

GERMANY UPR SOGIESC RECOMMENDATIONS

DATE AND TIME OF THE REVIEW: 8 MAY 2018, 14:30—18:00

DATE AND TIME OF THE ADOPTION OF THE REPORT: 11 MAY 2018, 15:00—18:00

During the 30th UPR Working Group Sessions, Germany received 8 SOGIESC recommendations. It will provide a response no later than the 39th Session of the Human Rights Council.

A. SOGIESC Information

National Report

54. Various measures have been implemented to eliminate discrimination against lesbian, gay, bisexual, transsexual and intersexual people:

On 1 October 2017 the Act introducing the right of persons of the same sex to marry entered into force. Under this, a marriage may take place between two persons of the same sex.

On 22 July 2017, the Act to criminally rehabilitate persons convicted of performing consensual homosexual acts after May 8, 1945 entered into force. The Act serves to rehabilitate and compensate those affected by Section 175 of the German Criminal Code (Section 151 of the Criminal Code of the GDR).

The National Action Plan against Racism (see 2.3.2.9) was extended to encompass the subjects of homophobia and transphobia.

From the start of 2015 to the end of 2019, within the framework of the federal “Live Democracy!” programme, measures are being promoted that are designed to increase acceptance of same-sex, transsexual and intersexual lifestyles, eliminate prejudice towards these groups and take a stand against discrimination and violence based on gender, sexual identity and sexual orientation. Currently, nine pilot projects and two nation-wide NGOs are receiving funding for structural development in the field of homophobia and transphobia.

Furthermore, the Federal Government supports numerous other projects to reduce discrimination of lesbian, gay, bisexual, transsexual and intersexual people and works for the protection and recognition of sexual diversity.

In September 2014, an interministerial working group on intersexuality and transsexuality was set up. It focused on national and international research, political decisions, societal debate and findings from hearings with experts and organised participative specialist exchanges. The work of the interministerial working group concluded at the end of the 18th legislative term.

Compilation of UN Information

9. While noting the justified concerns of Germany and the action it had taken to combat anti-Semitism, the Committee on the Elimination of Racial Discrimination was concerned that Germany was not adequately addressing other forms of racial discrimination, including institutional racism against Muslims. It was also concerned at the discrimination experienced by women from minority groups and the intersection between discrimination against lesbian, gay, bisexual, transgender and intersex persons and racial discrimination. The Working Group of Experts on People of African Descent was concerned about the human rights situation of people of African descent, whose lives were marked by racism but who were not officially recognized as a group particularly exposed to racism.

Summary of Stakeholder's Information

24. JS1¹ called for the inclusion of sexual orientation and gender identify as grounds for discrimination in the Grundgesetz für die Bundesrepublik Deutschland (Basic Law).

26. BVT² called for a revision of the transsexual legislation in order to make provision for a quick, transparent and accessible process of gender recognition based on self-determination.

33. Recalling its recommendation from 2013, CoE-ECRI stated that it was regrettable that significant shortcomings remained in the recording and following up to racist, xenophobic, homophobic and transphobic incidents. The police continued to use incorrect terminology and an excessively restrictive definition of hate crime for their statistics. AI also noted inadequacies in the recording of data on hate crime.

34. Referring to a relevant supported recommendation, JS4³ stated that crime motivated by the sexual orientation of the victims were either not reported or if reported, were incorrectly classified under "other hate-motivated grounds" by the police. LSVD⁴ stated that the different backgrounds and manifestations of hate crime based on sexual orientation, gender identity and expression and sex characteristics, directed against LGBTIQ* persons were ignored.

35. LSVD stated that Section 46 (2) Sentence 2 of the Criminal Code was amended to ensure that hate motivation would play a greater role in determining penalties and to better inform investigations. While an express reference is made to racist motivation, other forms of hate crime are investigated on the basis of "other hate-motivated grounds". The omission of homophobic- and transphobic-motivated crime from the amended Section 46 (2) Sentence 2 of the Criminal Code was a deliberate, structural exclusion. LSVD stated that a similar problem existed with Section 130 of the Criminal Code, which identifies national, racial or religious groups or groups defined by ethnic origin as potential targets and makes no mention of LGBTIQ* persons and persons with disabilities.

37. LSVD stated that the national action plan against racism was not forwarding looking and sustainable. It marginalized LGBTIQ* persons, failed to offer any specific measures and remained non-committal.

¹ Joint Submission 1 submitted by: German Federal Youth Council and European Youth Forum, Berlin, Germany.

² Bundesvereinigung Trans.

