



“Discrimination against transgender persons must no longer be tolerated”

[05/01/09] **During missions to member states of the Council of Europe, I have been reminded of the on-going discrimination many face on account of their gender identity¹. Transgender persons encounter severe problems in their daily lives as their identity is met with insensitivity, prejudice or outright rejection.**

There have been some extremely brutal hate crimes against transgender persons. One case which received media attention was the murder in Portugal of a homeless, HIV-positive, Brazilian transgender woman, called Gisberta (Luna) Salce Junior. She was tortured and raped by a group of young men, thrown into a well and left to die.

My discussions with non-governmental organisations defending the rights of transgender persons indicate that a number of such hate crimes go unreported – even in serious cases. One of the reasons appears to be a lack of trust in the police.

Some people seem to have a problem with the mere existence of human beings whose outer expression of their inner gender identity is not the same as their gender determined at birth. Aggression against transgender persons cannot however be excused as resulting from ignorance or lack of education. These attitudes cause serious harm to innocent and vulnerable people and must therefore be countered.

I have been struck by the lack of knowledge about the human rights issues at stake for transgender persons, even among political decision-makers. This is probably the reason why more has not been done to address transphobia and discrimination based on gender identity. The result is that individuals are discriminated against all over Europe, in areas such as as employment, health care and housing.

In a number of countries, the problem starts at the level of official recognition. Transgender persons who no longer identify with their birth gender, seek changes to their birth certificates, passports and other documents, but often encounter difficulties. This in turn leads to a number of very concrete problems in daily life when showing one's ID papers – in the bank or the post office, when using a credit card, or crossing borders.

One well-publicised case related to Dr. Lydia Foy in Ireland who sought to have her legal gender changed from male to female on her birth certificate. After ten years of struggle, in 2007 the Irish High Court finally ruled that the State was in breach of Article 8 of the European Convention on Human Rights.

The European Court of Human Rights has ruled that States are required to recognise legally the gender change of post-operative transsexuals². In one case, *Christine Goodwin*, a post-operative male to female transgender person, complained about sexual harassment in the workplace, discrimination in relation to contributions to the National Insurance system, and the fact that she was prevented from marrying a man (because she was still legally male).

The Court stated that “the very essence of the Convention was respect for human dignity and human freedom. Under Article 8 of the Convention in particular...protection was given to the personal sphere of each individual, including the right to establish details of their identity as human beings.”³

In some European countries, it has now become possible to correct official records and obtain a new first name. However, in other countries a change of birth certificate is simply not allowed. In a large number of Council of Europe Member States, such changes are permitted only upon proof that the transgender person has been sterilised or declared infertile, or has undergone other medical procedures, such as gender reassignment surgery or hormone treatment. The individual's sincere affirmation of their gender identity is not seen as sufficient, and the suitability of the medical procedures for the person in question is not considered.

Additionally, many countries require that a married person divorces before his or her new gender can be recognised, even though the couple itself does not want to divorce. This in turn may have an impact on children of the marriage. In fact, in several countries the parent who has undergone the gender change will lose custody rights. Legislation requiring divorce needs to be reformed in the spirit of the best interests of the child.

PUBLICATION



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To require surgery as a prerequisite to enjoy legal recognition of one's gender identity ignores the fact that such operations are not always desired, medically possible, available, and affordable (without public or other funding). It is estimated that only 10% of transgender persons in Europe actually undergo gender reassignment surgery.

Even access to ordinary health care is a problem for transgender people. The lack of trained staff familiar with the specific health care needs of transgender persons – or simply prejudice towards transgender people – render them vulnerable to unpredictable and sometimes hostile reactions.

In the United Kingdom, male to female transgender persons have been struggling to get their gender status accepted for the purpose of pension benefits. In spite of overwhelming legal arguments they have so far been denied the pension rights that other women in the country (who were born female) enjoy without question.

There are other obstacles encountered in day-to-day life. A major problem for transgender persons is harassment and discrimination at work. Some leave their jobs to avoid it, while others avoid gender reassignment surgery for fear of stigmatisation.

Data presented by EU's Fundamental Rights Agency shows that in some countries the unemployment rate of transgender persons can reach up to 50%. Some jobless transgender persons are unable to find employment, and see no other option but to work in the sex industry. A report from Human Rights Watch on Turkey called attention to the situation of transgender sex workers in that country - victimised by violence, drug addiction, sexual abuse, lack of health insurance, homelessness, police attacks, and a high risk of HIV/AIDS.

To date, very little factual information is available on the situation of transgender people in Council of Europe Member States. This information is needed urgently to determine the extent of the problems faced.

There is no excuse for not immediately granting this community their full and unconditional human rights. Council of Europe Member States should take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field.

Thomas Hammarberg

Notes:

1. 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 mannerisms. ([back](#))
2. Most recently, in *L. v Lithuania*, Application 27527/03, 11 September 2007, para. 56. ([back](#))
3. *Christine Goodwin v. United Kingdom*, Application 28957/95, judgment of 11 July 2002. ([back](#))

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