</sup> as they are described by Thomas Hammarberg, then one must ask again whether the German judges either sympathize with the experts or have no knowledge of the contents of the constitution. That their training in human rights is less than poor, we know for sure. The United Nations written on this:

*"The Committee notes with concern that education on human rights, [...] is not given sufficient attention and not systematically integrated into education curricula at various levels."*<sup>25</sup>

And the same Committee once again:

*„7. The Committee remains concerned that the provisions of the Covenant have not been applied before the national courts of the State party."*<sup>26</sup>

This apparent "marriage" between legislators, judges and experts, and the ignorance of human rights must be ended. Indignities and humiliations in the context of the expert's opinion process must be brought before court; the relevant experts must be withdrawn from duty. In addition, it must be possible to seek criminal prosecution against judges when it is demonstrable that they and their appointed experts are on such familiar terms, that they do not have the necessary distance, which is necessary for an objective procedure, or abuse their power and influence the outcome of the proceedings.

Judges must receive training in human rights, and Germany must fulfill its contractual obligations and make all human rights treaties ratified by German courts enforceable.

And last but not least, we join the call on the United Nations:

*"The Committee urges the State party to step up measures, legislative or otherwise, on the identity and the health of transsexual and inter-sex persons with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected. The Committee calls on the State party to fully consult transsexual and inter-sexed persons for this purpose."*<sup>27</sup>

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24 [http://www.bverfg.de/entscheidungen/rs20110111\\_1bvr329507.html](http://www.bverfg.de/entscheidungen/rs20110111_1bvr329507.html)

25 2-20 May 2011, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, Observation no. 31

26 2-20 May 2011, Concluding Observations of the Committee on Economic, Social and Cultural Rights, 20 May 2011, Germany: Observation no. 7

27 2-20 May 2011, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, Observation no. 26

A transsexual woman (she had had too much to drink the evening before):

*Then I woke up in a jail cell and began to panic. [...] I was afraid since I didn't know where I was. I could hardly breathe and had pain. My right hand was [...] swollen [...] I only had my dress on. The other things such as stockings and wig were gone.*

*I then called loudly for help and kicked with my foot against the bars so that someone might hear me.*

*Evidently I was heard because the door opened and two men came in. The one [...] grabbed me by the throat, pressed and threw me to the floor. He added: "maybe you will be finally be quiet now." and left.*

*I lay on the cold tile floor [...] I whimpered and cried and only thought, oh God what have they done to me, and what more were they going to do. [...]*

*They had succeeded in taking my dignity from me. [...] I collapsed and cried like a little child.*

*Sometime later the door opened. [...] The policeman said: "Come Little Fairy", I went barefoot with him. I was cold. It went through the police station, so that I could be shown off to everyone. I felt so demoralized. When it came to taking fingerprints, he took no heed of my broken hand. He pressed it into the inkpad to make the print. It didn't interest the two at all; contrariwise, they found it funny. [...]*

*I then called a girl friend, so that she could come and drive me to a hospital. [...] I could hardly move because of the pain.*

*At the hospital everything was noted. The doctor had tears in her eyes and was speechless. [...] She could determine with a few moves that a rib was broken and that, from what one could see about my hand, there was ample reason to send me to the emergency room.*

*They had torn my dignity from me. They had stripped me of all my rights as a human being. They didn't even leave me the rights of an animal. If I were a dog, a cat, or even a bird, then they would have taken me to an animal hospital immediately.*

*With what self confidence they had let this happen, showed me, that they obviously know that they would not be held accountable.*

## 2. Humiliation by the Police

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Humiliation by the police has not been reported to us as frequently as humiliation by experts. Maybe it's because transsexual people are already so familiar with being humiliated and degraded that they speak out only at the worst humiliations and are silent on others out of a feeling of helplessness.

We want to describe a case in the following example which received extensive media coverage in Germany<sup>28</sup>.

