



TRANS IN THE SPOTLIGHT!

The Recommendation of the Committee of Ministers of the Council of Europe to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity



What is the Recommendation? Why does it matter?

The Recommendation is the first and only agreement between governments to combat discrimination against transgender, and bisexual, lesbian and gay people in Europe. It defines a set of concrete measures member states should implement to improve the human rights situation in their country. The situation in the countries should be compared each three years against the set of standards defined in the Recommendations. Concerns of trans people are included throughout the text. In a nutshell, the Recommendation says that trans people shall be equal in in all areas of life and that specific measures need to be taken to realize this.

The Recommendation has been adopted by all European countries in 2010 and is up for review in March 2013.





What are the aspects relevant for trans people in the Recommendation?

1. Change of name and gender marker in all areas of life

The Recommendation states that the possibility for a trans person to change name and gender on all important documents should be given in all countries. The European Court of Human Rights has previously held that not offering such a possibility would violate the right of a trans person to privacy. Requirements for such a change of documents involving invasive medical measures, such as genital surgery or sterilization should be reviewed for their removal. The same goes for real-life experience.

The Recommendation requires the entire process of changing documents to be quick, transparent and accessible. All key documents such as birth certificates, identity papers, driving licenses, passports, social insurance cards and numbers, electoral, land and tax registers, diplomas, certificates of employment, insurance or banking documents need to be changed accordingly. This is important to protect the privacy of the person in all areas of life.

Once the new gender has been recognized by the state trans persons must have the right to marry (according to the marriage rules in the respective country). Any obstacles to this end should also be removed.

>> Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements. (Rec 20) <<

>> Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes. (Rec 21) <<

2. Access to Health without Discrimination

Trans people face a very high degree of discrimination in health care and are likely to avoid going to the doctor. National health plans need to take this into account. Suicide prevention measures, health surveys, medical curricula, training courses and

materials, quality monitoring and evaluation of health-care services should be set up in a way to enable trans people to access health care without any discrimination. Sexual and reproductive health services should be set up in a way that they take into account the special needs of a trans person.

>> Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of [...] gender identity; in particular, they should take into account the specific needs of [...] transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services. (Rec 33) <<

3. Trans-related Health Care

The Recommendation says that trans people should have effective access to gender reassignment services (psychological, endocrinological and surgical expertise or other trans specific medical services). Effective access also includes that public health insurance plans cover these treatments as any other treatment. Coverage of costs of treatment should not be limited because of the nature of treatment or the gender identity of the person. The signatory States emphasize that no person should be subjected to gender reassignment procedures without his or her consent, for instance having to accept also a sterilizing surgery if the person concerned only wants a breast augmentation. International human rights law says that no one may be subjected to treatment or a medical experiment without his or her consent. Similarly, therapy to force transgender persons to accept their birth gender should be abandoned

>> Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent. (Rec 35) <<

>> Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate. (Rec 36) <<

4. Trans in Employment

Given the great amount of problems faced by many trans people in employment, the Recommendation explicitly asks for measures protect to protect trans people from involuntarily disclosure of their trans status. Thus, certificates of employment and education need to be changed in order to reflect the trans person's name and gender.

>> Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees. (Recommendation 30) <<

5. Other recommendations

Besides these specific recommendations, the text also puts emphasis on the fact that trans people should be able to live according to their gender identity, irrespective whether they are in prison, detention or in school. These institutions have to respect the person's gender identity. The trans person should be placed in the appropriate gendered facility (for women or men) respecting their gender identity. The person's self-chosen name is to be used by the authorities. In line with international human rights law, the Recommendation says that underage trans persons have a right to get full information about being trans and also to express and live their gender identity. This includes school attendance in the clothing and with the name corresponding to their gender identity.

Why do trans issues matter?

In the years since the adoption of the Recommendation little progress could be identified that would have improved the situation for trans people in the member states.

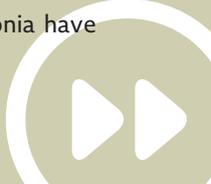
Laws Recognizing Gender Diversity are Lacking

According to an NGO report published in February 2013¹ in 13 out of 16 studied countries, 'legal recognition abusively depends on procedures such as

sterilization, other surgical treatment, or hormone treatment'. Out of these countries, only two countries offered adequate gender reassignment services. Anti-Discrimination Laws in employment in only four countries offered protection for trans people, whereas transsexuals are explicitly excluded to serve in the Army in three countries. In no country measures were taken to meet the specific needs of transgender pupils.

Adequate Trans Health Care is not Available

TGEU studied the availability of gender reassignment treatment in 23 states in Europe and found that the majority of states offer only a limited choice of treatment paths. About a quarter of these countries do not reimburse costs for gender reassignment (Bosnia I Herzegovina, Kosovo, Poland, Russia)². While on a positive note, Serbia and Macedonia have



announced to include treatment costs in public health care plans, a proposed ban on gender reassignment services was re-introduced to Lithuanian parliament in 2012.

Action to Combat negative Attitude needed

Moreover, the European Commission found in 2012 that most of Europeans in the EU look at transgender persons with pronounced disrespect and negative attitude³. Many more has to be done to change this attitude for increased equality of trans people.

What should Member states do?

Trans people need specific legal and social measures so that they can access the same rights as everybody else. Therefore, specific laws and regulations need to be in place ensuring:

- ▶ **Trans people's right to change documents in a swift, transparent and accessible procedure.**

Is this already possible in your country? Did your government assess how these procedures work and whether they are really effective in practice? Where trans people and their communities consulted on how to best improve the situation? Where agreements made between the government and trans activists on how the situation should be improved in a strategic way?

- ▶ **Trans people's effective access health care**

Are general health care providers properly trained so that they can provide adequate services to their trans patients? Are there specific programs and measures developed, together with the trans community, actively reaching out to trans people? Do treatment protocols for gender reassignment exist in your country? If yes, do these protocols follow international latest standards, such as the WPATH's Standards of Care Version 7 published in 2012⁴? Are trans people consulted in how to make these services better available and improve service quality?

- ▶ **Equality and Non-Discrimination in all spheres of Life**

Are there explicit laws or provisions that explicitly prohibit discrimination because somebody is trans, i. e. on grounds of gender identity? If yes, are these measures effective, and do trans people know about these laws and actually use them to access their rights?

www.tgeu.org



1) The Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) A survey of progress towards implementation in 16 member states, Prepared by ILGA-Europe with the help of Transgender Europe, Jan 2013

2) TvT Legal and Health Care Mapping Europe Dec 2012

3) Special Eurobarometer 393 „Discrimination in the EU in 2012“

4) WPATH Standards of Care 7th Version http://www.wpath.org/publications_standards.cfm