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CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

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Transgender Persons' Rights in the EU Member States

NOTE



DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

TRANSGENDER PERSONS' RIGHTS IN THE EU MEMBER STATES

NOTE

Abstract

The paper presents the specific situation of transgender people in the 27 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.

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INTRODUCTORY REMARKS AND METHODOLOGY

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 therapy⁴.

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.

⁴ The definition is valid in general. Nevertheless, in at least in 4 member States (ES, HU, FI, UK), transsexuals changing their legal gender do not have to change their sex, nor undergo hormonal therapy.

Transgender persons: someone whose gender identity does not correspond to the gender he or she got assigned at birth. 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 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'.⁵

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, PL⁶, SK, FI⁷, SE, UK**) treat discrimination on grounds of transgender identity as a form of sex discrimination. 2 Member States treat that discrimination as sexual orientation discrimination (**DE⁸, 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 discrimination⁹.

The Court of Justice of the European Union, on 27 April 2006¹⁰, 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.

⁵ Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe.

⁶ Poland has no laws on this subject. It treats discrimination on grounds of transsexuality as a form of sex discrimination, based on juridical practices.

⁷ Finland is considered in this category even if gender identity is not directly recognised as a reason for discrimination on the ground of sex. Nevertheless most legislation dealing with discrimination include at the end of a list of possible causes for discrimination a clause "or other similar reasons". This can be understood to mean both gender identity (transsexuals) and gender expression (transvestites).

⁸ The Federal Republic of Germany substituted the concept of 'sexual identity' in place of 'sexual orientation' in the implementation of Directive 2000/78/EC and Directive 2004/113/EC in *German law* The concept of 'sexual identity' includes homosexual men and women as well as bisexual, transsexual or intersexual people. § 75 of the Works' Council Law (2001) CF: Bundestag Dokument 16/1780 Betriebsverfassungsgesetz (Entwurf der Regierung. Sexual identity, as such, covers more specific grounds of discrimination than the respective directives.

⁹ These categories are based on existing legislation and case law.

¹⁰ ECJ, Case C-423/04.

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)¹¹ 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, the 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 birth¹².

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 reassignment¹³. This covers less than 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 Gender 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 orientation¹⁴ on 2 July 2008, which does not cover discrimination on the ground of gender reassignment.

¹¹ 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.

¹² 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).

¹³ "Sex discrimination is restricted to transgender persons intending to undergo, undergoing or having undergone gender reassignment". See footnote 4.

¹⁴ COM/2008/0426 final

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 documents¹⁵.

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'*.¹⁸

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.

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: **HU, FI, SE, 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, DE¹⁶, EE, ES¹⁷, FR¹⁸, IT, LV, LU¹⁹, NL, AT, PL²⁰, PT, SK²¹**. In these countries the individual must demonstrate:

¹⁵ 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.

¹⁶ Hormonal treatment is not mentioned in the so called Transsexual Law. German case law can be read that male-to-female transsexuals must be sterilized and have surgical measures to 'look' female. Female-to-male transsexuals should have a double mastectomy and be sterile. A neopenis may not be required by the responsible court.

¹⁷ The requirements of the law 3/2007 are two years of medical treatment "to adapt the physical characteristics to the corresponding of the reclaimed sex" and diagnosis of gender dysphoria".

¹⁸ In 2010, under pressure from the Council of Europe, the State issued an internal directive asking its judges and prosecutors not to systematically require gender reassignment operations to have taken place 'where the claimant supplies evidence that he or she has undergone medical or surgical treatment (hormone therapy, plastic surgery, etc.) to make their sex change irreversible and make their physical appearance and social behaviour correspond to that of the gender they identify with'. What the courts will now have to assess is the irreversibility of their treatment: this constitutes a fundamental step forward but will undoubtedly lead to major differences between judges' assessments and recourse to costly and lengthy expert reports.

¹⁹ Case law requests psychiatric diagnosis of transsexualism and proof of irreversible infertility by surgery.

²⁰ There is no law on this subject, just a ruling of the High Court, which states that "the characteristics of the newly forming gender are irreversible and dominant". See Ruling of the High Court, 25 February 1978 (Orzeczenie Sądu Najwyższego z dnia 25 lutego 1978 r.).

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.²²

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 change²³.

- c) Member States where there are no provisions on this matter: **IE, EL, CY, LT, MT, RO, SI**. 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".²⁴ 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. Austria*²⁵ 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.

