



**European Trans
Gender Network**
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Trans People in Europe: Comparison of laws and jurisdiction

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First of all I would like to thank TransX, the organising group of this Council for inviting me to speak here today and also for allowing me to work with them on the European-wide survey on the Social, Medical and Legal issues affecting Transgender People across Europe. This is I feel an historic moment in the European Transgender Movement and the survey has helped identify some of your pressing concerns.

I must clarify the terminology that I tend to use in trans debate. I have adopted the Australian terms “sex/gender affirmation” surgery instead of “sex/gender reassignment” surgery or “sex/gender reconstruction” surgery. I feel this more fully explains the process, we as Trans People go through to become more fully the people we already are. I also prefer the terminology “Trans Person”, “Woman/Man with a Transsexual History” “Woman/Man born Transsexual” or even “transman” or “transwoman” as being more dignified and accurate. The Term “Sex Change” should be consigned to the terminological dustbin of history. The right terminology should assist in one of our primary purposes; namely, the education of the public.

It is unusual for the UK to lead the way in Europe but certainly the Gender Recognition Act has produced a model for other European Countries to follow. The UK has in addition an Equality Bill going through Parliament, which hopefully will incorporate safeguards for Trans People in the area of goods and services [We understand the Government has confirmed it will include Sexual Orientation]. Spain also has blazed a trail with the availability of Civil Marriage to all its citizens and is presently considering a Transgender Law.

The UK Gender Recognition Act has set in place a mechanism whereby a Trans Person after diagnosis of Transsexualism and a period of two years Real Life Experience can apply to a Gender Recognition Panel for recognition of the “acquired gender”. The application is supported by two supporting medical reports. One report must be by a medical practitioner or chartered psychologist specialising in the field of gender dysphoria.. There is no need to have undergone surgery, if there is medical evidence that this would pose a risk to the health of the Trans Person. One disappointing provision of the Act is that a trans person in a validly constituted marriage, who has undergone sex affirmation surgery during the course of the marriage, can only apply for a limited Certificate of Recognition. If granted this allows six months to divorce, and then receive a full Certificate of Recognition. The two parties can then if they wish enter into a Civil Partnership under the UK Civil Partnership Act 2004. I regard this provision as unprecedented and unlawful interference in a lawful marriage by the state. This is likely to be challenged before the European Court of Human Rights.

What has emerged from the survey are two points. Firstly the variety of treatment of Transgender People across Europe and secondly the general lack of knowledge of the remedies available to European Transgender People and how they should pursue those remedies.

Stephen [Whittle] has already covered much of what I intended to say in explaining the various articles of the European Convention on Human Rights and the way they can assist Transgender People. I do however take issue with just one point . The emphasis on the right of respect for religion as being more important than the other articles of the constitution is I believe incorrect. Certainly, I agree, we have to watch the activities of religious groups who are against us. However the EU Committee on the Constitution confirmed that the European Union was a secular institution in rejecting the Pope’s submission that Christianity should be specifically mentioned in the Constitution and should affect the interpretation of the Constitution. I believe this view can be interpolated into the European Convention. If the Constitution had been adopted incorporating the EU Charter of Fundamental Rights, it would have been a step forward in the right direction as regards Human Rights. The Court of Human Rights is groaning under its workload, with cases taking five or six years to be heard. and it may soon groan to

a halt. If the transgendered of Europe are to become more litigious in pressing for the rights as Stephen [Whittle] has urged then a reorganisation of the court is required. One solution would be a division of the European Court of Human Rights in each European State, with Judges trained in the traditions of the Court and appointed by the Court. A simpler answer but requiring the requisite political will would for the EU in its own right to sign up as a party to the European Convention. This would have the benefit of avoiding divergent interpretation of the Convention by the European Court of Justice and the European Court of Human Rights, as has happened in the past. As regards the European Court of Justice, certainly there is already precedent such as the UK case of P v S, which decision can be argued in similar cases. For those unfamiliar with this case, it concerned a transwoman on the start of her transition. She informed Cornwall County Council, her employer of her decision prior to starting transition and sometime later was dismissed. This was held to be discrimination on grounds of gender. Furthermore Article 13 of the Treaty of Amsterdam gave the EU power to take “appropriate action to combat discrimination based on [amongst other grounds] sex or sexual orientation though not gender identity or sexual identity.

I will now go briefly through the issues that have been identified by the survey, country by country and conclude with a general overview on the place of Transsexuality.

THE NETHERLANDS. The Dutch have been the leaders in transsexual brain research. The minimum age both for hormone treatment and surgery is 18. A Precondition for treatment is the usual psychological evaluation. There must also be, as is common, a real life experience. A low number of Dutch Trans people, about 10 per cent lose their employment whilst undergoing transition. This even though the Dutch Equal Treatment Law is rather general and does not specifically mention Trans People. There has been little transphobic violence but unfortunately this appears to be on the increase and mainly from certain immigrant groups. 50 per cent of Trans People are estimated to be in employment with a low number probably 5 per cent in the sex trade. Interestingly, following a change of gender whilst married, there is no requirement to divorce, unlike the UK Gender Recognition Act.

