

# **Human Rights Standards in Gender Recognition Legislation in Europe**

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Transgender Europe

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# Transgender Europe



Not-for-Profit European umbrella organisation (founded 2005, registered under German law)

75 member organisations in 35 European countries

**Working for trans\* equality in Europe**

Advocacy and capacity building

Global research project Transrespect versus Transphobia  
Worldwide [www.transrespect-transphobia.org](http://www.transrespect-transphobia.org)

Participative status at the CoE since 2013

# Terminology



**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 mannerisms.

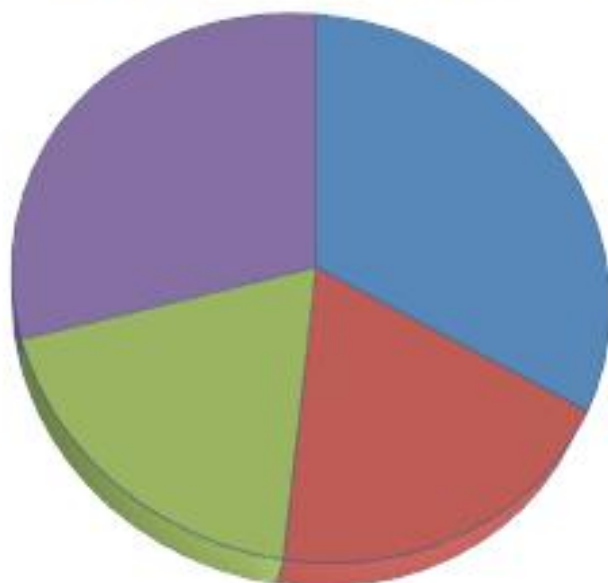
Yogyakarta Principles, Principles on the application of international human rights law in relation to sexual orientation and gender identity <http://www.yogyakartaprinciples.org>

# Requirements



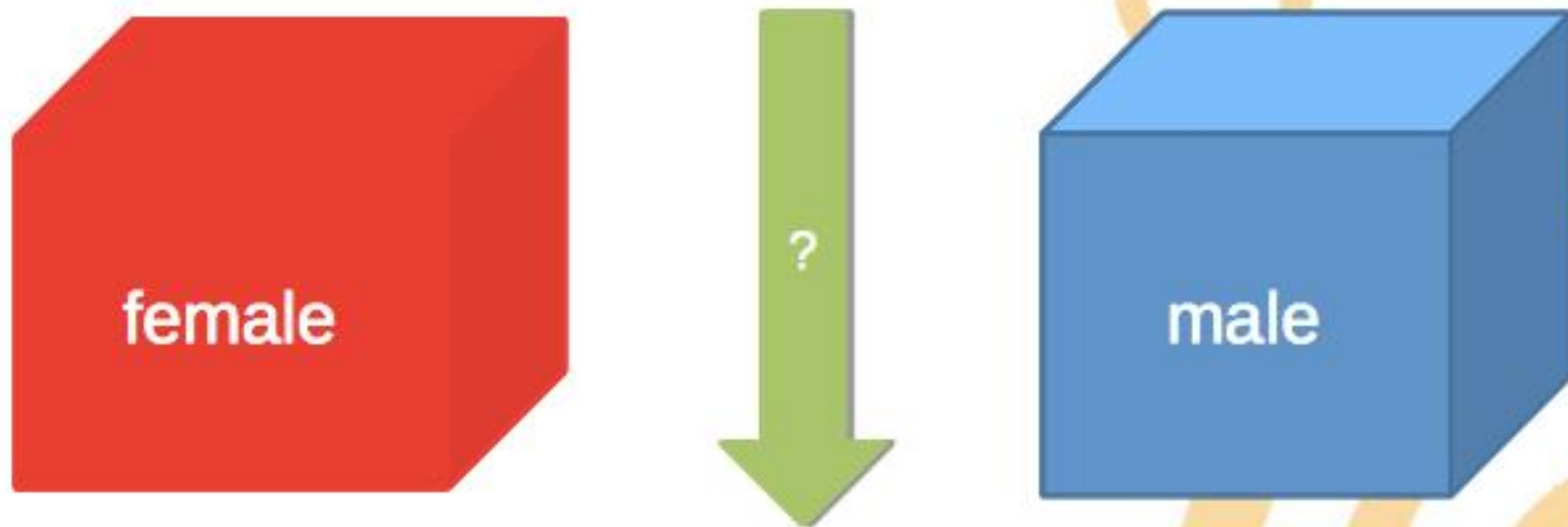
**EU Fundamental Rights Agency: 73% of trans respondents did not identify within the gender binary**

## Transgender population (6,771 respondents)



- Transsexual (1,813)
- Transgender (1,066)
- Queer (1,016)
- Other (1,683)

Definitions of 'sex' are often binary and mutually exclusive 'male' & 'female' categories and are hence problematic for trans people.



Trans people fall between the cracks.