²¹ Slovakia has no provisions on this matter, but the medical practice of gender reassignment fits in the group b) criteria.

²² 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.

²³ 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).

²⁴ *Christine Goodwin v. United Kingdom*, Appl. no.2897/95, judgment of 11 July 2002.

²⁵ *Schalk and Kopf v. Austria* (application no. 30141/04)

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

- a) 17 Member States permit persons after full gender reassignment to marry a person of the gender opposite to their acquired gender: **BE, DK, DE, EE, EL, ES, FR, IT, LV, LU, NL, AT, PL, SK, FI, SE²⁶, UK.**
- b) 2 Member States do not allow such marriages: **IE, PT.**
- c) 8 Member States do not have legislation in place: **BG, CZ, CY, HU, LT, MT, 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 seven Member States: BE, DE²⁷, ES, LT, NL, AT, FI and SE. In Finland and Sweden is not forbidden to a married person or a person living in a registered partnership to be confirmed to belong to the opposite gender than the one in which he or she is registered in the population information system if the spouse or the other party to the registered partnership gives his or her consent in person to the local registration office. When the belonging to a gender is confirmed, a marriage is converted into a registered partnership and accordingly a registered partnership is converted into a marriage without any additional action. In all other Member States this is not possible. For example in the UK and Poland²⁸, 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. A similar ruling was also made by a Luxemburgish Court of First Instance (Tribunal d'arrondissement)²⁹.

The German Constitutional Court has made a similar ruling³⁰. 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).

²⁶ In Sweden a person who has obtained legal gender recognition can marry a person regardless of legal gender since the gender neutral marriage act was promulgated on May 1st, 2009. Additionally there is no requirement of being post-operative to be granted legal gender recognition.

²⁷ The German Federal Constitutional Court ruled that the requirement to divorce was unconstitutional and instructed the Government to present a changed law to the Bundestag. In July 2009 the Bundestag changed the Transsexual Law to allow gender recognition without divorce as a prerequisite.

²⁸ In Poland the divorce is a condition required only after a medical diagnosis. There is no law that impose a divorce, but it is a current practice.

²⁹ Judgement of 17 September 2009, Tribunal d'arrondissement du Luxembourg. In this case the marriage would be considered as marriage between persons of the same sex, according to the current draft law on the reform of marriage and adoption.
http://www.chd.lu/wps/PA_1_084AIVIMRA0614327110000000/FTSByteServletImpl/?path=/export/expanded/sexdpata/Mag/013/979/091728.pdf

³⁰ Austrian Constitutional Court, BVerfG, 1 BvL 1/04 (18 July 2006); German Constitutional Court, BVerfG, 1BvL 10/05 (27 May 2008).

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 gender. 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 6 Member States it is easy to change the name, without medical evaluation: **EE, LT³¹, MT, SI, SE³², UK.**
- b) In 17 Member States **BE, CZ, DK, DE, EL, ES, FR, IT, LU³³, LV, HU, NL, AT, PL³⁴, PT, SK, FI³⁵**, 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 but thanks to the Passports Act, since 2008 it is possible to change name on passports.
- d) In 3 Member States there is no legislation at all on this matter: **BG, CY, 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"³⁶, 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:

³¹ A gender neutral name only.

³² Until October 2009 in Sweden the procedure was very heavy and required mental health evaluation, real life experience, hormone therapy, surgery to alter secondary sex characteristics, permanent sterility. Since October 2009 the procedure became easy. In fact, the Supreme Administrative Court (Regeringsrätten) decided that any person above the age of majority could, upon his or her own application, change his/her name to any chosen name.

³³ It is easier in Luxembourg to ask for a gender neutral name. The person has to prove that the requested name is already used. It has to be proven by documents such as bills, bank extracts, contracts, etc. The decision is taken by the Ministry of Justice upon opinion of the Public Prosecutor and the State Council (Conseil d'Etat). For a gender specific name, the name can be changed only after reassignment surgery. Sex and name in this case are changed within a single procedure, as both are considered as not dissociable (judgment of 4 October 2007 of the Tribunal d'arrondissement du Luxembourg).

³⁴ According to a Court ruling, the name change is an obligation after changing the legal gender.

