

GENDER LEGAL RECOGNITION IN FINLAND

SUBMISSION TO THE WORKING GROUP TASKED TO
PROPOSE A NEW DRAFT LAW

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

Amnesty International welcomes the commitment of the Finnish government to reform the current law and practices on gender legal recognition for trans individuals¹ and the establishment of a working group tasked to propose a new draft law on gender legal recognition (hereafter Trans Act Working Group) by the end of September 2014.

In this context, Amnesty International would like to raise some concerns with regard to current laws, policies and practices on gender legal recognition and in particular their impact on the enjoyment of human rights of trans people in Finland.²

As highlighted by civil society organizations spoken to by Amnesty International, human rights treaty bodies³ and other human rights bodies⁴, Finland should undertake further steps to combat

¹ Amnesty International refers to **transgender**, or **trans**, people as individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. Trans is a political umbrella term that is used to describe a wide range of identities, experiences, and people whose appearance seem to conflict with the binary gender norms of society, including transsexuals, transgender, travesti, gender queers, cross dressers, drag queens, drag kings, and many more. **Intersex** individuals possess genital, chromosomal or hormonal characteristics which do not correspond to the given standard for 'male' or 'female' categories as for sexual or reproductive anatomy. Intersexuality may take different forms and cover a wide range of conditions. Amnesty International refers to **gender identity** as each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, or with the way they are made to express their gender, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. An individual's gender identity may be male, female, or a gender which is neither male nor female; it may also be more than one gender, or no gender. When reporting experiences of trans individuals, Amnesty International refers to the specific identity each person prefers to be identified with. For instance in the context of the research on gender legal recognition in Finland, some trans individuals have explicitly indicated that they identified themselves as either man or woman with a trans past or as masculine or feminine gender queers.

² Amnesty International is carrying out a research project on gender legal recognition for trans individual in Europe. The report will be published in January 2014. This submission is based on the research conducted in Finland as a part of the ongoing research project

³ Review of Finland in the UN Human Rights Committee following the 6th periodic report; see the Concluding Observations (CCPR/C/FIN/CO/6).

⁴ The Council of Europe Commissioner for Human Rights recommended the abolition of the single status and infertility requirements for the purpose of gender legal recognition. Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his

discrimination on grounds of gender identity. This must also entail the introduction of a legal framework that allows trans individuals, and intersex individuals if they wish so, to obtain legal recognition of their gender. Such framework should comply with the requirements set out in the Appendix of this submission.

1. CURRENT LEGISLATION, POLICIES AND PRACTICES

In Finland, all the personal information relating to citizens and residents is registered in the Population Information System, which is an electronic database maintained by the Population Registration System.⁵ Such information includes the gender and the personal identity code. The latter includes information on the gender assigned at birth: its last digits are always even for people assigned female at birth and odd for people assigned male. All documents, including passport and identity cards, are issued on the basis of the information stored in the Population Information System.

The personal identity code is mentioned on many other, less official, documents including driving licenses, diplomas or library cards. It is also required to apply for pensions and other benefits, for the payment of wages, salaries and fees and for bank transactions.

According to the Act on Legal Recognition of the Gender of “Transsexuals” (hereafter the Trans Act), in force since 2002, the gender registered in the Population Information System can be changed only if the applicant presents a medical statement certifying that she or he permanently feels to belong to the “opposite gender”, lives in that gender role, and has been sterilized or is “for some other reason infertile”. The Act also restricts the possibility to access

visit to Finland from 11 to 13 June 2012. CommDH (2012)27, para. 108. See also Recommendation 90.8., Universal Periodic Review, 2012. Working Group report and views on the Recommendations by the Finnish government, <http://formin.finland.fi/Public/default.aspx?nodeid=44595&contentlan=1&culture=fi-FI> (accessed 15 November 2013).

