Trans Rights Europe & Central Asia Index 2020: Indicators & Criteria

campaign, non-discrimination

The **Trans Rights Europe & Central Asia Index** provides detailed information on the legal situation of all 47 Council of Europe member States and five Central Asian countries. The Index covers a total of 30 indicators in six legal categories: legal gender recognition, asylum, bias-motivated speech and violence, non-discrimination, health, and family.

Legal Gender Recognition

- **Existence of legal measures:**

Criteria:

There is legislation in place for legal gender recognition and there is a procedure that provides consistent results.

- **Existence of administrative measures:**

Criteria:

There is a clearly established administrative procedure in place for legal gender recognition, or court decisions, and they provide consistent results.

- **Name change:**

Criteria:

There is a legal or administrative procedure in place that makes name change possible for trans people, and it provides consistent results. This includes deed poll (a written declaration used in the UK to change one's name. It needs to be signed by the person concerned and two witnesses).

- **Name change without age restriction *(new)*:**

Criteria:

There is a legal or administrative procedure in place that makes name change possible for trans people under 18, without any age restriction, and it provides consistent results. This includes deed poll.

- **Self-determination:**

Criteria:

A point is awarded if all of the following criteria are met:

- LGR is based exclusively on the expressed wish of the person concerned e.g. by declaration
- Does not require third party involvement, e.g. judge, medical expert, intercessor
- Intersex status and/ or sex characteristics are not a contraindication.
- **No diagnosis or psychological opinion required:**

Criteria:

Diagnosis (such as Gender Identity Disorder, Gender Incongruence, or similar) or psychological opinion are not required for legal gender recognition.

- **No compulsory medical intervention required:**

Criteria:

Non-surgical medical interventions (such as medical examinations, assessments, hormone therapy) are not required for legal gender recognition.

- **No compulsory surgical intervention required:**

Criteria:

Surgical interventions are not required for legal gender recognition.

- **No compulsory sterilisation required:**

Criteria:

Sterilisation or proof of infertility are not required for legal gender recognition.

- **No compulsory divorce required:**

Criteria:

Divorce or single status are not required for legal gender recognition.

- **LGR without age restriction *(new)***:

Criteria:

The legal or administrative procedures in place for legal gender recognition have no age restriction, and they provide consistent results for minors.

- **Self-determination based LGR without age restriction *(new)***:

Criteria:

A point is awarded if all of the following criteria are met:

- There is no explicit age restriction for minors to change their legal gender
- LGR is based exclusively on the expressed wish of the person concerned e.g. by declaration
- Does not require third party involvement, e.g. judge, medical expert, intercessor
- Intersex status and/ or sex characteristics are not a contraindication.

- **Gender non-binary recognition:**

Criteria:

A point is awarded if:

- *More than two gender marker options (“X”, “NB”, “other”, or other option(s)) are available in the public registry (e.g. Register of Births, etc.); and*
- Available for those who seek it (not forced);

OR

- No mandatory recording of gender marker in the public registry (ability to opt out from recording of gender marker available to all, not only trans/intersex people).

Half a point is awarded if:

- *More than two gender marker options (such as “X”) are available in passport only, and*
- Available for those who seek it (not forced).

Asylum

Criteria:

Gender identity is expressly included in asylum law as a qualification criterion.

- **Policy/other positive measures:**

Criteria:

Gender identity is expressly included in policy/instructions/other positive measures. This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count).

Examples:

- Existence of specific measures in a general national LGBTI equality action plan
- Existence of a sectoral action plan in the area of asylum

Bias-motivated Speech and Violence

- **Hate crime law:**

Criteria:

Bias based on the victim’s (perceived) gender identity is expressly included in hate crime legislation as an aggravating factor.

- **Hate speech law:**

Criteria:

Gender identity is expressly included in hate speech legislation as an aggravating factor.

- **Policy tackling hatred:**

Criteria:

Gender identity is included in a national strategy tackling hatred (hate crimes or hate speech). This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count).

Examples:

- Existence of specific measures addressing hatred in a general national LGBT equality action plan
- Existence of a specific sectoral action plan in the area of hate crime/hate speech covering LGBTI
- Existence of generalised training curricula for competent professionals (e.g. police officers, prosecutors, victim support services, judges)
- Existence of specialised dedicated structure(s) within the competent public authorities, with an expertise in the area of LGBTI hate crime/hate speech

Non-Discrimination

- **Employment:**

Criteria:

Legislation prohibits discrimination in the field of employment and gender identity is expressly mentioned. Equivalent ground e.g. sexual identity, gender reassignment, etc. accepted too.

- **Health:**

Criteria:

Legislation prohibits discrimination in the field of health and gender identity is expressly mentioned. Equivalent ground e.g. sexual identity, gender reassignment, etc. accepted too.

- **Education:**

Criteria:

Legislation prohibits discrimination in the field of education and gender identity is expressly mentioned. Equivalent ground e.g. sexual identity, gender reassignment, etc. accepted too.

- **Goods & services:**

Criteria:

Legislation prohibits discrimination in the field of goods & services and gender identity is expressly mentioned. Equivalent ground e.g. sexual identity, gender reassignment, etc. accepted too.

- **Housing *(new)*:**

Criteria:

Legislation prohibits discrimination in the field of housing and gender identity is expressly mentioned. Equivalent ground e.g. sexual identity, gender reassignment, etc. accepted too.

- **Equality body mandate:**

Criteria:

A national human rights institution / equality body is explicitly mandated to work on gender identity in its law/founding documents, or where the national human rights institution / equality body is systematically working on issues covering gender identity. Equivalent grounds (sexual identity, gender reassignment, etc.) are accepted too.

Equality action plan: covers action plans, which expressly include gender identity, and include specific measures for progress. Equivalent grounds (sexual identity, gender reassignment, etc.) accepted too. A full point is awarded when the action plan entails or is followed up with the following measures:

- Detailed projects or initiatives within the time span
- Allocation of resources (financial or human resources)
- Clear responsibilities for proper implementation
- Setup of monitoring procedure.

A half point is awarded when a part of these criteria are met.

Law (gender expression): Legislation prohibits discrimination and expressly includes gender expression.

Health

- **Depathologisation**:

Criteria:

A point is awarded if all of the following criteria are met:

- No mental health diagnosis relating to trans identities in national clinical classification standards or equivalent; neither for adults/ adolescents nor for pre-puberty children
- Access to and cost coverage for trans-specific healthcare (TSHC) for adults/ adolescents is possible without requiring a mental health assessment or diagnosis.

- Access to and cost coverage for support services for pre-puberty trans and gender variant children is ensured without requesting a diagnosis of “Gender Incongruence in Childhood” (ICD11) or equivalent.
- **Conversion therapy prohibited:**

Criteria:

There are legal or policy measures in place prohibiting reparative or conversion therapy that is practiced against trans people.

Family Rights

- **Parenthood Recognition *(new)*:**

Criteria:

A trans parent’s legal gender and name are recognized in their child’s birth certificate (or other documentation of kinship) and “mother” or “father” are used according to the parent’s legal gender.

- **Non-binary parenthood recognition *(new)*:**

Criteria:

A point is awarded if:

- Regulations regarding recognition of parenthood can be aligned with available gender options where more than two gender markers are available, i.e. non-binary parents are able to be recognized as “parent” on their child’s birth certificate or other documentation of kinship; or
- All parents are recorded as “parent”.

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