In June 2010 a very good looking (!) transsexual woman (called A.) was stopped by the police. Because her papers were issued to a male name, the policemen addressed her only as "Mr." and the words: "For me you are a man with fake boobs!" As A. politely but firmly resisted these allegations, she received a complaint for libel, she is said to have called the police "pricks." Her companion told the court that he had not heard an insult, as well as A., who said that she had not expressed it. Nevertheless, she was convicted by a German court for libel and fined. The court considered the behaviour of the two police officers to be appropriate.

Even the German press had only scorn and contempt for A. in the end, she was called Transe (a very very contemptuous word)<sup>29</sup>, "Man with boobs", "Transmusel" [Translator's note: Transe + Musel - both are contemptuous, for transsexual Muslim woman] etc. Imagination knows no boundaries.

Here the story as told ATME by Ms A.:

*I had supposedly told the policeman to jack off [...] I could have paid a fine and then it would have been at an end. But [...] I had been discriminated against as a transsexual woman, I had been stopped, I had been insulted as a 'Man with Boobs', called 'lightly made-up boy.'*

*[...] We are just as much human beings on this planet, from the earth. [...]*

*I was not allowed to even finish my testimony before the court.*

*[...] on that day: a normal police control. I [...] had to get out of the car. I should make an alcohol test. Then I passed the breathalyser test [...] and then it was about ID documents. Two weeks earlier I had been robbed: driver's license, passport, EC-cards. ...everything gone [...] I said: 'You can check it out' [...]*

*Then they checked it and naturally it was listed in the police computer still: that the*

28 f.e. BILD-online vom 22.06.2010 (<http://www.bild.de/news/2010/news/polizist-nennt-sie-herr-mit-titten-13026178.bild.html>), Express.de vom 8.07.10 (<http://www.express.de/regional/koeln/geldstrafe-fuer-transsexuelle-aylin/-/2856/4397206/-/index.html>)

29 f.e. BLD.de (s.o.)

*sex is 'm', [...] and then the whole thing started with 'Mister So and So [...] whereupon I said: [...] 'I am a transsexual woman, [...] and have applied for a change of name with the court and was waiting for the decision, and therefore, I ask you please to address me as Miss. That is very important for me.' 'That's your point of view.' said one of the officers. 'That you're a woman, I doubt. For me you are a lightly made-up boy with false boobs.' That hurt me a lot and I thought: 'What's happening? I've gone through so many things in my life. My parents are Muslims; I'm a Muslima, and even my parents call me a woman. And in Germany living in a free democracy and have to hear me called by some police officer 'Mister.'*

*[...] And then it started with [...] Mister So and So this, Mister So and so that. Every second word was Mister. That was no longer a conversation [...] he thought it very funny and grinned the whole time. And I wanted to say something and then it was 'Do you want me to put you in a cell, Mister XY?' I was threatened and could not even answer! He said then: [...] 'Shut up!' I was defenseless - and had to listen the whole time Mister, Mister, Mister ... it went on so for over half an hour.*

*Then I said: 'Now's enough', and pulled up my t-shirt because I had no idea what more I could do. "Sufficient for you?" I asked to prove my femininity. And then he simply stared at me and laughed. He continued laughing and sad: 'And now you can drive on. A very, good morning, Mister XY'. I had to cry. And I wept.*

### **3. Humiliations by the jurisdictions**

#### **A: By the Failure to apply Human Rights Conventions**

Where the wind of the German courts blow, is revealed in an excerpt from a ruling against a transsexual woman, which says:

*"The statutory health insurance funds are held not constitutionally obliged to do all that is available in resources to maintain or restore health."<sup>30</sup>*

This is an obvious contradiction to Article 12 of CESCR and European Social Charter, Part 1<sup>31</sup>. Various human rights committees of the United Nations have already criticized the lack of international involvement of ratified pacts in the German legal system, and demanded improvement.<sup>32</sup>.

It is no wonder with the above reasoning, the desire of a transsexual woman for a rapid Epilation treatment of the whiskers, which is needed to preserve dignity and avoid discrimination and humiliation, was rejected and the court instead demanded from her to live and work as a woman for about 8 years with facial hair.