# Introduction



Recognition of Name & Gender = Affirmation of Citizenship

Legally speaking:

Legal Gender Recognition (LGR) = Protection of the **individuals right to private live** (art. 8 ECHR)

**Positive obligation:**

CoE Member States must allow legal gender recognition (Goodwin & I. v. UK, 28957/95 & 25680/94, 2002)

# Procedure



# Procedure



## CM/Recommendation 2010(05), Para 21

*Procedures must be quick, transparent, accessible.*

- **Quick:** Portuguese law 8 days
- **Transparent:** clear procedure in a law, including implementation and responsible bodies
- **Accessible:** practical aspects, e.g. change of name in UK from 5-10 £ and in Argentina for free, no degrading procedure, accessible language, etc.

# Requirements

# Requirements



States margin of appreciation, but:

- “having regard to **scientific and societal developments**” Goodwin > Standards of Care 7
- **Fulfilling requirements** set by the state must be possible within the respective state. L v Lithuania, 27527/03, 2007
- “(...) should be regularly reviewed in order to **remove abusive requirements.**” CM/Rec(2010)05
- “(...) for changing identity to be simplified (...)” EU Parl. Resolution, 28.9.2011

# Requirements



**No creation of dilemma between the individuals right to LGR (protection of private life) and other fundamental rights (e.g. human dignity, physical integrity, free from torture, fair trial etc.)**

# Requirements



## Compulsory medical intervention

i.e. hormones, surgery, sterilization

➤ **violation of several human rights:** physical integrity, degrading treatment / torture, procreation, human dignity

Commissioner for Human Rights, Issue Paper 2009:  
«**Abolish sterilisation and other compulsory medical treatment** as a necessary legal requirement to recognise a person's gender identity in laws»

# Requirements



Putting an end to coerced sterilisations and castrations:  
Report to the PACE 2013, Liliane Maury Pasquier

“(...) even where **consent** is ostensibly given – also in written form – , it can be invalid if the victim has been misinformed, intimidated, or **manipulated with** financial or other **incentives** (...). various definitions of “coerced”. These are mainly directed against transgender persons (...). Neither forced nor coerced sterilisations or castrations can be legitimated in any way in the 21st century – they **must stop.**”

# Requirements



UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on lesbian, gay, bisexual, transgender and intersex persons (2013):

«The Special Rapporteur calls upon [all states] to **outlaw forced or coerced sterilization in all circumstances** and provide special protection to individuals belonging to marginalized groups.»

# Requirements



No forced sterilization in Europe:

Portugal, Spain, Hungary, Sweden, UK, Iceland,  
Germany, Austria, Belarus, Estonia

Cases: Switzerland, Italy, France

No medical interventions in Europe:

5 countries: Austria, Germany, Hungary, Portugal, UK



# Requirements



## **Diagnosis or medical opinion**

- conflict with human dignity to label a healthy person as mentally ill

## **Real live experience and physical examinations**

- Not state of the medical art according to WPATH, Standards of Care Version 7

# Requirements



## Forced divorce

- protection of existing marital unions
- is there an equivalent to marriage?
- no restriction of childrens' and partners' own rights

Commissioner for Human Rights, Issue Paper 2009:  
«Remove any restriction on the right of transgender persons to remain in an existing marriage following a recognised change of gender»

Hämäläinen v Finland: pending at ECtHR Grand Chamber

# Requirements



No forced divorce in Europe:

Austria, Belgium, Denmark, Estonia, Finland, Georgia, Germany, Iceland, Luxembourg, Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland

Court Decisions Germany (2008):

- Marriage is protected in the constitution and cannot be dissolved by the state
- Does not result in opening of marriage for same-sex couples

# Effects



# Effects



«(...) renders its rights **practical and effective**, not theoretical and illusory» Goodwin & I.

«(...) guarantee to full legal recognition of a person's gender reassignment **in all areas of life**, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way (...) corresponding recognition and changes by **non-state actors** with respect to key documents» CM/Rec(2010)05

> Obligation **not limited to state actors**

# Effects



**Disclosure ban: key!**

All registries and documents to be changed without any trace. Birth certificate: obligation since Goodwin & I

**Automatic and full protection against disclosure** in the law: no third party can find out that a LGR happend (decision, registries, documents, etc.)

State and non-state actors: including documents issued earlier

# Effects



**Full legal capacity:** access all rights associated with the confirmed gender?

Right to marry according to the legal gender: Goodwin & I.; CM/Rec(2010)05

Pension, work place and similar rights: non-equal treatment with the confirmed gender is discrimination according to ECJ (European Union)

# Effects



## Parent-Child Relation

Barring a (legal) relationship or guardian / visiting rights only because of a parents gender identity is a **discrimination** (P v. Spain, 35159/09, 2010)

**Right of the Child** to be cared for by his or her parents (art. 7 (1) UN CRC), not be separated from them against their will (art. 9 UN CRC), common responsibilities of both parents for the upbringing and development of the child (art. 18 UN CRC), right to non-discrimination



# Conclusions



## Guiding Principles Gender Recognition Legislation

### Protection of Private Life

Procedure: **Quick, Accessible and Transparent**

Requirements: **No Dilemma**

Effects: **Full Legal Capacity**

**Questions?**

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