⁵ See the Population Information Act (507/1993), <http://www.finlex.fi/fi/laki/ajantasa/2009/20090661> (in Finnish, accessed 7 November 2013).

gender legal recognition to individuals who are single and of age (18 years old and above). However, the single requirement is not applied if the spouse gives his or her consent to the legal gender recognition. In this case an existing marriage is converted into a registered partnership and vice versa.⁶

Further details on the requirements to access gender legal recognition are spelled out in a Decree of the Ministry of Social Affairs and Health.⁷ In particular, the Decree specifies that the medical statement required by the Trans Act for the purpose of gender legal recognition should prove that all the medical criteria are fulfilled. The Decree provides also a framework regulating access to trans health care and psychiatric diagnosis. Both the Trans Act and its implementing Decree specifically deal with gender legal recognition people who are diagnosed with “transsexualism”, which is a very specific psychiatric diagnosis. As explained further in chapter 3a, such a diagnosis excludes many trans people, who are not diagnosed with “transsexualism”, from obtaining gender legal recognition⁸

Trans individuals can change their name usually only after having undergone diagnosis by a psychiatrist. The Names Act is in fact interpreted very strictly as prohibiting bearing a name that does not correspond to one’s legal gender.⁹ The diagnosis may not be required

⁶ Act No. 563/2002, Section 1. The Act also requires the applicant to be either a Finnish citizen or a resident in Finland. Unofficial English translation: <http://www.finlex.fi/en/laki/kaannokset/2002/en20020563> (accessed 11 November 2012).

⁷ Decree 1053/2002 of the Ministry of Social Affairs and Health on the organization of the examination and treatment aiming at the change of gender as well as on the medical statement for the confirmation of gender of a transsexual. Unofficial English translation: www.trasek.net/wp-content/uploads/2011/03/TransDecree2003.pdf (accessed 11 November 2013)

⁸ Finland follows the International Statistical Classification of Diseases and Related Health Problems (ICD-10) in relation to gender identity disorders (F64) with the exception of dual-role transvestism (F64.1) which was removed by the Finnish National version of the ICD-10 in 2011. Transsexualism (F64.0) is defined as “A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex”. Other diagnosis include dual-role transvestism (F64.1), gender identity disorders of childhood (F64.2), other gender identity disorders (F64.8), gender identity disorders, unspecified (F64.9). <http://apps.who.int/classifications/icd10/browse/2010/en#/F60-F69> (accessed 15 November 2013).

⁹ The Names Act only prohibits giving a child a name that does not correspond to the legal gender. Names Act 9.8.1985/694: <http://www.finlex.fi/fi/laki/ajantasa/1985/19850694#L6a>

in a few cases where the applicants wish to change their name with another one that is considered to be gender-neutral. However, practices regulating name change, including the interpretation on what names are gender-neutral, greatly vary across the Registration Offices that are in charge of dealing with applications to change name.

2. CONSEQUENCES OF CURRENT LEGISLATION, POLICIES AND PRACTICES

As the personal identity code, which includes information on the gender, is mentioned on many official and less official documents in Finland, it is crucial for trans people that this number corresponds to their actual gender. Several trans individuals interviewed by Amnesty International shared their negative experiences resulting from the divergence between their actual gender and their legal gender. As the current process for gender legal recognition can take up to 2-3 years, many trans individuals end up having to live in this problematic phase for a long period of time.

A 30 year-old trans man told Amnesty International: *“I started my midwife studies in 2010, when I was already taking hormones but my legal gender was not recognized. I had, for example, a conversation with my tutor teacher, in which s/he wanted to discuss my ‘sexuality’ as s/he could “see it from my identity number”. I was very confused of what s/he meant and why would they even ask something like that. My sexuality was not visible in the identity number although my legal gender was. I felt really uncomfortable having the conversation and afterwards I tried to get a new tutor but I was not listened”.*

A 20 year-old transgender man said *“I still officially have a female name and identity number, and I have had problems with my ID. For instance, when I try to collect a parcel from the post office, they have almost every time questioned if the passport was mine. Also, the travel card has my identity number on it and when I try to get on a bus, the driver often claims it is not my card as it says ‘female’.*

(in Finnish, accessed 15 November 2013)

And a 20 year-old masculine gender queer told us: *“Showing my passport or other ID is always very humiliating. All situations where my legal gender appears make people stare for a really long time. I do not want to be a woman looking like a man”*.

