

Single NGO Submission
– UPR on FEDERAL REPUBLIC OF GERMANY –
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Submitted by: Bundesvereinigung Trans* e.V. – BVT* e.V.

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Bundesvereinigung Trans* e. V. represents: seventeen German trans* organisations and groups at the regional, national, and federal level, founded to enforce the trans* emancipatory demands of its Waldschlösschen Declaration (2014). Its aspiration is the commitment to gender diversity and human rights – in the sense of respect for and recognition of equality, and social participation as well as healthcare – for trans* people and persons not listed in the binary gender system.

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Bundesvereinigung Trans* e. V. – representing seventeen German trans* organisations and groups, founded August 2015 – submits the single report to the Office of the High Commissioner for Human Rights on the situation of human rights in the FEDERAL REPUBLIC of GERMANY to be considered for the UPR in May 2018.

Studies quoted in the text are referenced in full at the end of the text; selected acronyms are also identified here, along with a glossary of important terms.

Volume of Part I and II: 1673 words.

I. Promotion and Protection of Human Rights on the Ground

I.1. General Remarks

1. Germany is a state party to the following UN human rights conventions: ICCPR (1976) plus OP-1 (1993) and OP-2 (1992); ICESCR (1976); ICERD (1969); CEDAW (1985) plus OP-CEDAW (2002); CAT (1990) plus OP-CAT (signed 2006); CRC (1992) plus OP-CRC-AC (2005) and OP-CRC-SC (signed 2000); Convention on the Rights of Persons with Disabilities (signed 2007); International Convention for the Protection of All Persons from Enforced Disappearance (signed 2007) as well as to the Convention Relating to the Status of Refugees (1951) plus OP (1967). Germany has been a member of the UN Human Rights Council since its inception and is subject to the highest human rights standards.

I.2. Implementation of International Human Rights Obligations

2. Germany committed itself to the Committee of Ministers of the Council of Europe's Recommendations on Measures to Combat Discrimination on Grounds of Sexual Orientation and Gender Identity (2010), to the Parliamentary Assembly of the Council of Europe's Resolution 2048: Discrimination Against Trans-Gender People in Europe (2015), and to the Human Rights Council's Resolution to Protect Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (2016).

3. In 2011 the CESCR (E/C.12/DEU/CO/5) urged Germany to step up protective measures on the identity and health of transsexual and intersex persons, with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected. Unfortunately, no major changes have been undertaken by the German government to change those policies which lead to discrimination and violation of the health rights of those individuals.

4. The CEDAW (2013) requested that Germany enter a dialogue with non-governmental organizations of intersex and transsexual people to better understand their claims and to take effective action to protect their human rights. So far, the dialogue with trans* organizations has not yet reached a sufficient level. Apart from three invitations for expert exchanges of the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, to report on problems with trans* healthcare, trans* counseling, and the urgent need to legalize reform of the Transsexual Law (TSG),

there has not yet been a parliamentary or other ministerial engagement of the issues at hand.

5. We acknowledge that the German government established the Interministerial Working Group on Transgender and Intersex People, spearheaded by the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth and including the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Health, and from 2017 the Federal Ministry of Defense. Although a collaborative working group report at the end is common, the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth singlehandedly published the final position paper (2017) that seeks urgent legislative and socio-political action in six areas for trans* people – one of which being the reform of the TSG. As the new government’s coalition negotiations are not yet concluded, it is unknown whether the new government will take these more progressive legislative proposals and put them practice.

6. The CEDAW (/C/DEU/CO/7-8) 2017 recommends that Germany revises the TSG to harmonize it with international standards on non-discrimination. The CEDAW country review also recommended to alleviate and simplify the conditions under which gender reassignment treatment can be obtained and ensure that health insurance companies reimburse the costs for such interventions without unreasonable barriers. The CEDAW committee calls upon Germany to strengthen efforts to eliminate discrimination against transgender persons, including through awareness-raising campaigns, and appropriate training for police personnel and the judiciary. So far, there has not yet been a governmental response, making it unknown whether – and if so, how – the newly elected government will follow its recommendations.

I.2.1. Discrimination & Gender

7. Since 1982, the Federal Constitutional Court has suspended provisions of the TSG (1981) in eight judgments, which have been contrary to human rights. The last instance was on January 11, 2011 (BVerfG 1 BvR 3295/07), which has implied the immediate imposition of the requirement that sterilization and medical measures be carried out in order to proceed with legal gender recognition. Currently three more lawsuits are underway. Despite lobbying and public action by trans* organizations right from the start of the enforcement of the law, the German government has not reformed the TSG. Related urgent law reform needs are the abolition of two mandatory ‘expert opinions’ on the ‘transsexual status’, the feeling of belonging to the ‘other sex’ for at least three years, and the permanence of the decision as well as the status of a court ruling. This lengthy and

costly process (on average EUR 1,800, to be financed by the trans* applicant) infringes on the self-determination and personality rights of trans* people.

