

Comment by Transgender Europe to the proposed Law amending legal status, as suggested by the Norwegian Ministry of Health and Care Services hearing note proposal on changes of the legal sex (June 2015)

Introduction/ Summary

It has to be welcomed that the Norwegian Ministry of Health has issued the present proposal to provide a legal basis for legal gender recognition.

The proposed procedure, based on a statement by the individual addressed to the National Population Register, appears sufficiently simple and has thus to be welcomed. In general, TGEU endorses the majority view expressed in the expert group's recommendations.

Any regulation should strive to meet European standard of quick, transparent and accessible procedures, that are based on self-determination of the individual (See Council of Europe Parliamentary Assembly Resolution 2048 of April 21 2015).

In order to ensure full compliance with European human rights standards it is recommended to use the TGEU checklist on gender recognition legislation¹.

Transgender Europe has reviewed the proposal. **In the present proposal clarifications are needed to ensure the rights of underage, intersex, those persons with a non-binary gender identity and trans parents are upheld.**

Additionally, we suggest introducing the right to the recognition of one's gender identity and the free development thereof.

Following we highlight a number of concerns that need to be addressed to make the law human rights compatible.

To §2

The proposal suggests to allow only those who identify "with the other gender" to use the law. The current suggested formulation of the "other gender" could exclude intersex persons who do not identify with one of the two binary genders. Also those persons who do not identify within the gender binary, that is as either male or female, would be barred from benefiting from the law. The possibility to have their gender identity officially recognized should also be granted to these groups.

Taking inspiration from the Maltese Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC Act), the legitimate ground for using the law should be that the person does not identifies with the sex that is officially registered in the National Register.

¹ Accessible at: <http://tgeu.org/checklist-legal-gender-recognition/>

The legislator should take inspiration from the Parliamentary Assembly of the Council of Europe suggesting that member states *consider including a third gender option in identity documents for those who seek it* (PACE Resolution 2048(2015), Para 6.2.4.).

To §3

This proposed provision for a repeated change of registered sex becomes obsolete if in compliance with the registered sex as the basis for a decision.

To §4

The proposal foresees that from age 16 an individual can apply for a legal change. At age 7 – 16 years an application can only be filed with full parental consent. Before age 7 a change is only possible for intersex children upon medical certification. **The suggestion to distinguish between different age groups of minors in their ability to make use of the law should be critically re-examined.**

Each child has the right not to be discriminated on grounds of age or gender identity. According to the UN Convention on the Rights of the Child states must protect the best interest of the child. Article 3 holds that children must be heard in all decisions that concern them. Regarding underage trans persons seeking legal gender recognition, the Parliamentary Assembly of the Council of Europe notably calls upon its member states to “*ensure that the best interests of the child are a primary consideration in all decisions concerning children*” (PACE Resolution 2048(2015), Para 6.2.5).

Applying formalistic age brackets do not take into account the individual situation and the evolving capacities of an individual child. Independent of parental dissent a child should have the possibility to have their gender identity legally recognized. The age limitations should be dropped or, taking inspiration from Malta or Argentina, a procedure should be developed respecting the different development stages of a child.

Child rights advocates support gender recognition that is accessible for trans youth as they often experience hostile environments, including rejection from their parents, resulting in increased levels of distress, depression and even suicidal tendencies. See for instance the Advice of the Ombudsman for Children on the General Scheme of the Gender Recognition Bill 2013 from October 2013².

² Accessible at: <http://www.oco.ie/wp-content/uploads/2014/03/OCOAdviceonGenderRecognitionBill2013.pdf>

It is a positive step to recognize the need for intersex children to be given the choice and time to make decisions. However, the suggested age limit of 7 years appears arbitrary, in potential conflict with the living situation of the child and should be extended. Changes in the legal gender might be necessary at a later stage in life, for example when finding out only later about their intersex status. Also, the proposal does not enable intersex persons – of young or mature age – to have a different gender, other than “male” or “female”. The legislators are encouraged to re-examine this issue and ensure that the identity of intersex persons is fully recognized.

It is regrettable that in the case of intersex children the proposal requests medical documentation, ignoring the fact that it is often health professionals who engage in harmful medical interventions modifying sex characteristics of an intersex child. Again, the Maltese law with its provisions to prohibit surgeries on intersex infants and the right for intersex individuals and their families to receive support and information, should serve as a point of departure.

To §6

Whilst the intent to protect rights of trans people as parents has to be welcomed, the proposed formulation leaves room for clarification. The privacy of both trans men who give birth and trans women who beget a child has to be protected, independent of their somatic onset. All relevant documentation should be handled in such a way to respect the trans person’s right to privacy and family life. Upon legal gender recognition the entry should correspond to the gender identity of the person and not “out” the parent as being trans. Documents certifying parenthood should thus be adopted avoiding terms such as mother or father and for example could refer only to parent 1 and parent 2.

It needs to be ensured that single-raising trans men who gave birth will be registered as the father of their children without bureaucratic hurdles involving their formerly registered name/ gender. The provision from §2 that the change of legal gender applies to all matters should be also taken into consideration here. This is also in the interest of the child, whose daily care and life should not be disturbed because of documents outing their father as trans.

The proposal refers to those trans persons who legally changed the registered sex but did not undergo gender reassignment treatment. Gender reassignment treatment might consist of different aspects, not all impacting a person’s reproductive capacity. Thus, the reference to the lack of gender reassignment treatment in a person should be removed as to ensure that all trans persons who need it could access the law, independent of their medical status. It would also be logical to remove references to medical treatment as the purpose of this legal proposal is to separate legal from medical aspects.

We suggest to use “person who gives birth” instead of “physically speaking, the woman who has given birth”.

For a trans woman who begets children it needs to be ensured that her status as “co-mother” does not result in any difference in treatment or access to rights in comparison to her previous legal gender.

Additional suggestion:

Overall, we suggest to take inspiration from Malta and Argentina and introduce the right for every person to have their gender identity respected and to fully develop it without interference. Setting this framework will give guidance and advice and help to interpret the spirit of the law correctly for trans people and practitioners alike.

The legislators should also ensure that the registration of data related to the legal gender recognition of a person is done in such a way that it respects the right to privacy of the person. This might result in specific solutions on where such information is stored and who can access it under which circumstances.

About the submitting organisation

Transgender Europe - TGEU is a European human rights NGO working for the human rights and equality of all trans people with member organisations in 42 countries in Europe and beyond. TGEU is registered as a charity under German law.

Governments have sought after TGEU’s competence in regard to legal gender recognition across the continent. TGEU regularly consults European institutions, such as the European Parliament, the European Commission and the Council of Europe’s Commissioner for Human Rights. More Information can be found at

www.tgeu.org

We are available for further comment:

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