

# HOW TO WIN THE ARGUMENT –

## OVERCOMING MYTHS IN LEGAL GENDER RECOGNITION DISCUSSIONS

When discussing gender recognition procedures and how to reform them, certain stereotypes and fears might reoccur. In the following a number of frequent myths are addressed, with advice on how to respond to them.

### SECURITY & SAFETY

**After robbing a bank, a bank robber will go directly to the civil registry to change name and gender marker.**

The so called “bank-robber question” is out of touch with reality. And even if such cases of abuse did happen, the argument is irrelevant, as the criminal liability of a crime does not depend on a person’s gender marker. Fears that criminals would abuse the procedure to mask their identity to avoid prosecution did not materialise in countries with accessible procedures. It turned out that gender had no relevance to security-political or regulatory policies and was a legally insignificant piece of information in everyday life and legal traffic. Abuse of laws is universal but cannot suffice as reason to deny a population group their human rights. Experience shows that those seeking gender recognition take such a decision after long years of

internal process. Identification of criminals today increasingly involves digital means, such as tax identifiers or digital movements in the internet.

**A male convict will seek gender recognition only to be able to transfer to a women’s prison**

Across countries, experience shows that trans detainees are at the bottom of a prison hierarchy, making abusive intent rather unlikely. Trans women face a high risk of discrimination and violence in detention, at the hands of other inmates or prison personal. Instead of such hypothetical experiences, we should be concerned that women in detention are safe and secure, whether trans or not.

### **Sex offenders will have an easier time accessing women's bathrooms**

Evidence shows that transgender persons face violence when forced to use bathrooms that do not correspond to their gender identity. This may cause feelings of intimidation and fear of being unsafe. Furthermore, thinking that transgender persons are criminals per se is transphobic. The dignity and safety of every person, including transgender persons, should be our priority.

Experience from countries with procedures based on self-determination show that these kinds of abuse are exaggerated, unrealistic and fantastic. Such abuse scenarios are often fed by a psychological fear that an outdated societal system would be shaken by a group of “odd-balls”. In particular, men are afraid that patriarchal structures and male privilege become obvious and thus vulnerable.

## **SOCIETY**

### **“Women” and “men” will disappear and social functioning will suffer**

Challenging the notions of “man” and “woman” is not inherently negative and is an unavoidable part of societal progress. Challenging these notions is not associated with the abolishment of invasive medical requirements, but rather with the de-

velopment of human rights and respect for diversity and equality. Also, the world did not end in countries with accessible LGR procedures and the majority of people still identify as men or women.

### **A free choice of gender markers for everyone is the end to equality measures for women**

Classic measures to support women/work-life balance are not affected by lifting restrictive gender recognition procedures. Civil status law and affirmative actions e.g. for single mothers, women in low-income sectors etc., can continue to exist in a similar way to non-discrimination measures for people with a migrant background or People of Colour, without the mandatory registration of gender in public registries.

### **We need clear allocations of gender for statistical reasons**

The mandatory registration of a person's gender is not necessary for statistical reasons. Furthermore, other criteria for positive measures (such as disability, ethnic background, religion, poverty) can be sociologically registered based on self-declaration. Gender is the exception amongst other discrimination grounds, which are all based on the self-declaration of the individual.

**There are too few trans people and having special regulations for them is excessive**

This argument does not hold as members of a minority still have the right to have their rights protected. National and European case law has repeatedly confirmed that gender identity is one of the most intimate areas of a person's private life and thus protected by the right to protection of privacy and family life.

**Such legislation would let numbers of trans people skyrocket**

After the introduction of a self-determined gender marker entry the numbers in Malta increased - other countries report something similar - from 21 cases in 15 years to 60 cases in the first year of the law. This might appear as a high percentage; however, overall it accords with the average proportion of trans people in a given population. An increase - after removal of bureaucratic barriers - is short term and levels off at an average level. In the overall view, the numbers are still small.

Often in discussions, opponents, who do not want to see the human rights aspect, project very strong unreal fears, but dismiss the affected groups as "lifestyle nutcases". This argument is not consistent if the figures would rise rapidly if restrictions were removed, when on the other hand, it is emphasised time

and again that the effort for such a small group would not be worth it.