*(Note: In order to permanently remove facial hair, it must be removed through an electrolytic treatment, a so-called needle epilation. But this treatment can be performed only when the whiskers are long enough, so that the affected person has a standing beard over several days)*

So are transsexual women forced to public display and ridicule, which is a serious form of legally enforced humiliation and degradation.

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30 LSG Baden-Württemberg, 27.01.2009, L 11 KR 3126/08

31 European Social Charter, Part 1: „11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.“

32 f.e. Concluding Observations of the Committee on Economic, Social and Cultural Rights, 20 May 2011, Germany:

*„7. The Committee remains concerned that the provisions of the Covenant have not been applied before the national courts of the State party.*

*The Committee urges the State party to take all appropriate measures to ensure effective applicability of the provisions of the Covenant in national courts, including by raising awareness of this obligation and the provisions of the Covenant among judges, lawyers and other officials involved in law enforcement. In this regard, the Committee refers the State party to its general comments No. 3 (1990) and 9 (1998) respectively on the nature of States parties' obligations and on the domestic application of the Covenant.“*

or: Concluding observations of the Committee on the Elimination of Discrimination against Women, 12 February 2009, Germany:

*21. The Committee [...] remains concerned that the Convention has not received the same degree of visibility and importance as regional legal instruments, particularly European Union directives, and is therefore not regularly used as the legal basis for measures, including legislation, aimed at the elimination of discrimination against women and the promotion of gender equality in the State party. The Committee is further concerned that the provisions of the Convention have not been used in court proceedings, which may indicate a lack of awareness of the Convention among the judiciary and the legal profession.*



A transsexual man:

"I had my first visit with my expert psychiatrist today and was shocked, when he wanted to make a physical examination. It was not just a test of reflexes and coordination - I had to stand before him completely naked and he went over everything, including the genitals. I asked him, if this sort of examination was more intelligently conducted by a gynaecologist, but no, he said, he had to do it ... that the procedures require it."

## B: Denial of the Civil Recognition of Sex

Even if a transsexual woman has all the required operations, including genital altering surgery and can show proof of many years to decades of an official recognition as a woman already, she may still not change her gender entry without having to be declared by two experts to be a mentally disturbed man.

For example, all court instances up to the Federal Constitutional Court rejected a request by a transsexual woman for a change of gender entry without having to be declared mentally disturbed<sup>33</sup>. This forces her to continue showing an identity card with a "male" status in the post office, when paying with a credit card or any other similar activity to identify herself as transsexual.

The Federal Constitutional Court saw no constitutional violation in the rejection of the complaint - no violation of human dignity.

Thus are transsexual women (see above: Case Ms A) made fair game, they may be insulted as "*men with boobs*" or "*men with vaginas*" without having any legal right to defend themselves.

A transsexual woman:

*"P (name removed)<sup>34</sup>, meant that I should out myself in my business as a woman, and appear as such and do my work. Otherwise I could not judge if I were really transsexual. My concerns he simply threw to the wind. I knew that I could never bear this. Furthermore such an undertaking would be too dangerous. My landlord would have thrown me out without delay and my appearance would have caused a mob to*

<sup>33</sup> Case is on hand for ATME with all court-documents.

<sup>34</sup> Paradoxically, most surnames of the experts begin with the letter P. It is however, in all described cases, various experts.

form."

### C. Compulsion to wear Humiliating Clothing

It is not only that the Transsexual Law imposes a humiliating and degrading expert's opinion process (see above) on transsexual people, it also requires that most transsexual women dress in an extremely stereotypically sexy - almost like prostitutes, and in this humiliating appearance undertake a so-called "life experience" test. Only afterwards maybe they get the right to change first names. A transsexual woman who likes to wear shorts and t-shirt gets, as a rule, no name change and no medical treatments, because these clothes are considered too masculine. This approach has been previously criticized by Thomas Hammarberg strongly. That there are strong stereotypes about the appearance and behavior of men and women in Germany, has been criticized in several way, including the CEDAW Committee:

*2000: „323. The Committee is concerned at the continuing stereotypical portrayal of women“<sup>35</sup>*

