



SITUATION OF TRANS* PEOPLE IN GERMANY

Brief assessment of Cycle 2 of the UPR:

There were no specific recommendations regarding trans* issues made to Germany. Two recommendations were made on the broader issue of combating hate crime against LGBT* persons.

The rights most commonly violated:

right to equality and non-discrimination, recognition before the law, protection from inhuman or degrading treatment, right to health, children's & other minorities rights, right to privacy, right to free development of personality

National framework: Legal Gender Recognition and change of first name(s) is regulated by the "Law on Transsexuals" (Transsexuellengesetz / TSG) from 1980. Access to trans* related health care is regulated through "Standards of Care" from 1997 and 2009, the first issued by medical associations, the second by a national joint committee representing health insurance companies¹. Trans* people need to fulfill "Standards" in both sets of criteria in order to access trans* related health care.

Specific challenges:

1. General obstacles to Legal Gender Recognition (LGR)

The "Law on Transsexuals" (TSG) is outdated. Although the Constitutional Court struck down various discriminatory parts of the TSG over the years, it has never been reformed. Today it still requires a court procedure, two "expert opinions" which usually include unnecessary pathologization by means of a diagnosis of "gender identity disorder" and a personal meeting with a judge. The procedure is time-consuming (Ø 9 months)² and expensive (Ø 1.800€)³. Two recent reports for the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) came to the conclusion that the TSG in its current form infringes basic rights and international human rights treaties in several ways⁴. Both reports include a draft for new gender recognition legislation based on human rights⁵. However, it remains unclear if and when the government plans to use these drafts. The coalition agreement of the new government (2018) mentions a reform of the TSG only in the vaguest of terms.

2. Recognition of non-binary trans* persons

Trans* persons can only change their names and gender marker from "male" to "female" or vice-versa. There is no legal status for people outside the gender binary. However, 25-75%⁶ of trans* people identify as "non-binary"⁷. The Constitutional Court ruled that a third gender option must be introduced until the end of 2018 in order to recognize intersex persons who identify outside the gender binary⁸. But it remains unclear if the third option will be open to non-binary trans* people or reserved exclusively for intersex persons. But, since binary trans* people have the right to be recognized before the law and non-binary intersex persons have the right to be recognized before the law, non-binary trans* people must have the right to be recognized before the law as well.

3. Trans* parents: A gap in recognition

After a TSG procedure, trans* people are legally recognized in every aspect of life except one: parenthood. Shortly after the sterilization requirement for LGR was dropped in 2011, a trans* man gave birth to a child and has been struggling to be recognized as a father ever since. The Federal Supreme Court (BGH) recently ruled that, although his legal name and status are male, he is to be registered as "mother" with his former female name in the birth register and his child's birth certificate⁹, effectively listing a person as parent that does not legally exist. The subsequent problems are numerous, making it impossible for him to register his child in school, go for a vacation abroad or even prove that he is the child's parent without disclosing his trans* status, subjecting himself and his child to various forms of discrimination. The case is now pending before the Constitutional Court which will hopefully overrule the decision of the BGH.

4. Protection of trans* children and minors

Although the majority of trans* people discover their gender identity before the age of 18, transitioning as a minor is extremely difficult. Access to LGR or trans* related health care is more complicated than for adults and only available with explicit consent of both parents. If parents don't support their trans* children's identity, it leads to high levels of gender dysphoria, anxiety, depression and suicidality amongst trans* minors. Trans* children who are supported in their identities are just as healthy as their non-trans* peers¹⁰. This violates children's right to health as well as their right to express views affecting them and be heard according to their age and maturity. While access to trans* related health care is not regulated by the state but the medical professions, the government could send a strong signal by strengthening trans* minors right to self-determination and ending legal discrimination.

¹ Becker et al. (1997): Standards der Behandlung und Begutachtung von Transsexuellen; MDS (2009): Grundlagen der Begutachtung. Begutachtungsanleitung. Geschlechtsangleichende Maßnahmen bei Transsexualität

² Adamietz & Bager (2017): Regelungs- und Reformbedarf für transgeschlechtliche Menschen. Gutachten im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität – Band 7, p. 11

³ Adamietz & Bager, p. 12

⁴ Adamietz & Bager (2017); Deutsches Institut für Menschenrechte/DIMR (2017): Geschlechtervielfalt im Recht. Status quo und Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtervielfalt. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität – Band 8

⁵ Adamietz & Bager, p. 26-32 and DIMR (2017), p. 68-86

⁶ DIMR (2017), p. 46; FRA (2104): Being Trans* in the European Union. Comparative Analysis of EU LGBT Survey Data, p. 16

⁷ "Non-Binary" is an umbrella term for people, whose gender identity is not exclusively male or female. Non-binary persons may identify between male and female or as neither-male-nor-female or even as male-AND-female. "Non-binary" is not to be confused with "intersex". Intersex refers to a persons physical sex characteristics whereas "non-binary" refers to gender identity

