



**European Trans
Gender Network**
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Transgender related laws and judgement in European countries

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Europe is a group of countries some of them completely independent and some of them joint in a federation, better known as European Union.

All of them have their own ruling system, each one different from each other and valid all over their territory.

For those countries joint in the European Union, part of their national sovereignty is submitted to communitarian lawmaking. That means that some aspects of social and economic life must (or should) comply to communitarian decisions.

At present few is done at European level about transsexualism and each country faces with it according with their traditions, laws and prejudices often generated by religious beliefs.

Sex in our world is a very serious taboo and most of the solutions found seems to be adopted only when it was impossible to act otherwise and in order to keep the status quo hiding the phenomenon rather than helping transsexual people for a complete fulfilment of their being. About that, Italian sex change law (L. 164/82) is noteworthy because in it is never mentioned who are the receivers of the law.

More specifically:

- in Sweden (1972), Germany (1980), Italy (1982), Netherlands (1985) and Turkey (1988) there is a law to sex affirmation surgery
- in Austria and Slovakia there are regulations
- in Belgium, France, Greece, Luxembourg, Poland, Portugal, Romania, Spain and Switzerland sex affirmation is left to case-law
- in United Kingdom sex affirmation is recognized only starting from 2005
- in Ireland, Portugal and Andorra sex affirmation is not recognized at all

In all cases, to affirm one's own sex there are explicit or implicit conditions that burden more or less heavily on personal life, family life and human or civil rights. Once more it is to be remembered that all solutions are adopted to preserve the status quo.

The principal aspects of life affected by transsexualism and sex affirmation could be summarized in: sex, name, family life, documents.

Sex change

In almost all countries a fundamental prerequisite is infertility.

In rare case, like in Netherlands it is required to be not able to procreate as in the former sex, but usually it is a must to be not able to procreate at all, neither as in the former, neither as in the new sex..

Most of the reasons of such request can be found in the above mentioned concept: „to keep the status quo“. A pregnant man is unusual, therefore, to avoid it, that man must be unable to bear children. and, of course, a woman must not be able to make another woman pregnant.

Another prerequisite is marriage dissolution, but this will be analysed later.

One more point to mention is that to sex affirmation is not self determined by the applicant, but it is allowed by, at least, one “specialist”.

Name change

Probably name is the most evident and pressing problem for transsexual people. If fact daily and sometimes even hourly it may happen the need to introduce ourselves to someone and, in this way, to

disclose our state and a lot of strictly reserved personal data to everyone.

In a lot of countries the change of name is subsequent to the sex recognition and any attempt to assume a name with a gender according to external appearance and psychological sex is strictly prohibited.

Once again a clear example is the Italian legislation. The sex change law says quite nothing about name, except „on document is reported only the new indication of sex and name“, but nothing is said about who must recognise the new name and neither it is said when.

In Italy the old civil status law permitted to change name if shameful and nothing was said about its gender, therefore, in theory, it would be possible to change it without problems. Unfortunately it was never granted and, furthermore, the new civil status law modified in year 2000 expressly stated that “the name must correspond to the sex of the child”. Therefore it is once more reaffirm that transsexualism does not exist: before the change of sex there is a person with a sex and a corresponding name and after there is a person of the opposite sex with another corresponding name. This is on the paper. Unfortunately in real world transsexualism exists and people continue to experience a lot of problems because they do not live on paper.

It is also noteworthy that states which permit to change the gender of name independently of sex affirmation procedure rarely adopted this solution to help transsexual people, but it is a sub-right inherited by another more strong and felt right, that is the possibility to change name at one’s wish just for everyone, not only for a particular group of persons.

At present it seems that only Germany adopted the “small solution” expressly for transsexual people.

Family life

Family life is the more damaged aspect for transsexual persons. Hopefully it is also the aspect in which something could happen thanks to the more and more widely recognition of de facto couple.

Here it is possible to distinguish two well determined period: before sex affirmation and after sex affirmation.

Almost every country require the dissolution of any previous marriage to grant sex affirmation and in some cases, such as Finland before 2003, it is also required to be without children.

In countries such as Netherlands, Spain, UK (?) in which homosexual marriage is allowed such condition is no longer required and in other countries such as France in which civil union is recognized, the marriage is transcribed into civil union register.

In all other countries divorce is compulsory.