3. AMNESTY INTERNATIONAL’S KEY CONCERNS ON THE CURRENT FRAMEWORK FOR GENDER LEGAL RECOGNITION

3.1. STATEMENT BY A PHYSICIAN AND STERILIZATION REQUIREMENT

According to section 1 of the Trans Act, one of the preconditions for legal recognition includes the need to produce a medical statement certifying that the applicant permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilized or is for some other reason infertile.

The physician statement requires in practice a psychiatric diagnosis, a period of time in which trans people must live according to their gender identity, as well as specific health treatments.

Amnesty International is concerned that this section of the Trans Act does not meet the standards of non-discrimination and efficiency laid out in the Yogyakarta Principles¹⁰, according to which gender legal recognition procedures should be “efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned”.¹¹

Trans people have to in fact undergo a cumbersome process in order to obtain the psychiatric diagnosis that is necessary to access specific

¹⁰ Yogyakarta Principles. The application of international human rights law to sexual orientation and gender identity. The Yogyakarta Principles were developed and adopted by a distinguished group of human rights experts in 2007 to outline the application of issues of sexual orientation and gender identity to the broad range of international human rights standards http://www.yogyakartaprinciples.org/principles_en.htm. (accessed 15 November 2013)

¹¹ Principle 3: the right to recognition before the law. Recommendation D.

trans health care and ultimately to obtain gender legal recognition. Every trans person seeking treatment should be referred to either one of the two multidisciplinary teams established at the Helsinki University Central Hospital and the Tampere University Central Hospital (hereafter Trans Units) by their general practitioners. According to the Ombudsman for Equality, trans people are sometimes referred by their general practitioners to mental health units in their place of residence, although this should not be the practice according to the rules set out by the Decree.

The diagnostic period¹² at the Trans Units of Helsinki and Tampere University Hospitals takes at least 6 months; it can take up to 12 months depending on the specific individual situation and the availability of human resources. The diagnostic period should establish that the specific trans identities of those referred to the Units are not the result of psychosis or other mental health disorders. Members of the Trans Units told Amnesty International that they do their best to make the diagnostic process as transparent and convenient as possible.¹³ However, many trans people continue to perceive the need to undergo a psychiatrist diagnosis as very stigmatizing.

N is a 39 year-old women with a trans past. She is married to a woman and has two children. She realized she was trans at the age of 26, although she had always felt uncomfortable with the male gender assigned her at birth. N was referred to the Trans Unit in Tampere in March 2012 by a general practitioner. She was finally diagnosed with “transsexualism” in April 2013. She shared with Amnesty

¹² The diagnostic period refers to the period elapsing from the first meeting at one of the two Trans Units to the moment where the psychiatric diagnosis is established.

¹³ In summer 2013, the Helsinki Trans Unit created a diagram of the entire process from referral of the trans person to the Unit until gender legal recognition. The process is explained to all trans people referred to the Unit on their first appointment. It includes: i) the diagnostic period (min. 6 months) ii) “real life test” (min. 12 months) in which the trans person lives according to the preferred gender identity. Such “test” is a requirement for the purpose of gender legal recognition; the Trans Act and its implementation Decree require indeed any trans person wishing to obtain gender legal recognition to have lived in the preferred gender ahead of the request to change the gender in the Population Information System. Such a phase includes hormone treatment, possibly mastectomy, voice therapy, epilation, and possibly other treatments iii) evaluation of the real life phase iv) second opinion from the other Trans Unit v) gender legal recognition and genital surgery (Interview with Hanna Hintsala / Helsinki Unit, 5 November 2013).

International her frustration with regard to this long process: *“I spent over a year trying to convince other people of who I am, that I am really a woman. It is a humiliating process, a breach of one’s self-determination. It’s absurd. No one else has to constantly convince others of who they are. I think it is derogatory and stigmatizing that the issue is treated as a psychiatric one. I had for instance to explain to my employer that I did not have mental health issues...”*¹⁴

Furthermore, many trans individuals told Amnesty International that they felt they had to conform to stereotypical gender norms in order to be perceived as trans by health professionals during and after the diagnostic process. Juudas, a 20 year-old trans man living in Tampere who is in the process of obtaining gender legal recognition told Amnesty International:

*“Above all you need to suffer all the time from the normativity that surrounds the process. I started my process in Helsinki, I was new there and one of the first things they told me was that I have a ‘feminine hairstyle’. I went there thinking I would have finally got help and the suffer would have ended soon. I had a very linear and simple idea of the process. But then I noticed that you are constantly being reviewed on the basis of how ‘girly’ or ‘manly’ you are. Based on that, they, these ‘qualified’ people, decide your gender. They decide what you are allowed to do with your body, how you can live your life and how the society will recognize your gender in the future. That is the setting of the whole process. You are being examined. You are not there to tell them how you feel, who you are. You think they would accept it and help you... No, they question everything and examine you from all angles.”*¹⁵

Members of the Trans Units told Amnesty International that they are very well informed about gender diversity and do not expect people to conform to stereotypical gender roles in order to obtain the needed diagnosis. However, the pressure is imposed by the fact that the diagnosis of “transsexualism”¹⁶ is the only one that paves the way to access health treatments and ultimately gender legal recognition. In many cases, trans people who do not identify according to the binary

¹⁴ Interview with N.N., 16 July 2013

¹⁵ Interview with Juudas Kannisto, 5 July 2013

¹⁶ F 64.0 WHO International Classification of Diseases

male-female divide are not diagnosed with “transsexualism” but can instead be diagnosed with “other gender disorders”¹⁷, which excludes them from accessing legal recognition of their gender.¹⁸

K.I., a trans person who is legally a female and identifies as gender queer, shared with Amnesty International his experience in this respect. K.I. describes himself as being “*a bit fluid but closer to male than female*” and says:

*“Gender queer people do not get their gender legally recognised, so... I have had to make my childhood experiences sound more stereotypical just in case, which is very distressing and creates uncertainty over your own identity and your perception of it. That is the thing I need to go through in the therapy session: I get a feeling of not being in the right place as I am not accepted as who I am. You need to live with your own perception and the fear of what may happen”.*¹⁹

Many trans individuals do not wish to conform to normative ‘male’ or ‘female’ standards of behavior, appearance or dress.²⁰ In order to ensure that the application procedure for gender recognition is not discriminatory, the procedure should ensure that no undue and/or unnecessary burdens are placed on individuals’ behavior, appearance or other forms of gender expression.

¹⁷ F 64.8: other gender identity disorders and F 64.9: gender identity disorders, unspecified of the International Classification of Diseases (ICD-10)

¹⁸ Such diagnosis also excludes trans people from accessing state-funded genital surgery and in some cases other state-funded treatments because the Decree 1053/2002 refers only to “transsexualism”. The treatments accessible to trans people who are not diagnosed with “transsexualism” depend on the practices followed by the Trans Units. In spring 2013 a decision was made by the Helsinki Trans Unit according to which mastectomy would be no longer accessible to trans people diagnosed with “other gender disorders”. Even if the diagnosis can be changed to “transsexualism” at a later stage, making treatments available depending on the specific diagnostic classification and not on one’s individual personal situation and wishes is problematic.

¹⁹ Interview with K.I., 18 July 2013

²⁰ For instance, only around 68 per cent of the trans women who were surveyed in a Belgian study felt either fully or mainly female. More than 23 per cent of them felt both male and female. According to the same study around 60 per cent of trans men felt either fully or mainly male. The research concluded that a third of trans people do not feel comfortable with the binary male/female identities. (See Joz Motmans, *Being trans in Belgium. Mapping the social and legal situation of trans people*, 2010)

Many trans individuals told Amnesty International that they felt the **sterilization requirement**²¹ to be certainly one of the most problematic of all the requirements. *“The sterilization requirement is a big question for me personally. I would like to have my gender legally recognized but I am not sure I can trick them [the health professionals] in the examinations to believe that I would never want biological children”* a 21-year old gender queer person told Amnesty International. Another young person said *“Above all, the sterilization requirement is the most heinous. I do not want to be forced to decide at the age of 24 whether I want to have biological children”*.