⁸ Case: 1 BvR 2019/16, decision of 10 October 2017

⁹ BGH Case Nr. XII ZB 660/14

¹⁰ Olson et al. (2016): Mental Health of Transgender Children Who Are Supported in Their Identities. Pediatrics; 137(3):e20153223



5. Ministry of Health: lack of knowledge and responsibility

Many of the human rights violations and discriminations trans* people face take place in the health care sector. The "Standards of Care" are outdated and pathologizing, i.e. enforcing 12-18 months of psychotherapy on trans* persons who wish to access trans* related health care, regardless whether they need or want psychotherapy or not. Usually the therapists expect stereotypical and binary narratives, which exclude non-binary trans* persons from gender conforming treatment. Furthermore the dependency within the "therapy" hinders a trustful relationship between patient and therapist. Competent therapists and other health care providers are overbooked and in some areas there is no trans* related health care available at all. → Although health care is regulated by medical associations and health insurance companies, the government still has a responsibility to ensure trans* people's rights. However, in the Federal Ministry of Health there is no department or person knowledgeable about and responsible for trans* issues, which makes it very hard for trans* organizations to advocate for trans* health issues on a federal level or turn towards the government when trying to hold the medical system accountable.

6. Trans* refugees & asylum seekers

Trans* refugees and asylum seekers are among the most vulnerable people in Germany, often fleeing transphobia in their home countries just to experience transphobia from other refugees in German shelters as well as xenophobia and transphobia in the German system. Often, they decide against disclosing their trans* status or coming out as trans* for fear of violence within their refugee shelter. Consequently, the City of Berlin decided to regard trans* refugees as "vulnerable persons" in the sense of the EU Directive 2013/33/EU which allows for special protection. Unfortunately, neither the federal government nor any other of the constituent states (Länder) has followed the example. Additionally, trans* refugees are not entitled to LGR or trans* related health care until the asylum procedure is completed, which often takes more than a year.

7. Counseling

Professional community-based counseling has proved to be a valuable tool for trans* persons but also for their families and other stake holders such as teachers, social workers and mental health professionals dealing with trans* issues. A recent study on a professional community-based counseling facility found that 93% of its users found counseling helpful and 82% indicated it was important to them that the counselor was a trans* person as well¹¹. Counseling is often the first place to go when seeking accurate information on trans* issues or help in the coming-out process. Despite that there are currently only a handful of professional trans* counselors in Germany, the total sum approximately amounting to no more than six full time jobs.

8. Compensations for 30 years of enforced sterilization

From 1981 to 2011, the "Law on Transsexuals" required trans* persons to undergo sterilization, hormone therapy and gender reassignment surgery as a prerequisite to apply for LGR. Many trans* people therefore decided to undergo sterilization and gender reassignment surgery, giving up their physical integrity and reproductive rights, although they would not have done so, given the choice. Others decided against gender recognition, facing discrimination but unwilling to give up one human right for the other. The Council of Europe Human Rights Commissioner critically remarked in 2009 that "transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation."¹² This prerequisite was an unspeakable violation of human rights and should therefore be compensated for.

RECOMMENDATIONS:

- 1) Initiate a major legislative reform based on the research of the Ministry for Family Affairs. Replace the "Law on Transsexuals" with quick, transparent and accessible procedures based on self-determination. Implement the ruling of the Constitutional Court by creating a third gender option that is open to all non-binary persons regardless of sex characteristics. Ensure full access and recognition also for minors, parents, refugees, detainees, migrants and persons with disabilities.**
- 2) To establish a department knowledgeable about and working on trans* issues in the Federal Ministry of Health to eliminate discrimination against trans* people in the health care system, ensuring adequate access to trans* related health care.**
- 3) To extend the definition of "vulnerable groups" in the sense of EU Directive 2013/33 EU on a federal level to include trans* refugees and put according protective measures in place. Ensure access to gender recognition procedures and full health care from the date of application for refugee status.**
- 4) To ensure access to qualified counseling on trans* issues for any person who needs it. Force the Länder to provide counseling by implementing it as a right into federal law. There should be at least one full time counselor to one million people.**
- 5) Set up a national compensation fund for trans* people who were coerced into sterilization or unwanted gender reassignment treatment or chose to not seek gender recognition because of these requirements between 1981 - 2011.**

¹¹ Focks et al. (2017): "Ich fühlte mich verstanden und das ist alles, was zählt." Wissenschaftliche Begleitforschung zum Pilotprojekt "Inter* und Trans* Beratung Queer Leben". Berlin: Schwulenberatung Berlin (eds.)

¹² Thomas Hammarberg (2009): Human Rights and Gender Identity. CommDH/IssuePaper(2009)2