DENMARK Despite the liberal traditions, the survey reveals almost three quarters of trans people lose their jobs whilst undergoing transition. Discrimination continues with a return to the job market accompanied by a lower status job or in an entirely different field of work. Discrimination seems to stem from lack of awareness together with the difficulty of changing names on records such as school reports. Identity documents such as birth certificate, social security card, drivers licence, passport and financial details may be changed however. Trans Denmark, together with other Danish trans groups are presently lobbying and involved in consultation with the Government over legislation regarding changes of name. Such legislation may be in place next year. Prior to sex affirmation, the permission of the Minister of Justice is required. As in Holland transphobic violence is low. What I found amazing was that hormone treatment could not be commenced until 25 years old. A recipe for self medication with its inherent dangers.

AUSTRIA The procedure here is very strict. The Federal Law 195/1988 prohibits a change of first name, if the name is uncommon or does not fit the applicant's sex as recorded in the Birth Certificate. Like Denmark names in school reports cannot be changed, in addition to working papers and the baptismal certificate. There is an initial psychiatric evaluation followed by a year or 50 hours of psychotherapy to provide a diagnosis of Transsexualism. Hormone treatment can then commence with real life experience. A gender neutral name can be chosen at this stage. A year later another psychiatric evaluation may recommend affirmation surgery. There are urological examinations at the two stages of psychiatric assessment. The final stage is to obtain a summary report from the University of Vienna Institute of Forensic Medicine prior to surgery. The first name can be changed to reflect the new sex. If married there is the need to divorce. About half of trans people are in employment though up to three quarters of these may lose their job whilst undergoing transition. There is little experience of transphobic violence.

PORTUGAL Before Surgery there is need to attend a two person psychiatric board prior to surgery. An application to the Court is required to change the name and gender in the birth certificate. There are no specific laws against employment discrimination, and a low manifestation of transphobic violence. About half of trans people are in regular employment with the rest working in the sex trade. Many of the Trans Population are from Brazil of former Portuguese colonies.

SPAIN A Gender Identity Law is currently being debated, as I previously mentioned. The Court will allow a change of name after the usual psychological test, hormonal treatment and surgery. The court will require a certificate from a psychologist/psychiatrist confirming a diagnosis of transsexualism, an endocrinologist's certificate, confirming the hormonal treatment with a surgeon's certificate of surgery. I found it surprising that despite all this there must be a further examination by a court appointed forensic

doctor before a court decision is made. Following a positive decision all documents can be changed and the Birth Certificate amended. Divorce is again required for full recognition. Only about a third of trans people are in regular employment with a high percentage in the sex trade.

ITALY A change of sex is essential before the change of name on records. However references to the old name continue, even in such mundane things as gas bills! There is no specific legal criteria regulating the change of sex. Rather strangely surgery is usually funded but not hormone provision, allowing self medication with its inherent dangers. About a fifth of Trans People are in regular employment with the remainder in the sex trade.

SWITZERLAND [Suisse Romande} Surgery is necessary to change one's name with divorce a prerequisite to surgery. There appears to be no legal requirement for divorce, it seems to be just bureaucratic usage. The Tribunal de Premiere Instance will issue consent to change of name. Apart from the Birth Certificate, all documents can be changed. Again like Denmark the minimum age for commencing hormone treatment is 25. Although there is a low rate of transphobic violence, there is frequent discrimination in the fields of Medicine, Employment, Bureaucracy and the Church.

HUNGARY Amazingly this new EU Member State, has a specific law against trans discrimination [act No CXXV of 2003]. Medical Services are basic, with no Female to Male surgery, though private cosmetic surgery is abundant. Divorce is required after surgery for full recognition of the acquired gender. An application is made by the Minister of the Interior to the District Birth Registry to change the name and sex.

REPUBLIC OF IRELAND Still in the company of Albania, Andorra and Gibraltar, in having no mechanism for change of gender. Changes of name are permitted by way of a lawyer prepared deed duly ratified by the Court. Other documents of Identification can then be changed. The passport can be changed following an interesting two stage procedure. First it is marked with a "T", which is very discriminatory and then to the acquired gender following surgery.

FRANCE Following B v France, the European Court of Human Rights held there was a right to change gender on the Identity Card. The Birth Certificate retains a note in the margin. This decision has been restrictively interpreted this case to relate to only those people treated by the state system. This state monopoly has been criticised for its repressive approach to psychiatric control which still tends to view transexualism, as a mental condition. Consequently many French Trans People have surgery abroad.

BELGIUM A proposed Law [Proposition B] is still being considered. Whilst this would allow a change of civil status, unlike the UK Gender Recognition Act, this change of status would not be available to those who could not undergo surgery on health grounds. There is also a difference in the French and Flemish translations of the Proposition. Whilst the former described multidisciplinary teams, the Flemish version refers to a more loose cooperation of physicians. Meanwhile once a new identity card is obtained, documents can be changed apart from the birth register which is modified by a note in the register. Educational diplomas and certificates in the former name cannot be changed.

