

**Joint submission to the United Nations Human Rights Council
Sixteenth session of the Working Group on the UPR (22 April – 3 May 2013)
Germany**

Joint submission by three NGOs:



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dgti e.V. was founded in 1998 and works towards the social acceptance of transsexual and intersex individuals.

TransInterQueer e.V. was founded in 2006 and does educational work about transgender, intersex and queer issues.

Trans-Kinder-Netz was founded in early 2012 and caters to the needs of trans children.

Germany

Joint submission to the UN Universal Periodic Review

Sixteenth session of the HRC UPR Working Group, 22 April – 3 May 2013

Executive summary:

This submission outlines the concerns with current laws and provisions for trans people in Germany. Much of the transsexual law has been called unconstitutional and was repealed, leaving trans people in a legal void with many uncertainties, leading to unlawful discrimination under international human rights law. In the case of trans children, there is no framework at all, leading to all kinds of discrimination and needing urgent improvement.

I. BACKGROUND INFORMATION

The Deutsche Gesellschaft für Transidentität und Intersexualität e.V., TransInterQueer e.V. and Trans-Kinder-Netz are volunteer-based non-governmental organizations committed to the impartial promotion and protection of the rights of trans and intersex people, whereas the main focus of Trans-Kinder-Netz is trans children. A range of programs is conducted to promote and protect the rights of trans and intersex people in Germany, including monitoring and fact-finding, public education and training.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Equality and non-discrimination

1. The law to change the name and determine the civil status in special cases (TSG) was entered into force in 1981. Through several decisions of the Federal Constitutional Court (BVerfG) in recent years, essential provisions of the law have been repealed and called unconstitutional. A redo and review of the provisions in the TSG is therefore mandatory.

2. A gender identity deviating from the one assigned at birth is not diagnosable from the outside. In addition, it is impossible to give an expert assessment using psychiatric methods concerning the permanence of the sense of gender identification for any given person. As such, assessments cannot fulfil their intended role which renders them inappropriate. Moreover, the expert opinion on gender identity is incompatible with the right to self-determination of the individual and contradictory to constitutional¹ and European legal² requirements. Thus the self-determination of trans* people should be realized by abolishing expert assessments and court procedures currently provided for in §4, para. 3 in conjunction with §1 para. 1 and 2 TSG.

1 See Federal Constitutional Court decision 1 BvR 16/72 from October 11, 1978 and 2 BvR 1833/95 from August 15, 1996

2 See Council of Europe: Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, in particular para. 21; Council of Europe Assembly Recommendation 1915 (2010); Council of Europe resolution 1728 (2010), in particular para.16.11. See also European Parliament resolution of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations, P7_TA-PROV(2011)0427, paras. 13 and 16.

3. The current provisions for the **change of name** are unreasonable (expert assessments), unnecessarily complicated (court procedure) and provoke discrimination³. Similarly, as a result of several decisions of the Federal Constitutional Court the conditions for the change of legal gender have been reduced to the extent that they now are identical to those for the name change. Both procedures should be undertaken by way of an administrative procedure at the competent authority for registration of births and civil status and under the same conditions as the name change. The requested legal gender may be female or male. For those who do not assign themselves to either of these two categories, another gender status⁴ should be created.

4. Regarding the existence of the transsexual law **as a special law**, such laws touching on individual/personal characteristics or features (special laws) are inevitably stigmatizing and discriminating by defining the relevant group of people as "different" and "outside of the norm." Moreover it conveys the impression that without exception all persons possessing the constituting personality traits of the target group of the law, would have the same needs in terms of legal provisions. Thus, the diversity of individual needs are left out of the picture. Legal provisions should be aimed at the respective needs situation, not groups of people. In addition, special laws might lead to the situation that persons in need of the provisions contained therein cannot resort to them because they do not at all or not completely fit the definition of said target group.