8. Although not explicitly required by the TSG, long-established common practice for the courts is that trans* people are subjected to the full set of psychiatric diagnostic criteria of the ICD-10 (including the so-called “real-life-test”) by two independent ‘experts’. After the constitutional court ruling – which ruled all medical requirements, such as hormone therapy or sex reassignment surgery, unconstitutional – there is no longer a need to pathologise trans* people under the TSG, which only regulates the legal change of name and sex. 63% of transgender respondents in a German study felt that the mental health diagnosis ‘gender identity disorder’ required for gender recognition is a source of significant distress for them, which makes it an obstacle to use the law. “Psychiatric requirements within legal gender recognition proceedings [...] impact [trans* people’s] lives and violate their human rights: The right to private life (Article 8 of the European Convention on Human Rights ECHR) is infringed through forced medical treatment, through pathologisation and resultant stigmatisation, dependence and heteronomy; the right to non-discrimination (Article 14 ECHR), and possibly, the prohibition of torture and inhuman and degrading treatment or punishment (Article 3 ECHR).” It is known that on occasion, those psychiatric sessions took as long as eight to twelve hours and that physical exams were required. Currently, the lengthy and heteronomous court process is endangering the health of trans* people (in several instances developing depression or suicidal tendencies) and is rendering them vulnerable to blatant discrimination (i.e. – in the labour market).

9. Non-binary or gender-nonconforming identities are not included in a ‘transsexuality’ diagnosis that is based on a gender-binary narrative. According to the LGBT Survey by the Fundamental Rights Agency (2012), 73% of transgender respondents did not identify within the gender binary; however, these identities would still seek gender-accurate representation, including on important official documents. Those with a non-binary identity often only have the choice to either lie about their (non-binary) gender identity in order to fulfill diagnostic criteria, real-life tests, and other requirements, or to be excluded from legal gender recognition altogether, despite the fact that Germany acknowledges intersex people under its civil status law (§ 22(3) Personenstandsgesetz) since 2013.

10. Minors, detainees, refugees and migrants, and persons with disabilities self-identifying as trans* or non-binary face considerable discrimination, as they depend on guardianship to get necessary legal recognition and medical treatments for themselves.

II. Challenges and Recommendations

11. As stated in this report, the German government must, in an institutional capacity, reform the TSG legislation (1981), in order to establish a “quick, transparent and accessible” (CoE) process of legal gender recognition “based on self-determination” (PACE), which includes minors, detainees, refugees, migrants, and persons with disabilities.

12. The German government needs, in an institutional capacity, to work on long-term legal regulation of healthcare and its cost for all people with gender-nonconforming identities, including minors, detainees, refugees, migrants, and persons with disabilities, beyond simple depathologization. The German government should establish within the Ministry of Health a department knowledgeable about and responsible for trans* issues, where there is currently none. This department would facilitate dialogue between medical professions, healthcare insurance agencies, and trans* people to finally achieve adequate trans* healthcare in line with human rights standards and free of discrimination (including non-binary healthcare), starting with the implementation of the new standards of care (expected for the end of 2017/beginning of 2018). It should further support the WHO process of revising the ICD and abolishing the psycho-pathologisation of trans* in its ICD-11 draft, all of which should be done in close dialogue with trans* organizations. Finally, a legal right to coverage of all necessary trans*-specific healthcare by public and private health insurances should be elevated into social law, such as its inclusion in the performance catalogues of healthcare providers.

13. The German government should set up that a national strategy on gender identity and expression issues be formed, including establishing a specialist department for trans* and non-binary services. The latter would include a consultation and law unit to assist with the overall reform of the TSG and the establishment and expansion of a broad-based, medical-psychological interdisciplinary care structure. The strategy should further address all demands posed by the Transgender Resolution of the Council of Europe (2015), including but not limited to addressing trans* people in a national suicide prevention strategy, non-discrimination on the labour market, equal opportunities, and equal access to goods and services.

14. The German government should take more targeted action against discrimination of gender-nonconforming identities. The existing Non-Discrimination Act is far from meeting the needs of trans* people (and others) and also needs revision. The Federal Anti-Discrimination Office (ADS Bund) should work comprehensively on both federal and state levels in close contact with trans* organizations. Gender-differentiated research and gender- and nonconforming-sensitive evaluation of studies should be encouraged on matters such as gender equality, levels of full- and part-time employment, income levels by sector and gender, race discrimination, ethnic origin, age, religion and beliefs, disabilities, and sexual identity and orientation.