FINLAND The law allows one free opportunity to change the first name. The officials of the administrative council to whom application is made sometimes require a mental health evaluation. Once identity papers have been changed full legal recognition is given in the acquired gender. If married, a divorce is required for full legal recognition. There is a mechanism for the marriage to become a civil union. Trans people are covered by the general discrimination law regarding men and women. The Health Ministry has given specific instructions concerning the treatment of trans people. There are only two university clinics in Finland where mental health evaluations are available. Usually the opinion of two mental health professionals is required, though interestingly only one in the case of mammectomy and ovaectomy/hysterectomy. Regarding violence apparently this is significant, which I found surprising.

GERMANY. A court application is necessary for change of name accompanied by two independent evaluations by mental health professionals. Real Life experience is usually required. Interestingly if you marry or give birth to a child or your married partner gives birth to your child and you claim parenthood 302 days after your change of name, the name automatically reverts to the original name. I am informed this is matter is currently before the German Constitutional Court. Germany also like other European countries requires you be infertile to get your sex changed in your documents of recognition. Whether you in fact get surgery depends entirely on your health insurance. Discrimination is less in cities than in the countryside as is generally the case. The number of sex workers is between 5 and 10 per cent. A conservative estimate of 50 per cent lose their jobs whilst transitioning.

ICELAND Iceland has a general provision against discrimination in its Constitution. It is believed Birth

Certificates are not fully changed and that a note is merely made in the margin of the register. Everything in Iceland flows from the computerised National Registry, and computerised information is freely accessible. This given the small population indicates that transition in Icelandic society could be very problematic.

RUSSIA Change of Legal Name is possible following surgery which is preceded by psychological assessment. Russia has some first and family names that are unisex. The minimum age for surgery is 20. About a third of people in transition are in regular employment [with almost half of those losing their jobs], a fifth in education with the rest working mainly as sex workers. There is a high degree of transphobic violence

TURKEY. Application must be made to the Court for approval of surgery. Following surgery the hospital prepares psychological and gynaecological reports, allowing the Judge to approve the new sex identity. The Court Judgement is then taken to the Birth Registration Office so that identity information can be changed. A record is kept of the original birth registration. Discrimination in employment is high. Almost 90 per cent of those who transition, lose their jobs and almost all trans people work in the sex trade. Violence by the Police and people in general is a daily occurrence .Horrifyingly some cemeteries will not accept the bodies of dead trans people.

UKRAINE Also here surgery is necessary before one can acquire a new legal name. The position with regard to names is similar to that in Russia, in that some first and family names are unisex. The names showing the particular sex only usually appear in legal documents. The minimum age for surgery is 20. Here again about half those in employment lose their jobs whilst transitioning About 10 per cent are in education and the rest in the sex trade.

You will have noticed that in some places in my talk I have used the term Gender and in some Sex. Gender is strictly a cultural description of sex but in some countries this distinction is not as clear as it should be.. I was really struck in doing the survey by the difficulty in Name Change, which is a comparatively informal procedure in the UK. requiring only the witnessing of a simple Deed before a Lawyer. The minimum age for commencing hormone treatment being set at 25 seems to make no sense to me at all. The increasingly enlightened medical view seems to be that if one can stop the disturbing effects of puberty and provide surgery at a particularly young age, the whole adjustment of the trans person is smoother. Also the requirement for sterilisation seems to reek back to the Nazi Era. The emphasis on infertility seems odd, particularly in an age when it is possible to store one's genetic material. prior to commencing hormone treatment. It is amazing that in the 21st Century there can be such outstanding injustices. I am amazed at the plethora of hurdles, be they legal, bureaucratic or medical placed in the way of people who just want to be themselves.

There have been considerable medical advances in medical knowledge regarding the causes of Transsexualism, starting with the work in Amsterdam on the brains of dead trans women studying the size of their hypothalamus compared with natal women and the more recent revelations as to the genetic basis for femaleness or maleness by UCLA in America and Monash University in America. These seem to point to the more physical reasons for Transsexualism and to the argument for its more general inclusion in the category of intersex. Categorisation itself however I feel only creates more indirect discrimination, in forming in the Public mind a concept of "others". In an ideal world there would be a general law for discrimination against any other human being on the basis of merely being part of common humanity. James Pfaus of Concordia University in the United States has said that it makes no sense to categorise human sexuality as each individual has a unique script. Bearing all this in mind, I also find some consolation in the concept of "Queer Theory" developed in the United States, which questions the very root of sexual categorisation. In my recent University dissertation, I argued that this concept with its fluidity, which I have named "Flexigender" should be more fully promoted and also that a new Human Right of Bodily Integrity should be incorporated into the European Convention.

Thank you.

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NB This talk was based on my University Dissertation "Flexigender" An examination of Gender, its misinterpretation and how this operates restrictively in Human Rights Legislation in Europe and on replies to the Survey. Thank you so much for your replies. If you have any updates on information you provided, can you please address them to me joannesworld@gmail.com and of course to the European TransGender Network office@tgeu.net.
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