³⁵ The Finnish Name Act prohibits giving the name of a woman to a man or the opposite without specific reason. The law would seem allow a name change on a request by the person in question if he or she gave transgenderism as the reason. However the magistrates registering name changes have in recent years interpreted the law so that transsexual are only able to change their name if they are able to provide a seconding letter from their psychiatrist. No one has challenged this interpretation in the courts. Other transgender people cannot change their name.

³⁶ 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.

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 with³³. Secondly, the WHO *International Statistical Classification of Diseases and Related Health Problems* (ICD) lists transsexualism as a mental and behavioural disorder.³⁴ The DSM and ICD systems are often reflected in national medical classifications in the Member States of the European Union.

The fifth edition (DSM-5) is due to be adopted in May 2013. The debate on the transsexuality question is open. The working group set up to revise the list of mental diseases has, for the time being, suggested not to delete it from the list, but calling it "gender incongruence" instead of "gender identity disorder".

In February 2010, France alone took the initiative³⁷ of no longer considering 'early gender identity issues' as a mental disorder but as an 'unclassified' disorder. For transgender persons, this constitutes a major symbolic advance, and France has also appealed internationally for transsexuality to be removed from the category of mental disorders. A similar decision came from Sweden in 2009 by the National Board on Health and Welfare.

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"*.

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"*.³⁸ 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

³⁷ Government order n°2010-125 of 8 February 2010.

³⁸ 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.

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.³⁹

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 this⁴⁰.

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.

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.

³⁹ Transgender EuroStudy loc. Cit. p.55 and 58.

6. TRANSGENDER ASYLUM SEEKERS⁴¹

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 met⁴². 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 traumatising transgender asylum-seekers⁴³. 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 need⁴⁴.

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

⁴⁰ Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe.

⁴¹ From the "Issue Paper on Human Rights and Gender Identity, Commissioner for Human Rights of the Council of Europe".

⁴² 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.

⁴³ See for example research conducted by the Helsinki Citizens Assembly and the Organisation for Refugee, Asylum & Migration (ORAM): *Unsafe haven – the security challenges facing lesbian, gay, bisexual and transgender asylum seekers and refugees in Turkey* (2009).

⁴⁴ 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.

accommodations or credit. 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 study⁴⁵, 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 study⁴⁶ 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 1989⁴⁷. 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;

⁴⁵ "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 & ORAM - Organization for Refuge, Asylum & Migration

⁴⁶ Global Rights International Human Rights Clinic, Human Rights Program, Harvard Law School LORI Zagreb Pride

⁴⁷ Ženska soba - Women's Room – Center for Sexual Rights
Official Journal of the European Communities No C 256/33-37 of 9.10.1989.

- 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;
- 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 2007⁴⁸ have also addressed the situation of transgender persons.

⁴⁸ European Parliament resolution of 18 January 2006 and of 26 April 2007 on homophobia in Europe

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	After medical evaluation and/or surgery	Yes, after gender recognition certificate (including Mental Health evaluation, hormonal treatment and sterility required)	yes	non
BG	no law	hormonal treatment and/or surgery	no law	no law ⁴⁹	no law	no law
CZ	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required leading to sterilisation	no law	yes
DK	sex discrimination	hormonal treatment and/or surgery	After medical 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 medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required	yes	no
EE	no law	hormonal treatment and/or surgery	Easy, without medical evaluation	Yes	yes	yes
IE	no law	no provision	yes	no	no	no law
EL	no law	no provision	After medical 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 medical evaluation and/or surgery	Yes ⁵⁰	yes	non
FR	sex discrimination	hormonal treatment	After medical evaluation and/or	Amended, but Mental Health evaluation,	yes	yes

⁴⁹ Only change of identity documents are possible.

⁵⁰ Change of Birth Certificate is possible for those persons who fulfill the requirements established in Law 3/2007.

	n	and/or surgery	surgery	hormonal treatment required		
IT	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	yes	yes	yes
CY	sexual orientation discrimination	no provision	no law	no law	no law	yes
LV	sex discrimination	no provision	After medical evaluation and/or surgery	Ministry of Health decides case by case	yes	no law
LT	no law	no provision	Easy, without medical evaluation ⁵¹	Yes, but Mental Health evaluation, hormonal treatment and sterility required and after genital surgery	yes	no
LU	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, the birth certificate can be amended by manual transcription (art 101 Civil Code) ⁵² . yes	yes	no law ⁵³
HU	sex discrimination	no hormonal and/or surgery requirements		yes	no law	yes
MT	no law	no provision	Easy, without medical evaluation	no law	no law	no law ⁵⁴
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 ⁵⁵	yes	no ⁵⁶
PL	sex discrimination	hormonal treatment and/or surgery	After medical evaluation and/or surgery	no law	yes	yes
PT	no law	hormonal treatment and/or surgery	After medical evaluation and/or surgery	non	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	hormonal treatment and/or surgery	After medical evaluation and/or surgery	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	non

⁵¹ A gender neutral name only

⁵² This implies full visibility of gender change history for every person requesting a birth certificate.