In Italy forced divorce is justified with: „spiritual and physical communion between the spouses cannot be reconstructed after the change of sex“. That could be true, but it should be decided by the consorts and not by the legislator.

The second problem that arises are children. Often the parent who acquire the new gender is imposed to sustain children, but not to spend time with them. It is famous a judgement in Italy in which it was stated that the parent who changed sex „could see the child, but could not to show to him“. In other words the parent could see him only far away.

It could be interesting to know if someone ever studied if it is more disturbing for children to discover that his parent has a body that is not his/her or to see his parent throw away from family by law.

After the sex affirmation, luckily, it seems that the recognition is full and it is possible to marry according to the new sex. Also adoption should be allowed, even if it is hard to obtain fostering once it is known the sex affirmation.

Documents

Except Andorra, Portugal and Ireland almost all birth certificate are amended and a margin note is added quoting the judgement terms. Because of that amendment some documents such as identity card, national insurance, passport, driving licence are reissued but it is not always easy. Some of them should be automatically reissued, but often it is the transsexual person who must ask for correction and it is not infrequent to discover after some years that the old name and gender is still recorded and used.

Surely correction of birth certificate is important because of its implications, but it is not the only problem and it is not the only document needing correction.

In fact often changes are not retroactive and all documents such as degree, study certificates, courses certificates, subscriptions and so on may result in a big problem.

For example in Italy the law prescribes that only one school diploma can be issued. If the diploma is issued before the sex affirmation, it contains the old name and, because of the lack of retroactivity, it

continue to maintain the old name. Usually it is possible to obtain a new diploma, but only because of the „good heart“ of persons, not by law help.

Another problem is the transcription in the marriage register, for the above mentioned problems and also the transcription in the children's birth certificate. In other words the recognized transsexual person is not the same person who is the children's parent.

The concept that the „old“ and the „new“ person is not the same person is taken to extremes in Turkish legislation in which a new birth certificate is issued and the marriage certificate is destroyed.

European institutions

Until now very few have been done by European institutions. The European Parliament issued in 1989 a resolution in which stated:

- a) the reference to the sex of the person concerned is to be rectified in the register of births and in the identity papers
- b) a change of forename is to be authorised
- c) the person's private life is to be protected
- d) all discrimination in the enjoyment of fundamental rights and freedoms is prohibited in accordance with Article 14 of the European Convention on Human Rights

Nothing else was issued by European Parliament from then and, unfortunately, a resolution is not compulsory for member states.

Probably it was not compulsory neither for the European Court of Human Rights because in its judgement on the argument, only few were favourable to applicants.

Noteworthy are:

- Van Kuck vs Germany in 12 June 2003 in which the court holds that the respondent State is to pay the applicant for reimbursement gender re-assignment medical expenses.
- B. vs. France in 25 March 2002 in which the court holds that the respondent State had to change transsexual's civil status after sex recognition.
- Case of Christine Goodwin vs. the United Kingdom in 11 July 2002 in which the court holds that the respondent State had to recognize the new sex of the applicant.
- P. v. S. and Cornwall County Council in 30 April 1996 in which the court holds that it is illegal to dismiss a person on basis of transsexualism.

The last point to analyse is the European Constitution. Once again there are lights and shadows in it.

In fact it is written in art. II-81 (Non-discrimination):

1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
2. *Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.*

It is mentioned only „sexual orientation“ and no words is spent for gender dysphoria .

It is true that something is better than nothing, but, strictly speaking gender dysphoria or transsexualism is not protected by European constitution, unless reassembling gender dysphoria and sexual orientation (or transsexualism and homosexuality) together arising once again the old belief by which transsexuals are just homosexuals men who change sex only to live more easily with another man.

Unfortunately lesbian mtf or gay ftm transsexuals do exist.

At the end, nothing is said about national or European antidiscrimination laws because till now no notice of specific antidiscrimination laws is arrived.

Summarising 75 years after the first change sex operation and 33 years after the first law about transsexualism, a lot of job have to be done for a fully recognition of the phenomenon at legal level and much more have to be done at social level. Almost every solution found was adopted to limit the social impact that sex affirmation could cause, but not approaching the problem from the transsexual's point of view, but from the „status quo“ point of view.

There is not a unique way to solve transsexuals problems, but whatever that solution could be, it must be suggested by transsexuals and not imposed to them.