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Discrimination against transgender people in Europe

Report[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Deborah SCHEMBRI, Malta, Socialist Group

Summary

Transgender people still face widespread discrimination in Europe, for example in gaining access to work, housing and health services. They are victims of bullying, physical and psychological violence as well as hate crimes. Severe violations of human rights occur in relation to legal gender recognition, since procedures in this regard in most European countries require sterilisation and divorce as preconditions for recognition.

Awareness of the challenges that transgender people face is largely insufficient among the general public. However, some progress has been achieved in policies and legislation in the last few years. Discrimination on grounds of gender identity is prohibited in a number of Council of Europe member States through either general or sectorial anti-discrimination legislation and, in the case of Malta, such prohibition has even been included in the Constitution.

In some member States, innovative legislation on gender recognition is under preparation or has recently been adopted. It is based on self-declaration and does not require applicants to undergo complicated, humiliating procedures. The emergence in Europe of the right to gender identity is a positive development and may represent a model for future national legislations.

1. Reference to committee: Doc. 13257, Reference 3987 of 30 September 2013.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Ms Schembri, rapporteur 5
1. Introduction 5
2. Definitions 5
3. Surveys and studies 6
4. Addressing discrimination: key areas 7
4.1. Access to work 7
4.2. Access to health 7
4.3. Access to housing 8
4.4. Access to education 8
4.5. Stereotyping and transphobic prejudice 9
4.6. Hate crimes and physical violence 9
5. Suicide and suicide attempts among transgender people 10
6. Legal protection against discrimination 11
7. Access to gender reassignment treatment 12
8. Gender recognition 14
9. Conclusions 15

A. Draft resolution[2]

1. The Parliamentary Assembly regrets that transgender people face widespread discrimination in Europe. This takes a variety of forms, including difficulties in access to work, housing and health services, as well as a high prevalence of hate speech, hate crime, bullying and physical and psychological violence. Transgender people are also at particular risk of multiple discrimination. The fact that the situation of transgender people is considered as a disease by international diagnosis manuals is disrespectful of their human dignity and an additional obstacle to social inclusion.

2. Awareness of the situation of transgender people is largely insufficient among the general public and accurate, unbiased information in the media is scarce. This leads to higher levels of prejudice and hostility which could be avoided.

3. The Assembly is concerned about the violations of fundamental rights, notably the right to private life and to physical integrity, faced by transgender people when applying for legal gender recognition; relevant procedures often require sterilisation, divorce, a diagnosis of mental illness, surgical interventions and other medical treatments as preconditions. In addition, administrative burdens and additional requirements, such as a period of "life experience" in the gender of choice, make recognition procedures generally cumbersome. Furthermore, a large number of European countries have no provisions on gender recognition at all, making it impossible for transgender people to change the name and gender marker on personal identity documents and public registers.

4. A number of Council of Europe member States have recently reformed their legislation on legal gender recognition or are in the process of doing so. Some regulations are based on the principle of self-determination and do not require long and complex procedures or the involvement of medical practitioners or psychiatrists.

5. The Assembly welcomes, in this context, the emergence of a right to gender identity, first enshrined in the legislation of Malta, which gives every individual the right to recognition of their gender identity and the right to be treated and identified according to it.

6. In the light of these considerations, the Assembly calls on member States to:

6.1. as concerns anti-discrimination legislation and policies:

6.1.1. explicitly prohibit discrimination based on gender identity in national non-discrimination legislation and include the human rights situation of transgender people in the mandate of national human rights institutions, with an explicit reference to gender identity;

6.1.2. implement international human rights standards, including the case law of the European Court of Human Rights in this field, without discrimination on grounds of gender identity;

6.1.3. collect and analyse information and data on the human rights situation of transgender people, including discrimination on grounds of gender identity and multiple discrimination, as well as transphobic intolerance and hate crimes, to be used as necessary guidance for designing, implementing and monitoring the impact of anti-discrimination legislation and policies;

6.1.4. enact hate crime legislation which affords specific protection for transgender people against transphobic crimes and incidents; provide specific training to sensitise law-enforcement officials and members of the judiciary;

6.1.5. provide effective protection against discrimination on grounds of gender identity in access to employment in the public as well as in the private sector, and in access to housing, justice and health care;

6.1.6. involve and consult transgender people and their organisations when developing and implementing policy and legal measures which concern them;

2. Draft resolution adopted unanimously by the committee on 20 March 2015.

6.2. as concerns legal gender recognition:

6.2.1. develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek it, irrespective of age, medical status, financial situation or current or previous detentions;

6.2.2. abolish sterilisation and other compulsory medical treatment, including a mental health diagnosis, as a necessary legal requirement to recognise a person's gender identity in laws regulating the procedure for changing a name and registered gender;

6.2.3. remove any restrictions on the right of transgender people to remain in an existing marriage upon recognition of their gender; ensure that spouses or children do not suffer a loss of rights;

6.2.4. consider including a third gender option in identity documents for those who seek it;

6.3. as concerns gender reassignment treatment and health care:

6.3.1. make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender people, and ensure that they are reimbursed by public health insurance schemes; limitations to cost coverage must be lawful, objective and proportionate;

6.3.2. include transgender people explicitly in suicide prevention research, plans and measures; explore alternative trans health-care models, based on informed consent;

6.3.3. amend classifications of diseases used at national level and advocate the modification of international classifications, making sure that transgender people, including children, are not labelled as mentally ill, while ensuring stigma-free access to necessary medical treatment;

6.4. as concerns information, awareness raising and training:

6.4.1. address the human rights of transgender people and discrimination based on gender identity through human rights education and training programmes, as well as awareness-raising campaigns aimed at the general public;

6.4.2. provide information and training to education professionals, law-enforcement officers and health service professionals, including psychologists, psychiatrists and general practitioners, with regard to the rights and specific needs of transgender people, with a special focus on the requirement to respect their privacy and dignity.