⁵³ No law, but authorized by judgement of 17 September 2009.

⁵⁴ There is no divorce in Malta.

⁵⁵ Sterility requirements are abolished by court decision.

⁵⁶ Court decision.

SE	sex discrimination	no hormonal and/or surgery requirements	Easy, without medical evaluation	yes	yes	non
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.

ANNEX 2: Transgender issues in the European Union's Member States⁵⁷

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.

⁵⁷ Main 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. This report has been updated with more recent data.

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 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, is it 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 hifi-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 § 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.

After the adoption of the Passports Act in 2008 it is now possible to change name.

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.

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 (LEY 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al cambio de sexo. BOE Nº 65,16/03/2007: 1151-1153.

www.boe.es/boe/dias/2007/03/16/pdfs/A11251-11253.pdf) provides for the rectification of one's 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:

- a) Be of legal age and Spanish nationality.
- b) A certificate of gender dysphoria diagnosis issued by a physician or clinical psychologist who has to be member of the professional association in Spain or holder of a recognized title. This certificate has to mention the existence of dissonance between registered sex and the felt gender identity, as well as the stability of this dissonance and absence of personality disorders.
- c) A certificate of two years of medical treatment, accredited by the physician, member of the professional association in Spain, under whose direction the treatment had been realized, or by a forensic specialist.

FRANCE

The legal framework for transgender situations and pathways is dominated by three basic concerns on the part of the public authorities⁵⁸:

⁵⁸ (1) More comprehensive information on transgender issues is available on the website www.transidentite.fr, particularly the communications delivered during the 'Assises du corps transformé', by Anne-Gaëlle Duvochel (<http://www.transidentite.fr/fichiers/Assises%20oct09%20Comm%20GEst%20Anne%20Gaëlle%20Duvochel.pdf>) and Camille Bernard (<http://www.transidentite.fr/fichiers/La%20transidentite,%20un%20cheminement%20personnel%20et%20social.pdf>)

I – The principle of the unalterable status of persons

France is fairly inflexible towards any request to change information appearing on identity documents which specifies a person's identity (their surname, first name or gender), in keeping with the principle of the 'unalterable status of persons'. This principle even applies in the case of absurd first names or surnames, for example. However, it is not so difficult to change first names as it is to change gender.

A – Changing a first name:

Because France permits the use of 'pseudonyms' and 'usual names', transgender persons may have an affidavit drawn up by a notary stating that they are known in their everyday life with the appearance and first name of their chosen gender. This 'usual name' may or may not appear on their identity card in addition to their official name, as the administration sees fit. It is also possible, through a solicitor, to bring the matter before a judge, who will take account of an important concept: the person's 'legitimate interest'. However, on their papers will then appear, for example in the case of a woman becoming a man: 'Pierre-Henri Dupont, female', which may place the person in an ambiguous situation where they have as much difficulty being a man as being a woman. Furthermore, this procedure costs between 800 and 1500 euros, which constitutes a financial barrier.

B – Changing gender:

The person has to engage a solicitor and appear before the judge at the court of first instance. If the court is persuaded, it rules that the State, represented by the public prosecutor, must alter the person's birth certificate, stating their change of gender in the margin. From then on, all official documents may be issued showing only their new gender. For some years, the State has demanded that its prosecutors do not take a systematically hostile attitude to changes of sexual identity, particularly by requesting expert opinions and appealing against the decisions of judges. But judges remain free to act as they please and are not bound by the judgments of courts in other towns. This means that the difficulty of changing one's civil status can vary from place to place.

In any case, the judge's approval is based on two main arguments:

- 1) An application to change sexual identity must be based on a diagnosis of severe 'gender dysphoria'.

Until 2010, transsexuality was considered internationally to be a mental disorder. It was on this basis that France agreed to pay in full for treatment to change sexual appearance. In February 2010, France alone took the initiative of no longer considering 'early sexual identity issues' as a mental disorder but instead as an 'unclassified' disorder. For transgender persons, this constitutes a major symbolic advance, and France has also appealed internationally for transsexuality to be removed from the category of mental disorders.