*2009: „27. [...] the Committee is concerned about the persistence of pervasive stereotypical and traditional attitudes towards women which threaten to undermine their rights. [...] The Committee is concerned that stereotypical attitudes are particularly prevalent in the media, where women and men, as well as migrants, are often depicted in a stereotyped manner. It is also concerned at the persistence of sexist advertising and at the inadequacy of the German Advertising Council set up by the advertising industry to receive and consider complaints related to sexist advertising.“<sup>36</sup>*

And Thomas Hammarberg again:

*„Other transgender persons are being forced to stereotype themselves to the extreme in their preferred gender to fit eligibility criteria, leading to ridicule in daily life. [...] the majority of tests and processes conducted in most countries will usually include aspects that can at best be called incomprehensible.“<sup>37</sup>*

35 Committee on the Elimination of Discrimination against Women, Twenty-second session, 17 January - 4 February 2000, Excerpted from: Supplement No. 38 (A/55/38), Concluding comments: Germany

36 Committee on the Elimination of Discrimination against Women, Forty-third session, 19 January-6 February 2009, Concluding observations  
(<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/50/PDF/N0923650.pdf?OpenElement>)

37 Strasbourg, 29 July 2009 CommDH/IssuePaper(2009)2 Original version, Human Rights and Gender Identity, Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Page 45, [http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg\\_dt.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Publications/Hberg_dt.pdf)

A transsexual woman:

*"I needed about 18 months in order to 'cope' with what I write here [...] about my psychotherapy. And now I've progressed so far that I'm able to scream out to the world: 'look how one of your medical experts mishandled me!'"*

*This is what happened:*

*"[...] it came to the announcement [...] that he had to examine me bodily. [...] He was a doctor of medicine [...] I shouldn't behave so. [He] had to examine me bodily, this would be a requirement, otherwise he couldn't [...] write an expertise in accordance with paragraph 9 [Transsexual Law].*

*[...] I surrendered, [...] I was of the belief that were I to refuse to conform I would hurt my expert's opinion. [...]*

*So I stood there ... with an anatomy which I myself didn't accept and began to cry softly. He: 'The penis is rather small.' I: 'It's also good so ... after three years of hormones, normal so'. He then let himself go over my breasts. 'They're really large'. He shook his head ...examined me frontal ... grabbed me. ...*

*Then a fuse in me burned through. [I] backed away, cried effusively, screamed at him: 'The two are entirely for me alone and my body feeling, not for such a prick as you ... are.' ... Then I was allowed to get dressed again. ...*

*[...] He didn't say excuse me: ' I got carried away, I'm sorry, it won't happen again.'*

*The worst thing about it is that the perpetrator had acted in the knowledge [...] that this indignant treatment would most probably go without any consequences. What remains with me is the degrading feeling of having allowed an evil and abject treatment to happen.*

*Had I been 'louder' and demanded my rights immediately, I wouldn't have had to [...] reprove myself for [...] my own internalized painfulness: 'How could I have invited you to perform such a foul and degrading act?' 'Self to blame.'"*

## 4. Refusal to Change the Law by the German Government

*„modify promptly the law on transsexuality to facilitate registration of a change of gender on official documents, [...] (New Zealand)“ (Human Rights Council 2009)<sup>38</sup>*

... an Germany's answer:

*„22. Germany accepts the recommendation. The Federal Government has already started preparations for making the necessary changes to the law on transsexuality.“<sup>39</sup>*

Till today, nothing happened, nothing changed.

German parties like the Greens and the Left are prepared to abolish the existing Transsexual Law, but they have met with the resistance of the CDU / CSU [Christian Democrats / Christian Socialists], FDP [Free Democrats] and SPD [Social Democrats]. A bill tendering a new Transsexual Law that respects human rights, has been introduced by the Green Party already, but this was rejected in Parliament.

So, as German politics refuse to this day, to include "sexual identity" as a prohibited ground of discrimination in the constitution, so are they still refusing to adopt a human rights-compliant legislation for transsexual people.