B. Explanatory memorandum by Ms Schembri, rapporteur

1. Introduction

1. *"I grew up as part of a close-knit family of origin and was proud to be part of that family. But as far back as my very first memories I have experienced a feeling of incongruence with my gender. I thought I was alone. I hid my identity and conformed to the expectations of my parents and Irish society at that time in the 1960s and onwards. I created a façade and invited other people into that façade. When, at the age of 43, I addressed a major aspect of my core identity, I faced up to the façade, there were many negative consequences for all of us."*

2. With these words, Vanessa Lacey, Health and Education Officer at the Transgender Equality Network Ireland (TENI), started her testimony before our Committee on Equality and Non-Discrimination, on 24 May 2013. This was the first time that the committee had singled out gender identity as a topic for a hearing, as opposed to dealing with it in the context of the broader issue of the protection of LGBT (lesbian, gay, bisexual and transgender) people against discrimination. In addition to Ms Lacey, the committee heard a presentation by Nicolas Beger, Director of Amnesty International's European Institutions Office. The hearing was the first opportunity for some of us to meet a transgender person and discuss face-to-face her history and everyday reality. It convinced the members of the committee that the specificities of the situation of transgender people in Europe are such that it deserves to be dealt with in its own right, with a specific report.

3. This is the background to this report, which is intended also to complement the previous work of the Parliamentary Assembly and the Council of Europe as a whole on sexual orientation and gender identity as a prohibited ground of discrimination, namely Assembly Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity and Recommendation 2021 (2013) on tackling discrimination on the grounds of sexual orientation and gender identity, as well as recommendation Rec(2010)5 of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity.

4. In this document, I would like to broach the issue, provide clarification on some concepts and give an overview of the challenges faced by transgender people in Europe. This memorandum takes into account the exchange of views with Ms Julia Ehrt, Executive Director of Transgender Europe (TGEU), which was organised on 2 June 2014 by the Committee, in Paris, and the findings of my fact-finding visit to the United Kingdom in December 2014.

2. Definitions

5. **Transgender people** have a gender identity which is different to the gender assigned at birth. This includes people who intend to undergo, are undergoing, or have undergone gender reassignment as well as those who prefer or choose to present themselves differently to the expectations of the gender assigned to them at birth. Diversity within the transgender spectrum is large, with 73% of transgender people not identifying themselves with the gender binary male–female.

6. **Gender identity** refers 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 and other expressions of gender, including dress, speech and mannerisms.[3]

7. **Legal gender recognition** is the legal recognition of a person's gender identity, including change of name, gender marker and other gender-related information such as social security number in public registries and key documents.

8. **Gender reassignment** or **gender confirming treatment** is a set of medical measures that can but does not have to include psychological, endocrinology and surgical treatments aimed at aligning a person's physical appearance with their gender identity. It might include psychological consultation, cross-hormonal treatment, sex or gender reassignment surgery (GRS) (such as facial surgery, chest/breast surgery, different kinds of genital surgery and a hysterectomy), sterilisation (leading to infertility), hair removal and voice training. Not every transgender person wishes for or is able to undergo all or any of these measures.

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3. Definition drawn from the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. These are an instrument of soft law, developed in 2006 at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world. Although not binding per se, they are increasingly referred to when interpreting international human rights law in relation to sexual orientation and gender identity issues.

9. **Transphobia** is the fear of, and aversion to, transgender people or gender non-conformity. Individual, structural or institutional manifestations of transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of (perceived) gender identity and gender expression.

10. I would also like to recall that the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") is the first international binding instrument to set out a definition of "gender", which is "the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Article 3).

3. Surveys and studies

11. Transgender people exist in all sectors of society and all age groups and they come from all walks of life.[4] However, for a long time their situation was not researched or described accurately. In the past few years, several surveys have shed light on the situation of transgender people in Europe. Amongst them are:

– *Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland* (2013) by the Transgender Equality Network Ireland (TENI);[5]

– *Trans Mental Health Study* (2012) by the Scottish Transgender Alliance, in partnership with TransBareAll, the Trans Resource and Empowerment Centre, Traverse Research and Sheffield Hallam University;

– *Be who you are*. *The life of transgender people in the Netherlands* (2012);

– *The Trans Research Review*, commissioned by the Equality and Human Rights Commission in the United Kingdom (2009);[6]

– *The Transgender Euro-study*, conducted by TransGender Europe (TGEU) and ILGA-Europe (2008).[7]

12. In 2013, the European Union Agency for Fundamental Rights (FRA) published a survey on LGBT people's experiences of hate crime and discrimination, based on the replies to a questionnaire conducted online in all European Union member States.[8] The survey attracted over 93 000 respondents who identified themselves as LGB or T. On 9 December 2014, FRA published "Being Trans in the EU", a report based on the analysis of the information provided by over 6 500 respondents to the LGBT survey – the largest body of empirical evidence of its kind to date, FRA underlines.[9] Other recent studies include "Being trans in Belgium" (2010)[10] and "Trans and intersex people" by the European Network of Legal Experts in the non-discrimination field, published by the European Commission (2012).[11]

13. In February 2014, Amnesty International published "The State decides who I am – Lack of gender recognition for transgender people in Europe", a report on transgender people in Europe based on a human rights approach. As the title indicates, this report illustrates the human rights violations experienced by transgender people in Europe when seeking legal gender recognition, either because this is not provided in their country's legislation, or because it implies the fulfilment of invasive legal requirements, such as psychiatric diagnosis, sterilisation and divorce.[12] Detailed recommendations are also provided, some of which are aimed at specific countries and some at all European governments.