- 2) Until 2010, applications to change sexual identity were admissible only if the person had undergone major surgery: vaginoplasty for MTFs, mastectomy and hysterectomy for FTMs (though there was no obligation for phalloplasty or metoidioplasty).

The objective of 'sterilisation' was never officially promoted. Surgery was proof that the person 'was not mucking about' when they spoke of their irrepressible need to change gender. That act justified the State agreeing to make an exception to the principle of the unalterable status of persons. Here too, France has just taken a step forward: under

pressure from the Council of Europe, the State has issued an internal directive asking its judges and prosecutors not to systematically require gender reassignment operations to have taken place 'where the claimant supplies evidence that he or she has undergone medical or surgical treatment (hormone therapy, plastic surgery, etc.) to make their sex change irreversible and make their physical appearance and social behaviour correspond to that of the gender they identify with'. What the courts will now have to assess is the irreversibility of their treatment: certainly, this solves the problem for any transgender persons who do not wish to or are unable to undergo an operation, and it therefore constitutes a fundamental step forward, but it will undoubtedly lead to major differences between judges' assessments and recourse to long and costly expert reports.

II – The principle of unalterability and respect for the human body

Condemnation of any physical attack on a healthy body: if they are not justified by the fact that transsexuality is a serious disorder, gender reassignment operations may be considered mutilations and could lead to prison sentences. Hence the care taken by medical teams, which establish strict protocols, are afraid of making incorrect assessments and try to make decisions collectively to cover the surgeon. Hence also the fact that France restricts these operations to a few public hospitals, where the surgeons lack training.

Conclusion: the situation in France is therefore mixed and subject to change, and the country is still far from being prepared to recognise the right to change gender without serious medical justification.

On the other hand, France has fairly good anti-discrimination legislation, particularly on employment, based on gender equality, which prohibits any discrimination based on gender or appearance (in fact, discriminatory attitudes towards transgender persons remain a problem, particularly during recruitment, but they are difficult to prove).

(Source: Anne-Gaëlle Duvochel, President of GEsT (*Groupe d'études sur la transidentité* - www.transidentite.fr)

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.

- 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.

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.

Following the judgment of the Supreme Court Senate Administrative Case Department of 14 January 2008, it was found that a lacuna existed in the law which was silent on the criteria to be followed to establish whether gender reassignment had taken place.¹⁰ Subsequently, on 25 September 2008 the Administrative Regional Court ordered the Registry Office to issue a written apology to the claimant for having refused to enter the changes on the Birth Register and for having forwarded sensitive data to the Ministry of Health; however, a claim for financial compensation for moral damages was refused.¹¹ On 18 August 2009 the Cabinet of Ministers approved amendments to the laws on Sexual and Reproductive Health and Civil Status Documents aimed at filling the lacuna in the legislation. The Sexual and Reproductive Health Law has now been supplemented by a separate Chapter VII "On Gender Reassignment", designating a competent authority to approve gender reassignment following a medical expert opinion.

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. Currently there are different views about how to handle transgender issues in Luxembourg. According to Center for Equal Treatment, transgender discrimination is a matter of sex (biological sex and gender identity; <http://www.cet.lu/en/FAQ>), whereas others exclude gender identity from all currently existing grounds of discrimination. The Minister for Employment estimates that, once the directive 2006/54/CE is transposed into Luxembourg law, this will offer good grounds on acting against trans discrimination. If neither applies, then the criminal law provisions would apply, as transgender individuals would be considered as belonging to a particular 'social group'. Presently there are no statistics about transgender issues. Apart the two specific known cases above mentioned (2007, 2009) there are no further case law that could give further substantive guidance about transgender issues. 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 diagnosis. Once an affirmative response is received, the individual would then be allowed to conduct the surgery abroad.

In addition, individual would be required to change his/her legal identity under Luxembourgish law. Once there is a legal sentence, changes will be made on the birth certificate /and then automatically registered officially at the "Service du répertoire général des Personnes" / [the Luxembourg Civil Status and Population Administration].

Please note that a post-op transsexual will be treated according to the sex of his/her official documents as long as the sex change has not been confirmed by a legal sentence. This means that an M2F transsexual, will have to share a room with a man, and the other way round for an F2M transsexual, during a stay at the hospital. To avoid this, the concerned persons has to ask for a single room. This depends on the availability and the decision of the medical corps at that moment.

