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Recommendations for improving the position of trans* people in B&H – concrete guidelines

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SUMMARY

or

WHAT THE STATE NEEDS TO DO IN ORDER TO IMPROVE THE POSITION OF TRANS* PEOPLE IN BiH

This report presents basic ideas and goals related to sex reassignment and highlights basic aspects of sex reassignment as well as basic standards in sex reassignment procedure. It also presents common objections against facilitating access to gender recognition for trans* people and provides concrete recommendations for improving the position of trans* people in BiH. It also features recommendations for further reading of literature that deals with similar issues, as well as a glossary of used terms related to issues of transgender and transsexuality.

Here we highlight some basic measures the state needs to undertake in order to improve the legal and social position of trans* people in the Bosnian-Herzegovinian society.

1. Amend current laws and provisions regulating the issue of changing identification documents, of providing legal protection to trans* people in cases of hate motivated crimes, the issues of marriage, parenthood and hate speech.
2. Ensure, through the aforementioned provisions and through education of civil servants, a quick, transparent, easily accessible and non-degrading procedure of changing identifications documents.
3. Improve the level of education by organizing trainings for the police and border police in order to prevent the mistreatment of people whose appearance does not conform to the expected gender norms of the sex marked in identification documents.
4. Pass a comprehensive law regulating the complete medical sex reassignment procedure and health care according to the Committee of Ministers of the Council of Europe Recommendations; implement the current Law on the Prohibition of Discrimination and provide a clear and efficient mechanism of protection against discrimination on the grounds of sex and gender identity in all areas regulated by law.

1. INTRODUCTION

The human rights of trans* people¹ are still violated in many spheres of life. Regardless of significant progress in this field, we still cannot speak of equality between trans* people and other members of the society even in the European Union (bar a few notable exceptions). Trans* people often suffer discrimination and violations of basic human rights, such as the right to privacy, human dignity, bodily integrity, a life without violence, the choice of and the right to medical protection, the right to a fair trial, the right to enter into marriage etc. These violations occur in everyday life situations such as renting an apartment, seeking employment, using health services, boarding planes, crossing borders, submitting identification documents for inspection, and are evident in the inability of trans* people to protect their rights through law, enter into marriage, as well as in their having to suffer obligatory sterilization, medical procedures, psychological diagnosis and various forms of stigmatization. A lot of positive change and progress has occurred in Europe and the rest of the world and many legal solutions regulating certain areas in a very efficient manner so as to protect and uphold the rights of trans* people have been passed. Still, no country has managed to completely eradicate discrimination or eliminate the unequal treatment of trans* people.

One of the most problematic legal issues in the life of a trans* person is changing the gender marker and other official information in identification documents, as well as the gender recognition procedure itself. In Europe, regulating these issues has taken on different forms, with varying effects and varying degrees of human rights protection. Forced sterilization, obligatory surgeries and expert medical opinions, medical procedures conditioning full legal recognition, the impossibility of complaining to unfavorable verdicts, prohibition and annulment of marriage for trans* people and other similar problems exist in most European countries, including the countries of the EU. To tackle these problems, the Committee of Ministers of the Council of Europe has set new standards in order to improve the position of trans* people. These standards *should* be binding for all member countries of the Council of Europe. The emphasis is on *should* since in most European countries the practice very much differs from what is stipulated in the Recommendations. Still, the set standards are a progressive way of regulating the position of trans* people (among other societal groups) and should in the very least be something all European countries strive to. The example of the Argentinian Gender Identity Law and some legal solutions in European countries such as in the United Kingdom and Portugal prove that the implementation of such standards is possible and that it efficiently solves many problems faced by trans* people.

As far as Bosnia and Herzegovina is concerned, the position and protection of trans* people is amongst the worst in Europe. The lack of legal regulation and protection is apparent even in comparison to other countries in the region. In all spheres relevant to the rights of trans* people, Bosnia and Herzegovina has in no way managed to regulate the aforementioned problems, or has done so only partially.