14. This report draws from these publications, as well as from a position paper written for me by Transgender Europe.

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4. Reliable figures on the size of the transgender population are not available, but an often-cited study by Gary Gates, a demographer of the University of California Los Angeles (UCLA), estimates that in the United States about 0.3% of adults are transgender. This figure is based on data from two surveys conducted in Massachusetts and in California between 2003 and 2009 (Mona Chalabi, "Why We Don't Know The Size Of The Transgender Population", Five Thirty-Eight, 29 July 2014).
5. http://teni.ie/section.aspx?contentid=1.
6. www.equalityhumanrights.com/uploaded_files/research/trans_research_review_rep27.pdf.
7. http://tgeu.org/Eurostudy.
8. http://fra.europa.eu/en/theme/lgbt.
9. http://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis.
10. http://igvm-iefh.belgium.be/nl/binaries/34%20-%20Transgender_ENG_tcm336-99783.pdf.
11. www.coe.int/t/dg4/lgbt/Source/trans_and_intersex_people_EC_EN.pdf.
12. www.amnesty.eu/content/assets/Reports/the_state_decides_who_I_am.pdf.

4. Addressing discrimination: key areas

15. Discrimination on the grounds of gender identity and gender expression is severe and widespread in Council of Europe member States. Transgender people are confronted with several forms of discrimination and difficulties in all aspects of life, such as discrimination in access to work, housing and health care, vulnerability to hate crimes, bullying and physical and sexual violence. The level of discrimination and hostility experienced by transgender people is severe, both because they frequently face social rejection and because they are generally visible.

16. Transgender people are at particular risk of multiple discrimination, as in the case of transgender people with disabilities or those who are migrant or part of a national or ethnic minority. In addition, discrimination in the access to work may lead to poverty and increased social exclusion: a vicious circle often affecting young transgender people more severely.

17. Transgender people face specific forms of discrimination, including coercive sterilisation, dissolution of marriage (unless the spouse's agreement is given, under the United Kingdom legislation's "spousal veto" clause) or a diagnosis of mental illness as preconditions for legal gender recognition. In addition, transgender people face difficulties in accessing appropriate general health care and gender-confirming treatment.

4.1. Access to work

18. Work is particularly important for transgender people: it often means access to a social life and is indispensable to finance gender reassignment treatment.

19. According to the FRA survey, only 49% of the transgender respondents (age range 18-81) are in paid work and 38% of single transgender people are poor, more than twice the number for the general 18-64 year-old population (14%). Nearly a third of transgender job seekers (29%) had experienced discrimination when looking for a job in the last 12 months.

20. The "Be who you are study" found an alarmingly large share (12%) were declared unfit for work. Research conducted in the Netherlands shows that about 30% of those having undergone gender reassignment treatment and legal gender recognition are receiving some sort of unemployment benefit in the age group 15-64.

21. Employment prospects have a direct impact on transgender people's decision to live according to their gender identity. Thus, many transgender people not living permanently in their preferred gender role are prevented from doing so because they fear it might threaten their employment status.[13]

22. In its Recommendation Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, the Committee of Ministers gave detailed recommendations for improving the situation for transgender employees, asking member States "to ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation". The Committee of Ministers paid particular attention to "effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications".

4.2. Access to health

23. Transgender people tend to suffer from a poor state of health. Their fear of discrimination and stigmatisation adversely affects their psychological and physical well-being. This is further accentuated by avoidance of health services, based on anticipation of negative/discriminatory attitudes by health-care providers. In an European Union-wide study the most consistent theme was that of improper or abusive treatment by health-care professionals.[14] Twenty-one percent of transgender respondents in the FRA LGBT

13. Whittle S. et al., Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination, 2007; Motmans J. et al., Being transgender in Belgium – Mapping the social and legal situation of transgender people, 2010.
14. Trans EuroStudy (2008).

survey reported inappropriate curiosity by care providers, and 17% had their specific needs ignored when seeking general health care.[15] As a reaction, transgender people often avoid health-care services as much as possible.

24. Transgender people's access to prevention and early-detection measures is low and they might seek health care only in cases of emergency or when a health problem has already progressed. This reduces possibilities of effective intervention and increases costs both for the individual and the health-care system.

25. Transgender people's health is often worse than that of the general population. Health and social issues may include isolation, risk of alcohol abuse, self-harm, substance abuse and possible higher rates of HIV infection. Thus, transgender women are 49 times more likely to become infected with HIV compared to all adults of reproductive age across the 15 countries studied, making the call for prevention, treatment, and care services an urgent one.[16]

26. In the course of my visit to the United Kingdom, I became aware of a specific form of discrimination that some transgender people faced in relation to access to medical services. There have been cases of transgender people being refused the possibility to store their egg cells in view of possible future in vitro fertilisation after completing a female to male transition process. These cases seem to suggest that more information and clearer guidelines are necessary in the field of public health, to avoid all possible forms of discrimination.

4.3. Access to housing

27. Safe and affordable housing is a key concern for many transgender people. Aggression from neighbours and others and rejection by their own families make transgender people, especially the young, more exposed to the risk of homelessness.

28. In a US-wide study on discrimination experiences of transgender people, about a fifth (19%) reported having been refused a home or apartment and 11% reported being evicted because of their gender identity/ expression.[17] According to the same study, more than half (55%) of those who were homeless at one point in their life because they were transgender or gender non-conforming (19% of total respondents) were harassed by staff or shelter residents, "29% were turned away altogether, and 22% were sexually assaulted by residents or staff. Respondents who have experienced homelessness were highly vulnerable to mistreatment in public settings, police abuse and negative health outcomes".

29. Transgender people with a migrant or minority background are particularly vulnerable to homelessness. The higher risk of discriminatory eviction even affects transgender organisations, as shown by the case of the Greek Transgender Support Association which faced organised resistance from other tenants, calling for their eviction only one month after moving in.[18]

30. In the above mentioned recommendation, the Committee of Ministers asks member States to target factors which might increase the vulnerability for homelessness of transgender people by establishing neighbour support and security programmes and training relevant agencies on the specific needs of transgender people.