The sterilization requirement implies that trans people may have to undergo medical treatments against their wishes and with the sole purpose of obtaining gender legal recognition. K.I. shared with Amnesty International how he felt coerced to undergo hormonal treatments in order to obtain gender legal recognition:

“My body image....I think it fits even without hormonal treatment but hormones are compulsory for me if I wish to have my male gender recognised. The legal gender is crucial in your everyday life, it is marked on your travel card, you need it when you see your doctor, when you apply for education. The thought of my identity number outing me in front of other people is distressing”.²²

Requiring individuals to undergo medical treatment in order to access legal gender change results in the violation of several human rights of trans individuals including the right to the highest attainable standard of health (International Covenant on Economic, Social and Cultural Rights [ICESCR], Article 12) and the right to be free from inhuman and degrading treatment (ICCPR, Article 7; ECHR, Article 3). As recommended by the Council of Europe Commissioner for Human Rights, individuals should not undergo forced medical treatments in order to access recognition before the law.²³

²¹ The infertility requirement is in practice achieved via hormone treatment. If a person cannot be given hormone treatment, for instance because of specific health problems, the infertility requirement is achieved by surgery.

²² Interview with K.I., 18 July 2013

²³ Strasbourg, 29 July 2009, Human Rights and Gender Identity, Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, recommendation .4. https://wcd.coe.int/ViewDoc.jsp?id=1476365#P101_20803

Also the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatments recently called on all states to “repeal any law allowing intrusive and irreversible treatments, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, ‘reparative therapies’ or ‘conversion therapies’, when enforced or administered without the free and informed consent of the person concerned”. He also calls upon states to outlaw forced or coerced sterilisation in all circumstances and provide special protection to individuals belonging to marginalised groups.²⁴

In light of this, Amnesty International calls on the Trans Act working group to remove any medical evidence for the purpose of obtaining gender legal recognition. Amnesty International urges Finland to develop quick, accessible and transparent legal gender recognition procedures on the basis of the individual’s self-declaration. Such procedure should not require trans people to obtain a psychiatric diagnosis, undergo specific health care treatments or being infertile.

3.2. AGE REQUIREMENT

The Trans Act excludes trans minors from the possibility to obtain gender legal recognition. Amnesty International is concerned that such age requirement has negative consequences on their enjoyment of their human rights.

Existing research highlights high levels of discrimination, harassment and violence experienced by young trans individuals. A recent study on the wellbeing of young LGBTI people in Finland²⁵ shows that many young trans individuals face discrimination and harassment in school and other areas of life. Eighty per cent of the trans individuals interviewed had faced harassment; generally, trans pupils are more likely to experience violence than their cisgender peers.²⁶

²⁴ See A/HRC/22/53 para. 88

²⁵ Katarina Alanko/Seta and the Finnish Youth Research (2013): How are young LGBTI people doing in Finland? Network (2013) Summary in English <http://www.nuorisotutkimusseura.fi/how-are-young-lgbtig-people-doing-in-finland-abstract> (accessed 15 November 2013)

²⁶ Forty eight per cent of the trans pupils interviewed experienced physical violence (compared to 40 per cent of the cisgender pupils interviewed), 79 per cent psychological

Although it is certainly encouraging that both Helsinki and Tampere Trans Units have specified teams for the treatment of trans minors²⁷, Amnesty International is concerned that lack of gender recognition may expose trans minors to further discrimination. For example, children who have already transitioned to their preferred gender will be denied legal recognition, resulting in the violation of their right to privacy whenever they have to produce documents that do not match their actual gender.²⁸

The UN Convention on the Rights of the Child (CRC), to which Finland is a state party, requires states to respect the right of children to be heard and to duly take into account their views. A key requirement of the CRC is that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.²⁹

The UN Committee on the Rights of the Child has highlighted that the identity of the child includes also characteristics such as sexual orientation and gender identity and that “[t]he right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests”.³⁰

Intimately linked to this is the right of children to express their views freely and to have those views taken into account in matters affecting them.³¹ As the Committee on the Rights of the Child has noted, “assessment of a child’s best interests must include respect for the

violence (compared to 67 per cent of cisgender pupils) and 21 per cent sexual violence (compared to 14 per cent of cisgender pupils). Sixty seven per cent of the trans pupils who experienced violence perceived it as motivated by their gender identity or expression.