5. The **disclosure prohibition** currently provided for in the TSG has proven to be necessary and, at the same time, inadequate with regards to the addressing of people, reissuing of certificates and credentials, as well as in the private domain. A disclosure prohibition is necessary to protect the privacy rights of trans* people. They particularly depend on their identity not being disclosed against their will without necessity. A forced or involuntary disclosure of a trans* individual's past can endanger the person, making them prone to discrimination and in extreme cases even endanger their lives. Thus, after a change of first name and / or legal gender - as is the case now - the previous names or the former legal gender may not be revealed or tracked down without consent of the individual, unless special reasons of public interest require it or a credible legal interest is ascertained. The permission for relatives to use the former name and/or legal gender is to be restricted to the private domain, in contrast to the present provision. Both provisions shall be included in the Code of Administrative Offences (OWiG). Unlike today, this will open the possibility of sanctioning violations of the disclosure prohibition.

6. Regarding **health insurance**, public or private health insurance funds as well as other benefactors not infrequently deny or defer payment for the cost of essential gender affirming procedures necessary for the conservation of trans* people's health, despite a positive medical indication. Considering the existential importance of these treatments for trans* people, this often results in serious health impairments right up to the risk of suicide. Long waiting times constitute an unacceptable burden, even more so the often unavoidable civil disputes caused by the current legal situation. This threatens health and psychosocial development of trans* people and increases the risk of discrimination (e.g. at work, when seeking employment, or when participating socially). Therefore, the public health insurance's obligation to pay for gender affirming treatment should - as

3 See Franzen, J. & Sauer, A. (2010): Discrimination of trans * people, particularly in working life. Federal Anti-Discrimination Agency, Berlin, http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/benachteiligung_von_trans_personen_insbesondere_im_arbeitsleben.pdf?__blob=publicationFile

4 The German Ethics Council proposes in its published opinion "Intersexuality" of 23 February 2012 to create another legal gender next to "male" and "female", <http://www.ethikrat.org/dateien/pdf/stellungnahme-intersexualitaet.pdf>

before - only be tied to the corresponding medical indication, and - also as before - be independent of the legal processes. However, this obligation must be enshrined by law. A change of name and legal gender alone do not justify an entitlement to medical gender affirming measurements. However, many trans* people are existentially dependent on such measures. Therefore, the legislator has a duty to protect their personal rights and their right to health by establishing relevant claims in applicable law. A statutory provision is necessary, because otherwise there is a risk that health insurance funds will not or insufficiently meet their obligations. A provision in the Social Insurance Code shall also collaterally oblige private health insurances.

7. Regarding the situation of trans children in Germany, there is neither adequate, up-to-date research nor any existing provisions as for their treatment. German law ignores trans children, medical guidelines do not consider the developmental state of children and so deprive them of therapeutic possibilities, and health care providers lack knowledge about trans children, their situation, and their needs.

8. Manifold disadvantages and discriminations derive from this with sometimes severe physical and mental impairment for the children. Adjustment of laws and therapeutic guidance is urgently required in accordance with the actual needs and developmental states of the children. Access to modern therapeutic means for all trans* children is needed, obligatory courses about trans* are required for all professions which work with trans* children, be it medical, psychological, educational or administrative. Educational advertising and intensified research (medical and psychological) are necessary as well. One is confronted with nescience, incomprehension or depreciative attitude concerning trans children and their parents.

III. RECOMMENDATIONS

1. Realize the self-determination of trans* people by abolishing expert assessments and court procedures;
2. Allow a change of first name and legal gender through an application at the competent authority for registration of births and civic status, instead of the judicial process through a court procedure;
3. Repeal the TSG (transsexual law) as a special law and integrate necessary provisions in established law;
4. Extend the disclosure prohibition, include it in administrative offense law;
5. Legally establish the health insurances's obligation to pay for medical procedures;
6. Establish treatment regulations for trans children and adolescents;
7. Formally change the guidelines to respect the wish of teenagers to start hormone replacement therapy and surgical interventions;
8. Commission a comprehensive report on the situation of trans children in Germany;
9. Change medical guidelines in a way to formally respect the right of self-determination (in agreement with the legal guardian) concerning the usage of GnHR analoga to stop puberty.
10. Establish training programs for kindergarden and school staff regarding trans children
11. Make it mandatory for kindergardens and schools to respect the personality rights of trans children.

IV. APPENDIX

The annex "Trakine Report (Annex)" provides material based on the monitoring and fact-finding of Trans-Kinder-Netz and describes the current situation of trans children in Germany.