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 selfdetermination.

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.

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.

(As far as possible practically means always required. Only very few exceptions granted). 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.

Also in Groningen there exists a so-called *gender team* at the UMCG (UNiversity Medical Centre Groningen). They see about 10% of the trans population that calls for medical assistance on trans affairs. 0.5% of the official population roughly counts as 80,000 people (of 16 million).

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.

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.

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 Jó 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 Național de Medicină 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.

In Slovakia, the full change of name is possible only after the medical evaluation, hormonal treatment and surgeries leading to sterilization. The process of gender reassignment is not covered by verbatim legislation but the Act No. 300/1993 Coll. which determines conditions for change of name and forename. In the case of "sex change" it requires medical opinion to approve the change. Medical practice interprets the expression "sex change" as triadic therapy with hormonal treatment, real life experience and surgeries leading to sterilization. To change the name and forename into a gender neutral one Slovak legislation requires

that a person presents a confirmation from a medical specialist that they are in the process of gender reassignment.

FINLAND

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.

Quote from the "Act on the Confirmation of Gender of a Transsexual" states the following:

1§ Preconditions for confirmation

A person is confirmed to belong to the opposite gender than the one in which he or she is registered in the population information system referred to in the Act on Information on the Population (507/1993), if he or she:

- 1) provides a medical statement on the fact that he or she permanently feels to belong to the opposite gender and that he or she lives in a conforming gender role and on the fact that he or she is sterilised or for other reasons unable to reproduce;
- 2) He or she is adult;
- 3) He or she is not married or living in a registered partnership and
- 4) He or she is a citizen of Finland or has his or her residence in Finland

2§ Exemption from the preconditions for confirmation

The provisions in section 1.3 do not prevent a married person or a person living in a registered partnership to be confirmed to belong to the opposite gender than the one in which he or she is registered in the population information system if the spouse or the other party to the registered partnership gives his or her consent in person to the local registration office after the local registration office has informed him or her on the conditions in subsection 2.

When the belonging to a gender is confirmed in accordance with subsection 1, a marriage is converted into a registered partnership and accordingly a registered partnership is converted into a marriage without any additional action. The conversion stipulated in subsection 2 is registered in the population information system in conjunction with the registration referred to in section 3.

Source <http://trasek.net/laki/TransAct2003.pdf>.

Finland has since the spring this year started to earmark transsexuals in the population register. This earmarking was motivated by the possibility to identify transsexuals (no reason was given for the need to identify transsexuals). The earmark was also motivated by the need to protect data on transsexual. However no similar earmark is needed for other people, who need protection e.g. those needing special protection against criminals.

Transgender organisations opposed the introduction of this earmark since they feel it singles out one minority in a negative way.

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

Until October 2009 in Sweden the procedure of gender reassignment was very heavy and required mental health evaluation, real life experience, hormone therapy, surgery to alter secondary sex characteristics, permanent sterility. Since October 2009 the procedure became easy. In fact, the Supreme Administrative Court (Regeringsrätten) decided that any person above the age of majority could, upon his or her own application, change his/her name to any chosen name.

In order to obtain a gender reassignment, applicant should feel as he or she belongs to the opposite sex, lives accordingly for a long period of time and is to be expected to do so forthwith (quite similar to the provisions in the Gender Recognition Act/UK). This requirement correspond with the evidence of gender dysphoria, that the applicant is sterile (ie can not procreate), of legal age of majority, unmarried, a citizen of Sweden.

The legal gender recognition takes place on application to the Forensic Council of the National Board of Health and Welfare which in these matters act as a first level administrative court.

In case the applicant wishes to undergo genital reassignment surgery he/her needs the permission of the above mentioned Council.

A person who has obtained legal gender recognition in Sweden can marry a person regardless of legal gender since the gender neutral marriage act was promulgated on May 1st, 2009. There is no requirement of being post-operative to be granted legal gender recognition in Sweden.

Traditionally the records in Sweden were kept by the State Church and the parishes, upon the division of the State from the Church of Sweden this task was left to the Taxation Authorities.

There is no a real "birth certificate" in Sweden. In the situation where a person needs a document stating when or where is born, the document issued by the competent authorities only contain what is on the official registry on the day of the issue.

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 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.

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