²⁷ The Tampere team was established in 2010 and the Helsinki team in 2011. The National Advisory Board on Social Welfare and Health Care Ethics (ETENE) issued a statement supporting access to health treatments for young trans individuals in 2011 (only in Finnish: http://www.etene.fi/c/document_library/get_file?folderId=72662&name=DLFE-2320.pdf). (accessed 15 November 2013)

²⁸ See “None of the above – Young Trans and People’s Vision for 2020” <http://www.seta.fi/ti-youth-vision2020> (accessed 15 November 2013)

²⁹ Convention on the Rights of the Child, Article 3.1.

³⁰ Committee on the Rights of the Child, General Comment 14: The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 55

³¹ Convention on the Rights of the Child, Article 12.1

child's right to express his or her views freely and due weight given to said views in all matters affecting the child".³²

The right of children to express their own views regarding what is in their best interests is especially important regarding older children, in light of their evolving capacities. As the Committee on the Rights of the Child has emphasized, "[t]he child's views must be given due weight, whenever the child is capable of forming her or his own views. In other words, as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them".³³

In light of this, Amnesty International calls on the Trans Act working group to remove the current blanket age restriction from the Trans Act. Instead, the right to legal recognition of a child's preferred gender should be assessed on an individual basis, taking into account the children's views regarding their own best interests, in light of their evolving capacities.

3.3 SINGLE STATUS REQUIREMENT

According to the Trans Act, those who are married or in a civil partnership cannot obtain gender legal recognition. In practice, the single status requirement is not implemented if the partner or the spouse of the trans person seeking gender legal recognition gives his/her consent to convert their civil partnership into a marriage or vice-versa.³⁴

This requirement results in trans people being discriminated against on grounds of their gender identity in the enjoyment of their rights to marry and to found a family and to respect for private and family life.

The right to marry and to found a family is protected by several

³² Committee on the Rights of the Child, General Comment 14, para. 43

³³ Committee on the Rights of the Child, General Comment 12, para. 85.

³⁴ Under Finnish law only different sex partners can marry (Section 1.1, Marriage Act, 234/1929) while civil partnerships are exclusively accessible by same sex partners (Section 1, Act of Civil Partnerships, 950/2001).

instruments including the International Covenant on Civil and Political Rights (ICCPR, Article 23) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Article 12). The right to respect for private and family life is protected by the ICCPR (Article 17) and the ECHR (Article 8). The European Court of Human Rights has clarified that the notion of private and family life equally applies to same-sex couples, irrespective of the legal regime applicable to them under domestic jurisdictions.³⁵

Moreover, the single status requirement does not meet the standards on gender legal recognition as laid out by the Yogyakarta Principles according to which “[n]o status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity”.³⁶

Because of the requirement of single status, people seeking recognition of their gender will face an invidious choice between either giving up the legal protection acquired by their couple – whether in the form of marriage or civil partnership – which entails a violation of their right to private and family life, as well as the right to private and family life of their partners and children, or foregoing the legal recognition of their preferred gender, which results in a violation of their right to privacy and to be equal before the law.³⁷

Heli, a 49-year old trans woman, shared with Amnesty International

³⁵ For example the Court found in the case *Schalk and Kopf v Austria* that the reference to “men and women” in the ECHR no longer means that “the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex”. The court also stated that “it is artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy ‘family life’ for the purposes of Article 8”. See *Schalk and Kopf v Austria*, Application no. 30141/04, para. 94.

³⁶ Yogyakarta Principles. The application of international human rights law to sexual orientation and gender identity. Principle 3(d): the right to equal recognition before the law, see http://www.yogyakartaprinciples.org/principles_en.htm. The Yogyakarta Principles were developed and adopted by a distinguished group of human rights experts in 2007 to outline the application of issues of sexual orientation and gender identity to the broad range of international human rights standards.