4.4. Access to education

31. Negative attitudes and conduct towards transgender people and gender diversity is widespread in educational facilities. Thus, only 10% of transgender respondents to the FRA study had never observed anything in this regard. For the majority (69%), negative comments and conduct occurred regularly in their school life.[19]

32. This stigmatisation impacts transgender students and staff in their personal development, self-esteem, well-being and thus also school/professional performance, forcing many to quit school early. Unfortunately, sometimes school staff engage in discriminatory behaviour as shown by the case of a young transgender

15. FRA LGBT Survey 2012.
16. Griensven J. et al., HIV surveillance and prevention in transgender women, *The Lancet Infectious Diseases*, Volume 13, Issue 3, March 2013, pp. 185-186.
17. Grant J. et al., Injustice At Every Turn: A Report Of The National Transgender Discrimination Survey, 2011.
18. Greek Transgender Support Association (March 2014).
19. FRA LGBT Survey 2012.

woman in Athens: the Greek school administration neither stopped the physical and verbal attacks against her from the Headmaster, nor reacted to an attempt by other students to douse her in a flammable liquid and burn her. Even if the Greek Ombudsman stood up for her, the transgender girl had to leave the school.[20]

33. Procedures to change a name and gender marker are usually only available at the age of majority. This poses challenges for the usage of gendered facilities (locker rooms, sanitary facilities, gender-segregated uniforms/schools) and participation in daily school life in accordance with the individual's gender identity.

34. Most countries do not require official records and educational certificates of transgender students to be adapted, leaving it to the goodwill of the school administration. A divergence in official documents poses considerable obstacles in accessing higher education and finally the job market.

35. In the United Kingdom, according to Ms Alison Pritchard, Director of the Government Equalities Office, awareness of the importance of accommodating the needs of young transgender people in school is increasing. Schools have a duty to ensure that they are balancing the rights of their students and are not discriminating on grounds of gender identity. Actual arrangements are made by the individual school, based on the specific situation and also depending on available budgets.

4.5. Stereotyping and transphobic prejudice

36. Transgender people are confronted with little understanding, let alone acceptance. A study in Germany found that 45% of people have no or little understanding of those who intend to or have changed their gender.[21] This has been confirmed in the European Union Eurobarometer 2012, which revealed that only 8% of people know a transgender person personally, while 13% had no opinion on the prevalence of transgender discrimination (compared with 8% for sexual orientation).[22] While the report shows diversity in the public sphere is more accepted, people would be very uncomfortable with a transgender person being elected to the highest political office.

37. Knowing a transgender person personally is directly linked to a higher sensitivity for discrimination experiences. However, ignorance and stereotypes are the breeding ground for hostility and prejudice. Media play a key role, as evidenced by the direct link between inappropriate media representation of transgender people and physical and verbal attacks against them.[23] A comparison across the European Union shows that comments (44%) and verbal abuse (27%) are the most common forms of harassment.

4.6. Hate crimes and physical violence

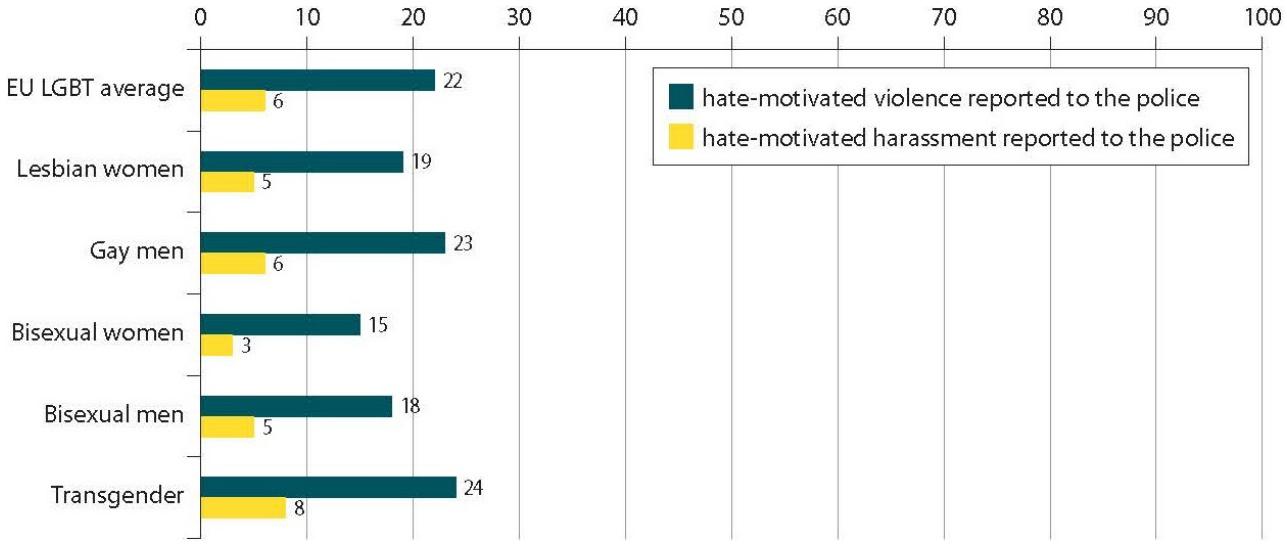
38. Many transgender people are exposed to verbal and physical assault in public. According to the Transgender EuroStudy (2008), 79% of respondents have experienced some form of harassment in public, ranging from transphobic comments to physical or sexual abuse. This phenomenon was confirmed by the "Transphobic hate crime in the European Union" report published by Press for Change in 2009.