15. The government should also seek better protection for children and adolescents, who need clearly-regulated protection from discrimination but also encouragement and support so that they can develop in their own living space in their self-defined social gender. It is therefore important that a gender recognition law enables access for persons under guardianship to the procedure with their best interest in mind.

Attachment

Glossary

gender non-conforming	People whose behavior or gender expression does not comply with the norms of the gender they have been assigned.
non-binary	People who do not identify as (exclusively) man or woman.
trans*, transgender	People who do not (only) identify with the gender they were assigned at birth. Used in this report as an umbrella term; in the context of self-definition many other terms are used.

References

Amelung, Till (2017), Trans*Gesundheitsversorgung: Forderungen and die medizinischen Instanzen und an die Politik, Bundesverband Trans*(Hrsg.)

Adamietz, Laura; Bager, Katharina (2016) Gutachten: Regelungs-und Reformbedarf für transgeschlechtliche Menschen, Bundesministeriums für Familie, Senioren, Frauen und Jugend <https://www.bmfsfj.de/blob/114064/25635a05dd8e4ad7d652602c595c7cd3/regelungs--und-reformbedarf-fuer-transgeschlechtliche-menschen---band-7-data.pdf>

Bundesministeriums für Familie, Senioren, Frauen und Jugend, Schlussfolgerungen des aus der Arbeit der Interministeriellen Arbeitsgruppe Trans- und Intersexualität (2017) <https://www.bmfsfj.de/blob/119686/619f9892b9f7d198c205dbdc82bcad56/positionspapier-schutz-erkennung-inter-trans-data.pdf>

Degner, Anne; Nomanni, Miriam (2016) „Psychiatry in legal gender recognition procedures in Europe” Working Paper, Humboldt Law Clinic for Human Rights

European Union Agency for Fundamental Rights (2012)

European Union Agency for Fundamental Rights (2014), Being Trans in the European Union. Comparative analysis of EU LGBT survey data. http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative-0_en.pdf

[CoE] Committee of Ministers of the Council of Europe Recommendations on Measures to Combat Discrimination on Grounds of Sexual Orientation and Gender Identity – CM/Rec 2010(5), Paragraph 21 <http://tinyurl.com/cp32kfa>

[CEDAW] Convention on the Elimination of All Forms of Discrimination against Women Concluding observations on the combined seventh and eighth periodic reports of Germany* (2017) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1071&Lang=e

Hamm, Jonas (2016), Paradigmenwechsel. Zum Reformbedarf des Rechts in Bezug auf Trans*. Bundesverband Trans*(Hrsg.)

Hamm, Jonas; Sauer, Arn (2014), Perspektivenwechsel: Vorschläge für eine menschenrechts- und bedürfnisorientierte Trans*-Gesundheitsversorgung. Zeitschrift für Sexualforschung; 27; 4–30.

Krell, Claudia; Oldemeier, Kerstin (2015), “Coming Out – und dann?!” Ein DJI-Forschungsprojekt zur Lebenssituation von lesbischen, schwulen, bisexuellen und trans* Jugendlichen und jungen Erwachsenen. Deutsches Jugendinstitut (Hrsg.).
http://www.dji.de/fileadmin/user_upload/bibs2015/DJI_Broschuere_ComingOut.pdf

LesMigras (2012), “...nicht so greifbar und doch real” quantitative und qualitative Studie zu Gewalt und (Mehrfach-)Diskriminierungserfahrungen von lesbischen bisexuellen Frauen und Trans* in Deutschland.
http://www.lesmigras.de/tl_files/lesmigras/kampagne/Studie_Zusammenfassung_LesMigraS.pdf

[PACE] Parliamentary Assembly of the Council of Europe Resolution 2048 (2015), Discrimination against transgender people in Europe.
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>

[TIS] Netzwerk Trans*-Inter*-Sektionalität (2014), Intersektionale Beratung von / zu Trans* und Inter*. Ein Ratgeber zu Transgeschlechtlichkeit, Intergeschlechtlichkeit und Mehrfachdiskriminierung.
http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Literatur_Themenjahr_Geschlecht/Intersektionale%20Beratung.pdf?__blob=publicationFile&v=1

TGEU (2016), Legal Gender Recognition in Europe – Toolkit
<https://tgeu.org/wp-content/uploads/2017/02/Toolkit16LR.pdf>

Trans*Aktiv (2014), Waldschlösschen Erklärung
<http://www.ws.transident.com/downloadarchiv/send/20-waldschloesschen-erklaerung/21-waldschloesschen-erklaerung>

[UN] UN General Assembly (2001), Question of torture and other cruel, inhuman or degrading treatment or punishment, “Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment,” A/56/156, July 3, 2001.
<http://www.un.org/documents/ga/docs/56/a56156.pdf>

[WMA] World Medical Association (2015), Statement on Transgender People.
<http://www.wma.net/en/30publications/10policies/t13/>