³⁷ The rights of spouses and civil partners differ in particular with regard to parenthood. While in marriage the presumption of parenthood applies, in civil partnership the partner of the biological parent can become the legal parent of the child only through second-parent adoption. Contrary to spouses civil partners are not allowed to adopt children as a couple and may experience more barriers in accessing fertility treatments.

her experience. In 2006 she was diagnosed with “transsexualism” by the Helsinki Trans Unit, a diagnosis confirmed by the Tampere Trans Unit. She has undergone all the necessary phases to obtain gender legal recognition. However, she can not change her legal gender because she is married and she does not want to convert her marriage into a civil partnership as this would be contrary to her religious beliefs and a violation of their right to private and family life. *“I would be satisfied to have, in addition of my name, a passport with gender markers that reflect my gender. I currently do not fulfill the expectations created by my passport, for instance at airport security checks. I only wish my identity number did not out me. In my view this number should correspond to my female name. Gendered identity-numbers lead to many unpleasant situations. For example once a ticket inspector claimed I was travelling with someone else’s ticket or that I had taken my spouse’s ticket by mistake [as the ticket showed the gendered identity number]”*.

Heli considered the single status requirement to be the most problematic one in the gender legal recognition process. She told Amnesty International: *“I think that the biggest issue is them requiring changes in my personal life, in things that has to do with my privacy. Requiring annulment of marriage is one example. I am surprised they don’t require ban on owning land. That would make as little sense [as the single status requirement]. The justification is that otherwise morals, everyone else’s rights and everything else would collapse. However, I did not change, I was not reborn as a woman and I am not remarrying my spouse. We have been married since 1996 and in that marriage a child was born. If I can live with this, the society should be able to, too. It is not a question of lying to anyone. ... I wonder what is the protection the society needs in these situations”*.³⁸

³⁸ Interview with Heli Hämäläinen, 12 June 2013. She brought her case before the European Court of Human Rights in 2009. (application 37359/09). On 13 November 2012, the Court found no violation of article 8 in conjunction with article 14. See [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114486#{%22itemid%22:\[%22001-114486%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114486#{%22itemid%22:[%22001-114486%22]}) (accessed 8 November 2013). The case was referred to the Grand Chamber of the European Court of Human Rights in April 2013 on the request of the applicant and on the basis of article 43 of the ECHR. The Grand Chamber held a hearing on 16 October 2013. Amnesty International submitted a third-party intervention to the case invoking the right to privacy. The Court is expected to decide on the

The current prohibition on marriages between same-sex individuals in Finland cannot justify restricting the family and marriage rights of trans people. Amnesty International believes that such a difference of treatment is discriminatory as states should ensure the enjoyment of all human rights, including the right to marry and to found of family, without any discrimination, including on grounds of sexual orientation and gender identity. A discriminatory aim can never justify restricting a human right.

As the Commissioner for Human Rights of the Council of Europe has noted, courts in some states³⁹ which do not recognize marriage between same-sex partners have nonetheless decided in favor of allowing marriages to continue when one partner has changed gender. Such rulings, the Commissioner notes, recognize that “protecting all individuals without exception from state-forced divorce has to be considered of higher importance than the very few instances in which this leads to same-sex marriages. This approach is to be welcomed as it ends forced divorce for married couples in which one of the partners is trans”.⁴⁰ The CoE Commissioner has also specifically recommended Finland to abolish the single status requirement as a prerequisite for legal gender recognition.⁴¹

The single status requirement does not enable a “quick, transparent and accessible” procedure with regard to gender legal recognition, as recommended by the Council of Europe Committee of Ministers. It is also at odds with the Yogyakarta Principles as it entails burdensome process for those trans individuals who are either married or in a civil partnership and who wish to obtain legal recognition of their gender.⁴²

issue in 2014.

³⁹ German and Austrian Constitutional Courts.

⁴⁰ CommDH/IssuePaper(2009)2, Human Rights and Gender Identity, para. 3.2.2.

⁴¹ CommDH (2012), Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Finland, from 11 to 13 June 2012.

⁴² 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. Recommendation 21 reads: “Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.” Ministry of Education and Culture together with the

In light of this, Amnesty International calls on the Trans Act working group to abolish the single status requirement from the Trans Act and ensure that married trans people do not have to turn their marriage into a civil partnership before being eligible for gender legal recognition.

3.4. OTHER CONCERNS: RESPECT THE RIGHT TO PRIVACY

Amnesty International calls on the Trans Act working group to ensure the privacy of individuals in all aspects of the application procedure and after a gender recognition certificate has been issued.