39. Nearly every visibly transgender person experiences harassment, abuse and violence in public. As pointed out by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR): "Homophobic hate crimes and incidents often show a high degree of cruelty and brutality. They often involve severe beatings, torture, mutilation, castration, even sexual assault. They are also very likely to result in death. Transgender people seem to be even more vulnerable within this category."[24]

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20. Scalable transphobic behavior against trans schoolgirl & teacher who supported her, Greek Transgender Support Association, 2013, https://transgendersupportassociation.wordpress.com/2013/12/06/press-release-scalable-racist-and-transphobic-behavior-against-the-trans-schoolgirl-and-the-teacher-who-supported-her/.
21. Federal Anti-Discrimination Agency, Benachteiligung von Trans Personen, insbesondere im Arbeitsleben, Berlin, 2010, p. 62.
22. European Commission Special Eurobarometer 393, Discrimination in the EU in 2012.
23. Trans Media Watch (UK), How Transgender People Experience the Media (April 2010).
24. Hate Crimes in the OSCE Region: Incidents and Responses, Annual report for 2006, OSCE/ODIHR (2007), p. 53.

The most serious incidents of violence or harassment reported to the police in the last five years which happened partly or completely because the victims were perceived to be LGBT (by LGBT subgroup (%))



Source: FRA LGBT Survey

40. The transgender hate motive behind crimes is often reported only by non-governmental organisations (NGOs). Perpetrators of violence against transgender people can be clients (in the case of transgender sex workers), gangs, police and other individuals. The statistics of TGEU's Trans Murder Monitoring Project show an alarming trend, illustrated, for example, by the number of reported murders in Turkey in recent years (2008: 4; 2009: 7; 2010: 7; 2011: 6; 2012: 6; 2013: 4).[25] Other reports concerning 11 European countries documented 71 murders of transgender people in five years.[26] In most cases, victims are migrants or sex workers, and often both.

41. When turning to health-care providers, the police or equality bodies, transgender people may face many difficulties in obtaining help, as they fear transphobic reactions, blackmail and re-traumatisation. 76% of transgender respondents to the FRA LGBT Survey said that they did not report the most serious incidents to any institution, not even the police. Negative attitudes of law-enforcement bodies against transgender sex workers have a major impact on these individuals' safety and security.[27]

42. For many transgender people, rejection, bullying and violence start in the family of origin. The continuous threat of violence negatively affects transgender individuals' ability to pursue their personal development and fulfilment. It is often not possible to turn to others for help, as disclosing domestic violence would often result in coming out as transgender, as the causes for the domestic violence would become public, with all the adverse consequences that this would entail.[28] Moreover, the ongoing strain on an often isolated individual without access to transgender peers or suitable support often results in serious mental health issues for transgender individuals and their communities.

5. Suicide and suicide attempts among transgender people

43. The prevalence of self-harm, suicide and suicide attempts is much higher among transgender people than the general population. While this has been investigated more widely in the United States than in Europe, some of the more recent European studies that I have mentioned provide relevant information. Transgender Europe and ILGA's Transgender study of 2008 reported a 30% attempted suicide rate among transgender

25. TvT research project (2012), Trans Murder Monitoring, Transrespect versus Transphobia Worldwide, project website: www.transrespect-transphobia.org/en/tvt-project/tmm-results.htm.
26. Transgender Europe Press Release, 1 March 2014: www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2014.htm.
27. See, for instance, "Police Detention of Transgender Individuals during 'Xenios Zeus' Operations (Greece)", Greek Transgendered Support Association, press release, 17 August 2012: http://transgendersupportassociation.wordpress.com/2012/08/17/press-release-17-8-2012-police-detention-of-transgender-individuals-during-xenios-zeus-operations/.
28. Identifying the Difficulties Experienced by Muslim Lesbian, Bisexual and Transgender Women in Accessing Social and Legal Services – Initial Findings, The Safra Project, January 2003, paragraph 5.4.

people. The United Kingdom's Trans Mental Health Study of 2012, for instance, indicates that 84% of respondents stated that they had considered ending their lives at least once.[29] Of these, 65% had considered it in the last year, and 3% thought about it daily. The rate of respondents having actually attempted to commit suicide at some point is a disturbingly high 48%.The findings of the 2013 Irish study Speaking from the Margins were similar.

44. The findings of a 2009 Internet survey on transgender youth based on approximately 90 respondents in France showed a similar trend.[30] Children and young people are particularly at risk. The recent, tragic suicide of an American teenager, Leelah Alcon, was a particularly visible case, but not an isolated one.[31]

45. Actual and attempted suicides are the consequence of pain and in turn generate more suffering among the victims and those around them. They are also a cry for help. This cry should not fall on deaf ears: it is my firm conviction that much can and must be done to prevent suicide and the suffering leading to it. Suicide prevention measures should include awareness-raising activities aimed at transgender people and the general public, as well as specific training for people working in suicide prevention. Information campaigns and other prevention activities may be carried out jointly by transgender people's organisations and charities specialising in suicide prevention.

46. In the United Kingdom, the government's suicide prevention strategy of 2012 takes into account that specific situations may require a different approach. Therefore, the strategy allocates research funds to investigate "how interventions can be tailored to improve the mental health in some specific groups such as black and minority ethnic groups and lesbian, gay, bisexual and transgender people".[32] The Scottish suicide prevention strategy 2013-2016 has also identified LGB and transgender people as high-risk population groups.

47. Specialists explain that the main motivation for suicide is not a wish to die, but rather the will to end pain. In Europe, there is much scope for improving the quality of life of transgender people. While suicide prevention activities targeting transgender people are needed, it is also necessary to tackle the root causes for suicide, which include all forms of discrimination and violence. Discrimination subjects transgender people to hardship and if that were to be eradicated the quality of life of transgender people would improve and suicide rates would certainly decrease. Even conversion therapies, aimed at convincing a transgender person to give up their gender identity and instead to identify with the sex they were assigned at birth, often represent a form of psychological violence and may further accelerate suicidal tendencies.