**Society is not ready for progressive gender recognition laws**

After the introduction of the LGR procedures, understanding and support of gender identity equality in the Maltese population soared to 85 per cent, the second highest overall in the EU; and at 17 per cent, the fastest growth in any EU member state in the period of two years since the last survey.<sup>100</sup> For Maltese campaigners and policy makers these changes in attitudes clearly correlate with the new law. This is a very likely hypothesis as the Fundamental Rights Agency shows that LGBTI-friendly public measures lead to an improved living situation for LGBT people.<sup>111</sup>

Additionally, less bureaucracy in this area hurts no-one and it actually makes a difference for one group in the population in otherwise difficult circumstances. It is a state signal for the acceptance of human rights. Costs for bureaucracy also decrease as more complex procedures, e.g. expert statements are often very expensive.

**Young men will abuse gender recognition procedures to avoid army conscription**

The fear that young men will use accessible gender recognition procedures to

evade military draft are not substantiated by evidence. Young men seeking to be exempted from military service will, rather, continue to use conscientious reasons or medical statements, as a change in legal gender prompts many social changes as well as requiring considerable effort to adapt all ID documents etcetera. In case of fraudulent use it would certainly be possible to revoke the decision of an administrative gender recognition procedure through general administrative rules.

## MARRIAGE

### *Allowing a trans person to stay married leads to same-sex marriages*

When concluding the marriage, the spouses were of legally of different gender and thus fulfilled the conditions for marriage. It is an obligation of the state to protect the rights of a lawfully married couple, irrespective of whether or not a spouse seeks to have their gender marker rectified at a later point in time. Protection of an existing marriage is however not the same as enabling the marriage of a same gender couple. Moreover, this question loses significance in view of an international trend in jurisprudence and development of law towards giving equal recognition to same-gender partnerships.

## REPRODUCTION

### *Removing the sterilisation requirement will lead to pregnant men and women begetting children.*

In the past, some societies impaired the reproduction of certain groups (e. g. Roma, people with disabilities, people with mental disorders ...) which we, as a society, condemn. Reproductive rights do not depend on a person's gender identity; they are individual human rights and should be protected as such. Trans men have been giving birth for a long time, albeit without legal protection and recognition of their identity, which contributes to a realistic risk of transphobic discrimination which might also affect the child.

### *Sterilisation is not forced if the person agrees to gender reassignment surgery and that is inevitably the outcome of it*

It is irrelevant whether or not an individual finds it acceptable to give up reproductive rights in exchange for the right to identity recognition. The UN Declaration on Bioethics and Human Rights<sup>112</sup> states that medical interventions are only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. If withdrawing consent could lead to disadvantages, e.g. inaccessibility of legal gender recognition, consent is not given freely and is thus void.

## MENTAL HEALTH DIAGNOSIS

### *We need a diagnosis to prevent those who are really mentally ill from accessing LGR*

If we are concerned about people's mental health, we should invest more into education on and support for questions related to gender identity. Trans people often show worse mental health as a reaction to a transphobic environment. Mandatory psychiatric involvement in legal gender recognition contributes to distress and many people choose to remain silent about their mental health issues, out of fear of being denied the option of transitioning legally. Peer-to-peer support, counselling outside of clinical settings and an accepting environment are much better aides to people with mental health issues. Rigid assessment procedures, on the other hand, make it difficult to have an open dialogue between individual and care provider.

### *Diagnosis is needed to ensure trans-specific healthcare and cost coverage for it remains*

Experience from Malta and Sweden shows that pathologisation is not necessary for the provision of trans-specific healthcare. Healthcare should always flow from an individual's medical needs, not from an administrative requirement or legal status. Also, pregnant people and children have medical needs without being declared sick. In most coun-

tries, cost coverage depends on political will, thus requiring a political discussion on the matter.

### *Only a doctor / expert can tell if a person is really transgender*

There is no objective procedure available to assess a person's gender identity. Evidence shows that requiring a transsexual, gender identity disorder diagnosis or similar is neither purposeful nor appropriate in legal gender recognition. In fact, applicants often adapt their personal stories to meet the expert's expectations in order to obtain the diagnosis and thus qualify for legal gender recognition. Medical state-of-the art is to respect a person's self-determined gender identity.

### *A mental health diagnosis/ expert assessment prevents "regretters"*

Opponents persistently bring up discussion of so called "regretters", trans people who after transitioning decide to live again according to their sex as assigned at birth. It is argued that self-determination in legal gender recognition leads to an overburdening of the administration with people who will continuously switch back and forth. Again, no practical experience supports this argument. In the few known cases where trans people have decided to de-transition, loneliness, social and family pressure, and distress resulting from transphobia

have been decisive factors. British tabloid newspapers have been tirelessly searching for de-transitioning persons and have found only a one-digit number throughout the years.