According to the current practice, the previous personal identity code of trans people who have obtained gender legal recognition remains visible in the civic register along with a note with regard to the legal recognition.⁴³ The information in the register can be classified as confidential upon a request based on a threat to the individual's safety. Although the information on gender reassignment is generally kept confidential even in instances where such request has not been made,⁴⁴ it is uncertain who may have access to it.⁴⁵

CONCLUSIONS

Finland is a champion of equality on the basis of sexual orientation and gender identity in its foreign policy and at the United Nations. It is incompatible with this approach for its domestic laws to fail to fully realize equality in its gender recognition law. Amnesty International encourages Finland to be to the fore in advancing legislation that fully meets human rights standards. Amnesty International will submit

Ombudsman for Equality gave out a recommendation in August 2013 that calls for all educational institutes to provide trans people with certificates and diplomas corresponding to the new name and personal details upon request. The recommendation states that new certificates should be given already after name change, and not only after the new legal gender has been registered. Recommendation (in Finnish): <http://www.tasa-arvo.fi/nyt/tiedotteet/tiedote/-/view/1862791> (accessed 15 November 2013)

⁴³ Act on Civic Register, Section 13

⁴⁴ Personal Data Act 11§, Act on Civic Register 40§

⁴⁵ Ombudsman for Equality. Research on the Situation of Gender Minorities in Finland, 2012, p19.

substantive observations on the new bill when it is published, and looks forward to engaging with the Trans Act Working Group in the course of its advancing the new legislation.

APPENDIX: AMNESTY INTERNATIONAL'S POSITION ON GENDER LEGAL RECOGNITION

Amnesty International calls on all states, including Finland, to prevent and end violations of the human rights of trans people, in accordance with their obligations under international human rights law, including by enacting legislation that meets the following standards.

Ensure the right of trans individuals to recognition before the law:

- Abolish any requirements of sterilisation in relation to legal name or gender marker change.
- Abolish any medical requirements in relation to legal gender recognition, such as sterilisation, hormone treatment, genital surgery, or mental disorder diagnosis.
- Abolish all requirements of change of marital status in relation to legal gender recognition.
- Allow individuals to change their legal name and gender markers on all official documents issued by the state and ensure that individuals are able to change their name and gender markers on official documents provided by other institutions, such as certificates of education, and employment-related documents.
- Develop quick, accessible and transparent legal gender recognition procedures on the basis of the individual's self-declaration.
- Abolish all requirements to give up custody rights in relation to legal gender recognition.
- Abolish any inclusion of third parties in gender marker changes of adults, such as parents or spouses.
- Allow gender legal recognition for adolescents and children in a way that takes account of their freely expressed views regarding their own best interests, in light of their evolving capacities.

Ensure the right to privacy for trans individuals:

- Ensure that the process of gender legal recognition respects their right to privacy.
- Ensure that access to previous name and gender entries is limited.

Ensure the rights of trans individuals to found a family:

- Remove requirements for trans individuals who are married or in a civil/domestic partnership to change their marital statuses a prerequisite for name or gender marker changes.
- Remove requirements for trans individuals to undergo sterilisation as a prerequisite for gender legal recognition.
- Ensure that an individual's gender identity does not affect their assessment as a suitable adoptive parent or their custody rights.
- Ensure that a trans individual's gender identity/and or gender identity does not prevent them from accessing assisted reproductive technology, where needed.

Ensure the rights of trans individuals to appropriate healthcare and medical treatment:

- Support the removal of the classification of gender identities as mental disorders in the DSM and ICD and reclassifying only those relevant aspects of trans-related health care in a non-stigmatizing manner to facilitate access to health care.
- Ensure that trans individuals have access to gender reassignment treatment if they wish to undergo such treatment, without undue bureaucratic, financial, medical, social or political interference or delays.
- Protect trans individuals from forced medical treatment and unwanted psychiatric monitoring.
- Remove requirements for gender reassignment medical treatment as a prerequisite for legal gender recognition.
- Ensure that sterilisation, genital surgery and/or hormone treatment is not enforced by the health system as a condition for gender legal recognition.

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