48. I wish to underline that, as shown by the research carried out in the field, the prevalence of suicides and suicide attempts among transgender people decreases after transitioning. This is another significant indication that transitioning leads to a substantial improvement of satisfaction and life quality.

6. Legal protection against discrimination

49. Only 21 Council of Europe member States explicitly include gender identity as a prohibited ground of discrimination, either in their general anti-discrimination legal framework or in anti-discrimination laws in specific sectors. Amongst them is a German equality law which protects transgender people in the area of employment, including the right to rectification of employment certificates.[33] In other countries, gender identity is covered under "sex" and made explicit through case law.[34] It should be underlined that my country, Malta, in recent years made a huge leap forward in fighting discrimination on the grounds of sexual orientation and gender identity. In April 2014, it became the first country in Europe, and the second in the world, to include "gender identity" as a prohibited ground of discrimination in its Constitution.[35]

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29. Trans Mental Health Study 2012, www.bath.ac.uk/equalities/news/pdf/transmhstudyNov2012.pdf.
30. Enquête sur le vécu des jeunes populations trans en France, www.transidentite.fr/fichiers/ressources/Enquete%20jeunes%20trans%20HES%20MAG%20avril%2009.pdf.
31. "Trans teen publishes heartbreaking suicide note: 'This life isn't worth living'", *Pink News*, 30 December 2014, www.pinknews.co.uk/2014/12/30/trans-teen-publishes-heartbreaking-suicide-note-this-life-isnt-worth-living/.
32. "New suicide strategy and £1.5 million into prevention research", UK Government press release, 10 September 2014, https://www.gov.uk/government/news/new-suicide-strategy-and-1-5-million-into-prevention-research.
33. General Act on Equal Treatment, http://alturl.com/jze4c.
34. Council of Europe Commissioner for Human Rights, Discrimination on grounds of sexual orientation and gender identity in Europe, 2011, p. 42.
35. Malta: Douze Points! First Constitution in Europe to Protect Gender Identity, TGEU statement, 15 April 2014: http://tgeu.org/malta-douze-points-first-constitution-in-europe-to-name-gender-identity-tgeu-statement/.

50. Recently adopted European Union directives in the area of victims' rights,[36] asylum[37] and the draft European General Data Protection Regulation explicitly refer to non-discrimination on the grounds of gender identity and expression.

51. Neither sexual orientation nor gender identity are explicitly mentioned as prohibited grounds of discrimination in the European Convention on Human Rights (ETS No. 5). However, the European Court of Human Rights ("the Court") has held that the expression "and other status" in Article 14 includes them. The relevant case law includes the following judgments:

– *Grant v. United Kingdom*,[38] in which the Court held that the State had contravened the right to private and family life of a transgender woman by refusing to pay her a pension as a woman at the age of female retirement;

– *Van Kück v. Germany*,[39] in which the Court found that the applicant's right to a fair trial had been violated when the national courts ignored medical expertise stating the need for gender reassignment treatment and requested that the applicant prove that she did not cause the transsexuality herself. The Court stated that "determining the medical necessity of gender reassignment measures by their curative effects on a transsexual is not a matter of legal definition". Considering that "gender identity is one of the most intimate areas of a person's private life", the burden placed on the applicant to prove the medical necessity of treatment was considered disproportionate;

– *Schlumpf v. Switzerland*,[40] in which the Court held that a mandatory two-year waiting period prior to gender reassignment surgery, without taking into account the individual needs, namely the advanced age (67 years old), and the strong favourable medical arguments for granting cost coverage, amounted to a violation of the right to privacy. The Court recalled that the Convention guaranteed the right to personal self-fulfilment and reiterated that the concept of "private life" could include aspects of gender identity. Protection against discrimination was again emphasised by the Court's explicit statement in *P.V. v. Spain*[41] that transsexualism was undoubtedly covered by the last clause of Article 14 of the Convention.

7. Access to gender reassignment treatment

52. In general, transgender people who seek gender reassignment treatment experience an increase in quality of life after transitioning. According to a UK/Irish survey, 70% of them were more satisfied with their lives after transitioning and only 2% were less satisfied. Those who were less satisfied after transitioning mentioned poor surgical outcome, loss of family, friends or employment, everyday experiences of transphobia and non-trans-related reasons.

53. One of the main obstacles faced by transgender people in access to trans-related health care is general lack of competence and resources. 80% of those seeking gender reassignment have been refused coverage under the available health-care plan; 50% of those refused paid for the treatment themselves.[42] Given this limited public coverage, it would be even more important to have public policies and guidelines clearly outlining that gender reassignment treatment has to be dealt with like any other medically necessary treatment in public insurance plans. It is also of concern that many private medical insurance providers reject transgender people or require higher insurance premiums.

54. The Committee of Ministers has emphasised that limitations to cost coverage must be "lawful, objective and proportionate".[43] Twenty-eight Council of Europe member States provide comprehensive or partial gender reassignment treatment.[44] Differences between these States are significant, ranging from member States where quality expertise centres are available and those where some but not all necessary treatment is

36. Directive 2012/29/EU of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime.
37. Directive 2011/95/EU of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
38. Application No. 32570/03, judgment of 23 May 2006.
39. Application No. 35968/97, judgment of 12 June 2003.
40. Application No. 29002/06, judgment of 8 January 2009.
41. Application No. 35159/09, judgment of 30 November 2010.
42. Trans EuroStudy 2008.
43. Appendix to Recommendation CM/Rec(2010)5, Recommendation 36.

available. In countries where no facilities are available, people wishing to undergo gender reassignment go abroad (they are even explicitly advised to do so in some member States).[45] Treatment protocols differ from country to country and often do not meet international medical standards.[46]

55. A few cases have been brought before the European Court of Human Rights. In *G.G. v. Turkey*, which is pending, the applicant challenges under Articles 3 and/or 8 of the Convention the refusal by Turkish authorities to cover treatment judged to be "imperative and urgent" by courts and doctors. On 10 March 2015, in the case *Y.Y. v. Turkey*, concerning the refusal by the Turkish authorities to grant authorisation for gender reassignment surgery on the grounds that the person requesting it was not permanently unable to procreate, the Court held unanimously that there had been a violation of Article 8 (right to respect for private and family life) of the Convention.