***A confused person, who is not transgender, will be manipulated to obtain legal gender recognition.***

The option of accessing legal gender recognition does not manipulate or ensnare anyone. As with marriage for same-sex couples, if you don't like it, you do not need to marry a person of the same gender. Also, every person has the right to make decisions that concern that person. This is particularly true for an area as intimate as gender identity. It is actually an argument for easy procedures without irreversible requirements so that people can explore their gender identity more freely. Furthermore, legal gender recognition does not create entitlement to trans-specific medical treatment, as some people might fear.

***People will switch identities back and forth***

Experience from countries with easily accessible procedures does not support this argument. The law does not get used "just for fun" or for immoral reasons. The effort and personal impact involved are simply too high. Those taking practical steps toward gender recognition have

often gone through a long period of inner reflection on the matter. The underlying motivation cannot be assumed to be light-hearted.

The effort involved in a gender recognition procedure should not be underestimated. It is not realistic to expect that a person would take upon themselves the bureaucratic procedures plus related costs for a change of documents, rectification of educational certificates etc., multiple times. Additionally, over-burdening of the administration is not a valid argument in cases of repetitive re-entry into a confessional group or multiple divorces. Incidentally, administrative fees are set to cover the costs for general bureaucratic administrative efforts.

## CHILDREN

***Children's wellbeing will suffer and/ or they will be influenced to be(come) transgender***

If we asked trans youth or adults what they would have needed when they were younger and at which age they would have liked legal gender recognition, the answers will most likely favour no age limits in gender recognition laws. Trans kids, their parents, and trans adults who speak out about childhood discrimination experiences give painful insight into a reality without legal protection,

and a powerful argument for regulations that are accessible irrespective of age. In this respect, the provision of comprehensive support and counselling services for parents and children within general family and social support services are much more important for the well-being of trans children and youth. Also, this argument reveals the underlying belief that being trans is inherently bad and undesirable, an attitude which is not compatible with the principle of equality.

### ***Children are too young to make such a decision***

Children are certain about their gender identity, whether we like it or not. Many parents of trans children report that their trans child made very decisive statements from the age they were able to express themselves. The only remaining task is to ensure these children can grow up safely and feel confident however their gender identity develops. Official change of name and gender marker helps trans children to explore their gender identity and gives them the support they need in an often transphobic environment. This does not require medical interventions or psychiatric involvement. No harm is done on an individual or societal level if a child has the option of exploring their gender identity from early on, even if such a development might not be consistent. Trans chil-

dren who are supported in their gender identity and able to live accordingly do not show levels of anxiety elevated beyond those of their non-trans peers.<sup>113</sup> Asking trans children to “wait” until they can live their gender identity, however, pushes them into isolation, distress, depression and suicide.<sup>114</sup> Research overwhelmingly shows the harm done to a child’s personality, including the potential emergence of suicidal tendencies, if the development of their gender identity and their opportunity to explore it in an open and accepting environment is significantly impeded.

### ***A childhood diagnosis can help negotiate problems with kindergartens and schools***

If the diagnostic assessment is not helpful for adults, why should it be appropriate for minors? Educational and administrative staff should seek guidance on how to work with trans and gender diverse children and how to address transphobic bullying. Education and guidance from professionals working with trans children are more effective on the long run, helping to establish a welcoming and safe educational environment. To address insecurities in the pedagogical or family environment, it is sensible to implement education and counselling services for the educational sector and for those professionals working with families on a broad basis.

***Allowing a child to live out their trans identity will confuse other children about their gender identity***

Growing up in a society where diversity is respected teaches children solidarity and empathy. If we decide to limit children's experience of diversity, we are teaching them that exclusion is a valid practice. And children will eventually grow up, having school-mates, family members, colleagues or neighbours who are trans. Children are confronted with a wealth of information, input and

ideas about different forms of living, not least through the internet. They can and need to learn to find their own path. Also, this argument resonates with the unrealistic fear that decriminalisation of homosexuality would lead to more gays and lesbians. On the other hand, accepting and accommodating difference in others signals to a child that its own individuality is accepted and loved.