¹ Trans* is a comprehensive term for all persons whose identities overstep gender or sex boundaries in any way. The term includes transgender and transsexual persons.

Generally speaking, there is no comprehensive law, or any other legal provision on any level of government regarding these issues, no official medical procedure or a clearly defined procedure for changing identification documents, meaning to say that the state and public institutions are practically ignoring the needs of trans* people. This results in all of the aforementioned human rights violations. Achieving the level outlined in the aforementioned Recommendations will be very hard for Bosnia and Herzegovina (even though this should be the ultimate goal, considering the situation and the lack of even the basic legal provisions that would regulate the position of trans* people) and requires long-term and dedicated work on issues which have previously never been discussed.

2. RECOMMENDATIONS FOR IMPROVING THE POSITION OF TRANS* PEOPLE IN BiH

It is difficult to speak of improving sex reassignment procedures in Bosnia and Herzegovina since trans* people have been completely ignored by the state and its organs. There is not a single legal provision determining clear requirements and stipulations a person needs to meet in order to change their sex. Except for the prohibition of discrimination on the basis of gender identity, expression and sexual orientation in the Law on the Prohibition of Discrimination and legal protection provided by the Criminal Code of Republika Srpska², transgender is almost an invisible term in Bosnia and Herzegovina. We do not find mentions of trans* people in neither primary nor subordinate legislation regulating the issues of health insurance, marriage, family, protection under the criminal code, and many other legal areas.

The very procedure of sex reassignment through medical therapy and surgery is not possible in Bosnia and Herzegovina. People who want to undergo sex reassignment surgery travel to other countries, most frequently Slovenia and Serbia, in order to go through the necessary medical treatment. Sex reassignment procedure is not possible in medical institutions in BiH, and is therefore not covered by health insurance.

The process of changing one's identification documents and gender markers in public registers is another substantial obstacle for trans* people in Bosnia and Herzegovina. There are no clearly defined requirements a person has to meet, the procedure is not clearly outlined and contains numerous bureaucratic deficiencies.³

The changes necessary for the improvement of the position of trans* people are primarily related to the adoption of clear, unambiguous legal provisions regulating sex reassignment procedure and the procedure of changing identification documents, followed by amendments to the criminal code and the adoption of provisions ensuring the protection of trans* people in cases of prejudice-motivated crime. Finally, it is necessary to enable trans* people to enjoy equal rights when it comes to entering into marriage with people whose sex is opposite from the desired sex, as well as remaining married to their spouses after they have completed sex reassignment surgery.

² Hate crime can also be motivated by gender identity.

³ According to unofficial data, three persons in Sarajevo Canton completed the procedure for legal gender recognition procedure in 2013.

The effort to improve the position of trans* people should focus primarily on passing new legislation and amending the existing one in order to systematically and unambiguously regulate all areas and aspects of life relevant for trans* people, as well as to eliminate the systematic violations of their human rights.

2.1. Amending and adopting legal provisions regulating the changing of identification documents

It is necessary to pass laws or by-laws that will ensure the procedure of changing identification documents and gender markers in registers is quick, transparent and easily accessible in the way that has already been outlined earlier in the text. The requirements a person has to meet must be clear and non-discriminatory, must respect the person's human rights, be free of unnecessary bureaucracy and reduce the waiting period as much as possible. As has already been mentioned, it is important that the time period between applying for and the issuing of documents is as short as possible due to the fact that the possibility of discrimination against trans* people is most acute during this time. Changing identification documents must not be conditioned by any sort of medical procedure (such as sterilization or hormonal therapy). The existing laws on registers either allow gender marker changes but without offering a clearly defined procedure, or do not allow any change at all (the case of Brčko District) and as such are in no way adequate solutions