56. "Gender Identity Disorder" (GID) or an equivalent diagnostic process is mandatory in most European countries to access gender reassignment treatment and most legal gender recognition procedures. National treatment protocols feature adapted definitions of GID from the WHO International Catalogue of Diseases (ICD).[47] People with trans identities are affected by a wide range of codes, such as Transsexualism (F 64.0), Gender Identity of Childhood (F 64.2), Other Gender Identity Disorders (F 64.8), Gender Identity Disorder, unspecified (F 64.9), Fetishistic Transvestism (F 65.1) or Dual-role Transvestism (F 64.1).[48]These diagnoses have been criticised by human rights activists as stigmatising and actively pushing for social exclusion of trans people, while not adding to their physical or mental well-being. Sweden, Norway and Finland removed Dual-role transvestism (F 64-1), Fetishism (F 65.0), Fetishistic transvestism (F 65.1) and Multiple disorders of sexual preference (F 65.6) from their national catalogues for lack of therapeutical value.

57. I wish to highlight some positive developments on this front. On 11 June 2014, the Danish Parliament amended the gender recognition procedures, omitting diagnostics and any other medical requirements, making it the first country in Europe to base legal gender recognition entirely on the self-determination of the transgender person[49]. On 16 May 2014, the Administrative Court of Stockholm rejected the practice of interpreting the Swedish Law on Legal Gender Change as requiring a psychiatric evaluation and diagnosis (the decision has been appealed).[50]

58. Coverage of costs for gender reassignment treatment hinges on obtaining a GID diagnosis or equivalent. The "mental disorder" label reinforces stigma, making prejudice and discrimination more likely, and rendering transgender people more vulnerable to social and legal marginalisation and exclusion. The mental health diagnosis thus contributes to increased risks to mental and physical well-being. 63% of transgender respondents to a German study felt that the GID diagnosis was a source of significant distress for them.

59. Even when gender reassignment treatments are covered by public health services, they may be difficult to obtain in practice. In the United Kingdom, for instance, as my interlocutors explained during the fact-finding visit, there is a serious shortage of surgeons with specific experience in this field in the National Health Service. As a result, waiting lists are large and waiting times are exceedingly long.

60. A group of international transgender health experts has been developing different alternative models for health classification regarding gender identity, as a contribution to the currently ongoing review of the International Classification of Diseases, with the aim of facilitating access to health-care coverage without stigmatising diagnoses.[51]The global campaign "Stop Trans Pathologisation – STP 2012" demands the removal of the categories of "gender dysphoria"/"gender identity disorders" from the WHO list.[52] The World Professionals Association of Transgender Health (WPATH) has called for the depsychopathologisation of

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44. Austria, Belgium, Denmark, Estonia, the Czech Republic, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Serbia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Ukraine, according to the Commissioner for Human Rights LGBT Study 2011, p. 109.
45. Ibid.
46. World Professional Association for Transgender Health (WPATH), Standards of Care Version 7 (2012).
47. WHO International Classification of Diseases (ICD), currently undergoing the 11th revision: www.who.int/classifications/icd/revision/icd11faq/en/index.html.
48. Sweden, Norway and Finland removed from their national versions of the ICD-10 Dual-role transvestism (F 64-1), Gender identity disorder of childhood (F 64.2), Fetishism (F 65.0), Fetishistic transvestism (F 65.1) and Multiple disorders of sexual preference (F 65.6).
49. Denmark goes Argentina!, TGEU Statement, 11 June 2014, www.tgeu.org/sites/default/files/2014-06-11__TGEU_Denmark-final.pdf.
50. Stockholm Administrative Court, Case No. 24931-13, 16 May 2014.
51. It's time for reform – Trans Health Issues in the International Classifications of Diseases, GATE, November 2011.
52. Stop Trans Pathologization – STP 2012 www.stp2012.info/old/en.

gender variance and urges "governmental and medical professional organisations to review their policies and practices to eliminate stigma toward gender-variant people".[53] The Spanish Network for Depathologisation of Trans Identities has developed a best practice model for trans-related health care, based on informed consent.[54]

8. Gender recognition

61. Legal gender recognition is for many transgender people the key to meaningful participation in society and to living in dignity, protected from discrimination. Despite repeated rulings of the European Court of Human Rights on the positive obligation of States to provide for gender recognition, only 34 countries in Europe have legal provisions to recognise a trans person's gender identity. Transgender people's existence is hence *de facto* not recognised in a quarter of the Council of Europe member States. Procedures, if they exist, are often very lengthy and complicated. A medical and legal limbo is inscribed in all existing legislation regulating gender recognition.

62. All too often, the requirements for gender recognition force individuals to give up one human right to gain another. Twenty-three countries in Europe require by law that trans people undergo sterilisation before their gender identity is recognised. The former Commissioner for Human Rights has critically remarked that "[t]ransgender people appear to be the only group in Europe subject to legally prescribed, State-enforced sterilisation".[55] Other requirements may include diagnosis of mental disorder, medical treatment and invasive surgery, mandatory psychiatric institutionalisation,[56] assessment of time lived in new gender identity and being single or divorced. Such requirements violate a person's dignity, physical integrity, right to form a family and to be free from degrading and inhuman treatment.