A transsexual man:

*“As a consequence of a sociological-medical examination I was measured, weighed and photographed in such a manner that I was robbed of any notion of understanding that this was an allowable undertaking.*

- My breasts were measured with a tape about six times. During the measuring my nipples hardened. This lead the expert to ask me if I was cold. I found this to be rather rude in this situation, because it was very warm in the room.*
- Then the doctor wanted to determine the weight of each breast separately. For this purpose I was to stand on the scale to determine my weight. Afterwards, he took each of the breasts in the hand, held them up, and asked me to get on the scale again. He calculated the weight of the breasts by the differencing.*
- Then followed the photography of the breasts.*
- Even my crouch was not protected by this experts urge to do research. I had to lay down naked on the examination table so that he could measure the growth of my clitoris caused by testosterone. The doctor however had no good idea how he could measure this. He fumbled around a little with the labia and then asked me what my*

38 HUMAN RIGHTS COUNCIL, Eleventh session, Agenda item 6, UNIVERSAL PERIODIC REVIEW, Report of the Working Group on the Universal Periodic Review, Germany

39 HUMAN RIGHTS COUNCIL, Eleventh session, Agenda item 6, UNIVERSAL PERIODIC REVIEW, Report of the Working Group on the Universal Periodic Review, Germany, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

*opinion was - is it one or two centimetre big?*

- *Finally, he took photos of my [...] [genitals].*

*During the examination I gave to understand several times that I was irritated by the procedure. [...] But the doctor didn't let himself be distracted. {...}*

*I'm [transsexual] [...] and that means that my relation to my body is difficult. [...] For my female body to be delivered up to expert glances of a male physician in such a way was highly uncomfortable for me. [...]*

*[...] I have been in the last year [...] a total of four times invasively examined, had to stand word and answer before a judge, and out myself at work in front of my bosses and colleagues.”*

## 5. Conclusion

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We recommend that the United Nations pressures Germany to undertake the following reforms:

1. Recognition of transsexualism as a sexual variation and termination of the claim that it is a mental disorder. The several medical classification systems must be changed.
2. Abolition of the forced psychiatric evaluations in the German Transsexual Law. Transsexual people themselves should decide on their gender entry.
3. An end to the practice that judges decide on the gender of a transsexual person. Till today Judges may reject any application in Germany to correct gender documents, even when a transsexual person has genital surgeries. This must end.

## The Aktion Transsexualität und Menschenrecht e.V. (ATME)

Aktion Transsexualität und Menschenrecht e.V. (ATME) (Campaign Transsexuality and Human Rights Inc.) is an independent non-profit organization founded in April 2008. ATME fights for an end to gender identity based discrimination.

In our reports for the United Nations we comment statements by the Federal Republic of Germany concerning international human rights conventions and point out the violations of these conventions. The human rights reports should also help to sensitize the public to the fact that sex (and stereotypical gender behaviour) is not defined in all cases by the presence or absence of a penis. The sensitization of the public and media to the problems and hardships of transsexual people is one of the goals of our work.

Medical definitions, medical practices and the resulting legal processes in Germany, such as the German Transsexuals Act, have been implemented up until now with no consideration of international human rights conventions. An additional goal is, therefore, to achieve reform of the German Transsexuals Act. All people should be equal before the law, including transsexual people. No one should be declared mentally disordered just because they want to change their first name or correct the gender listed on their birth certificate.

Gender assignments using subjective criteria and gender stereotypes are human rights violations. We advocate the real and complete recognition of gender identity as a part of human dignity and personal rights.

Moreover, transsexual people must have the right of access to all medical benefits necessary to empower a life of dignity.

A membership association such as Aktion Transsexualität und Menschenrecht needs active members and financial supporters. If you want to do something to help achieve respect for gender identity of every individual, even if they don't conform to stereotypes, we will appreciate your membership or donation. At the very least, please visit our website: <http://atme-ev.de>

„All human beings are born free and equal in dignity and rights“

(Article 1, Clause 1, Universal Declaration of Human Rights)

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