2.2. Protection of trans* people under the criminal code

It is necessary to change the Criminal Code of FBiH and introduce provisions to the hate crime law that would include gender identity as one of the prohibited grounds for discrimination

2.3. Passing legal provisions that regulate the issue of the medical sex reassignment procedure

The sex reassignment procedure must be available in public medical institutions in Bosnia and Herzegovina and it is therefore necessary to make provisions that will regulate this process. Due to the complexity of the subject, passing a particular law seems to be the best solution. This law should regulate both the procedure itself (surgeries, hormonal therapies, opinions of medical experts) and the issues related to health protection and covering the costs of the procedure. The law must not contain degrading requests such as diagnosing the trans* person with a mental disorder.

2.4. Changing legal provisions regulating the issue of marriage and the position of trans* people following gender reassignment

This issue is important both for the rights of trans* people and the rights of other family members, primarily children and their well-being but also the trans* person's spouse. Since the existing family laws of the entities and Brčko District stipulate that marriage between two people is null if they are not of opposite sexes, amendments should be passed to eliminate this requirement and enable same sex partners to enter into marriage or at least a civil partnership. Enabling trans* people to remain married after undergoing sex reassignment should not be interpreted as enabling same sex marriage in itself.

In addition to creating the necessary legal framework guaranteeing that the human rights of trans* people are upheld and protected, it is of crucial importance to create a clear strategy for the organs of state to efficiently implement relevant legal norms, a strategy that would include methods of raising awareness and providing adequate information on trans* people to the citizens, as well as methods of educating civil servants and employees in public institutions. The importance of this stems from the fact that the society is not familiar with the position and characteristics of trans* people, but also from the risk that many legal norms will not be implemented due to ignorance and lack of informedness in public institutions.

As a conclusion, it might be useful to look at some of the solutions brought to the table in Serbia, specifically the proposed *Law on Acknowledging Legal Consequences of Sex Change and Confirmation of Transsexualism* and the recently adopted *Ordinance on the Manner of Collecting Medical Documentation and Determining the Terms and Prerequisites for Sex Reassignment or Life in Another Gender Identity* in Croatia. These laws contain most of the ideas mentioned in this texts, i.e. are in accordance with the Committee of Ministers of the Council of Europe Recommendations, but also the requests of activist groups that advocate equal rights for trans* people, and their language presents an added convenience. They also serve as an example of how some of the discussed ideas and suggestions can be efficiently conveyed into laws and by-laws.

The Ordinance on the Manner of Collecting Medical Documentation and Determining the Terms and Prerequisites for Sex Reassignment or Life in Another Gender Identity in Croatia regulates the issue of collecting medical documentation and determining the terms and prerequisites for sex reassignment and life in another gender identity and was drafted under the guiding principles of humane treatment and the protection of patient's rights, the protection of a child's welfare and rights, the principle of prohibiting discrimination and protecting the confidentiality of personal information.

Some of the positive examples present in this law include determining a deadline of 30 to 60 days for providing a medical opinion (Article 9, page 5), not conditioning the change of identification documents by any sort of medical procedure (Article 2, page 2), clearly stating what documents are necessary (Article 4) and stipulating the formation of a list of medical experts specialized in trans* issues who will provide the necessary medical opinion (Article 5, page 1).

The Law on Acknowledging Legal Consequences of Sex Change and Confirmation of Transsexualism in Serbia regulates the procedure of acknowledging the legal consequences of sex reassignment and confirmation of transsexualism. The law encompasses several areas. It prohibits discrimination on the grounds of gender identity and sex reassignment by clearly prohibiting discriminatory behavior from civil servants and members of the medical staff. Some of the positive solutions include determining a short time period of 8 days for issuing a decision on the change of identification documents (Article 4, page 5), a decision on privacy and sex reassignment data protection (Article 8), a decision regulating marital relationships (Article 9), and a decision ensuring unobstructed enjoyment of parental rights and obligations after sex reassignment (Article 10).

ABOUT AUTHOR

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