63. TGEU's TvT Legal and Health Care Mapping[57] shows that in some countries legal gender recognition is possible in theory, but the practice is different. Applications by trans people are often delayed, not accepted or refused without the right to appeal, or there is legal uncertainty about the procedure. Another practical difficulty occurs if the legal gender recognition procedure does not extend to altering official documents previously issued by State or private actors. Population registries using numerically coded gender markers may pose an additional challenge. Thus, the last digit of the Danish social security number (odd for male, even for female), which is widely used, for example when opening a bank account or as a university matriculation number, clearly indicates the gender as registered by birth, because it does not change over a lifetime.

64. Those trans people not matching the strict diagnosis or other medical requirements are not eligible to have their gender identity officially recognised. This is relevant for a large portion of the European trans population: The EU Survey on LGBT Experiences of Discrimination (FRA 2012) found that 73% of trans respondents do not identify within the gender binary. Equally, those trans people not able or willing to submit to requested medical procedures or who are excluded on grounds of age restrictions do not have access to these procedures and associated rights.

65. Cumbersome and lengthy processes result in trans people having no, or greatly reduced, access to the job market; difficulties with travel; forced divorces and stress on families; ineligibility for partnership recognition and being subjected to discrimination by State and non-State actors. Claiming one's rights is also hindered, as it is difficult to file a discrimination case if one's ID documents do not reflect the person's presented gender. The Fundamental Rights Agency (2008, 2010, 2011) suggests a link between certain requirements such as sterilisation, genital surgery, mental health diagnosis or age limits in national gender recognition legislation and setbacks in accessing education or employment.

66. In conclusion, the lack of quick, accessible and transparent gender recognition procedures further marginalises an already socially excluded group. Transgender respondents to the EU LGBT Survey 2012 unsurprisingly named improved gender recognition procedures as a major factor that could help improve social acceptance and transgender well-being.

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53. WPATH, De-Psychopatholisation Statement (2010), www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3928.
54. Spanish Network for Depathologization of Trans Identities, Best practices guide to trans health care in the national health system, pp. 27-29.
55. Commissioner for Human Rights, Thomas Hammarberg, "Human Rights and Gender Identity", 2009.
56. The Ukrainian Order regulating gender recognition requires a minimum four-week stay in a psychiatric institution. The applicant is placed in a ward corresponding to their birth gender, not their self-perceived gender identity.
57. Transrespect versus transphobia worldwide map: www.transrespect-transphobia.org/en_US/maps.htm.

67. On a positive note, a change of attitude and attempts at legal reform can be witnessed in many European countries, a process triggered by increased awareness, with civil society and international organisations, including the Council of Europe, being positive drivers of change. The Swedish and Dutch parliaments abolished in 2011 and 2013 respectively the sterilisation requirement for a change of documents, Austrian and German courts had previously declared similar legal passages to be violating human rights and thus void.

68. As already mentioned, the Danish Parliament recently amended the gender recognition procedures, omitting sterilisation and any other medical requirements. The new Danish regulations represent a turning point and the first time that the principle of self-determination is enacted in Europe. They make it possible to obtain legal gender recognition by requesting a new social security number. No surgical intervention or treatments such as hormone replacement therapy are requested. The law introduces a reflection period (the request needs to be confirmed six months after the original application) and a minimum age of 18.

69. The Irish Parliament is currently discussing a draft bill on gender reassignment, but this text is not based on self-determination. Michael O'Flaherty, a distinguished Irish human rights lawyer and former rapporteur of the group of experts which drafted the Yogyakarta Principles, criticised this draft legislation as disrespectful to transgender people and out of line with international good practice.[58] I believe that European legislators who engage in regulating the question of gender recognition should now draw inspiration from more recent and progressive models.

70. On 4 March 2015, the Parliament of Malta voted unanimously on second reading a draft Gender Identity, Gender Expression and Sex Characteristics Bill. At the time of writing a final reading is still required for adoption. The opposition has declared that it will vote in favour of the Bill, which is expected to be adopted by the end of March 2015. This comprehensive text is one of the most advanced in this field. It stipulates that all citizens and permanent residents of Malta have the right to "the recognition of their gender identity, the free development of their person according to their gender identity, to be treated according to their gender identity and to their bodily integrity and physical autonomy". This "right to gender identity" is of major importance. Legal gender recognition is no longer viewed as a social or medical issue, but rather as a way to enforce every individual's right to their gender identity. I am convinced that this is the only correct, human rights-based approach to regulating this matter, beautifully encapsulated by this law's provision: "The gender identity of the individual shall be respected at all times."

9. Conclusions

71. Transgender people have long suffered high vulnerability to a wide range of discriminatory and hostile behaviours. Their situation has been neglected or underestimated and not tackled effectively.

72. There is lack of knowledge and understanding of transgender issues amongst the general public. Much remains to be done to increase awareness of the rights of transgender people and their specific needs. Providing relevant accurate, unbiased information through the mass media and in education curricula is necessary to this end.

73. Awareness among public authorities has increased in the last few years, as shown by the adoption of important reforms of regulations relevant to transgender people, notably on legal gender recognition. However, this does not apply to all Council of Europe member States. My main goal, in the preparation of this report, was therefore to provide law-makers with information on the challenges that transgender people currently face in Europe and on the most protective and progressive legislation introduced in Europe up to now.

74. It is my sincere hope that this report will contribute to a greater equality and respect for the rights and dignity of all human beings, without discrimination.

58. Michael O'Flaherty, "Gender recognition bill is in violation of international human rights law", *Irish Times*, 10 February 2015, www.irishtimes.com/opinion/gender-recognition-bill-is-in-violation-of-international-human-rights-law-1.2097289.