³ Joint Submission 4 submitted by: FORUM MENSCHENRECHTE, Berlin, Germany; in cooperation with: ACAT Deutschland, Brot für die Welt, Bundesverband unbegleiteter minderjährige Flüchtlinge (BUMF), Bundesweite AG der Psychosozialen Zentren für Flüchtlinge und Folteropfer (BAFF), German NGO Network against Trafficking in Human Beings (KOK), Deutsche Kommission Justitia et Pax, Deutscher Frauenrat, FIAN Deutschland e.V., Diakonie Deutschland – Evangelischer Bundesverband, European Center for Constitutional and Human Rights (ECCHR), Gemeinschaft für Menschenrechte im Freistaat Sachsen e.V. (GMS), Germanwatch, Gesellschaft für bedrohte Völker, Humanistische Union (HU), Human Rights Watch Germany, Humboldt Law Clinic: Grund- und Menschenrechte, International Physicians for the Prevention of Nuclear War (IPPNW), German Section, Physicians in Social Responsibility, Refugio Munich, Intersexuelle Menschen e.V., Lesben- und Schwulenverband in Deutschland (LSVD), Kindemthilfe, MISEREOR, Nuremberg Human Rights Centre, Pro Asyl, Reporters without Borders German Section, TERRE DES FEMMES, terre des hommes, Vereinte Evangelische Mission (VEM), Women's International League for Peace and Freedom German Section (WILPF).

⁴ Lesbian and Gay Federation in Germany.

76. BVT stated that Germany should introduce regulation to address the healthcare needs of people with gender-nonconforming identities.

77. OII Germany stated that a lack of knowledge and prejudices of healthcare professionals and the policies of health insurance companies impaired access to general health care for intersex people.

78. OII Germany stated that there was a lack of counselling services available to parents and families of intersex infants, children and adults.

80. OII Germany stated that intersex people were not included in any education curriculum. In addition, sex education did not include their existence or their bodily experience and instead, perpetuated the notion that only two sexes existed.

B. SOGIESC Advanced Questions for Germany

- **Belgium:** Is the Government of Germany considering to amend the Law on Transsexuals by repealing any discriminatory provisions and ensure that a quick, transparent and accessible procedure with respect to the legal gender recognition is in place?
- **Sweden:** What measures is the Federal Government of Germany taking to ensure that the rights of children with gender variations are guaranteed – particularly in cases where their parents decide to apply gender correction?
- **Uruguay:** Uruguay would like to be informed if any measure has been taken to address the situation of transsexual persons in the health care system structure (Ministry of Health) and if any reform has been made to ensure that transsexual persons receive proper treatment in the national health system.

C. Germany's Working Group Session

- **Opening Remarks:** From the international human rights perspective, one of the most challenging and most important topics for Germany is the fight against racism and discrimination in all areas. For instance, when it comes to hostilities towards groups of the population, be it Jews, be it Roma, Muslims, black people or lesbian, gay, bisexual, transgender or intersex persons. This has also been the object of preliminary questions raised by the United Kingdom and Brazil. Racism and inhumane attitudes are not in line with our legal system and our basic values, and they should not be accepted without protest. The German government in the June of 2017 has revised its National Action Plan against Racism, and has expanded it in order to include homophobic and transphobic hostilities, and this new Action Plan is to be seen in the close context with the new strategy of the German government for extremism prevention and democracy promotion of July 2016. For the German government, especially consulting with civil society initiatives and organisations is most important when it comes to developing this National Action Plan, as well as when it comes to implementing this plan.

The German government wants to work for a society that welcomes sexual and gender diversity — that respects it and accepts it. This is highlighted by the fact that, on 30 June 2017, marriage equality was opened up for same-sex partners as well. The German government systematically has been fighting for gender diversity and dealing especially with the specific situation of transgender and intersex persons.

- **Intervention Made After 55 Interventions:** I would like to first of all speak about the rights of LGBTI persons — lesbian, gay, bisexual, transgender or intersex persons. Different delegations — for instance, Greece, Vietnam, Brazil — were addressing this, and we were asked to further ensure the rights for gender diversity. We can only subscribe to this. It is very important to the German government to work towards a society that welcomes sexual and gender diversity, that it accepts it and also supports and promotes it. Let me give you one example. Persons who are insured in the statutory health insurance programmes in Germany are entitled to healthcare when this is needed in order to be able to diagnose a disease, to cure it, to prevent exacerbation, or to alleviate symptoms. On a case-by-case basis, this could also include reimbursement for treatment costs in the field of transsexuality and this would then also be reimbursed by our statutory health insurance funds.

Then there was also a question on provisions of a third gender option from Australia and Canada and another delegation. And let me just point out that after the Federal Constitutional Court, our Supreme Court in Germany, ruled last year on this, the coalition agreement of the current German government has now stipulated that this is going to be introduced to our law on personal status — that is, an option for a third gender.

Then there was a question of hate crime. Let me illustrate that in our penal code there is a stipulation according to which somebody can be punished if somebody is instigating hatred, violence or other extreme measures against parts of the population, or those that are part of a group in the population, or is violating human rights by insulting those people or even promoting slander vis-a-vis those persons. So, parts of the population groups that are addressed in that stipulation would be persons with specific sexual orientations or persons with disabilities. That was pertaining to a question from Australia.

Now on intersex persons. I can only comment that intersex children are better protected against irreversible and not necessary medical interventions. This was addressed in a question by Sweden as well. In the coalition agreement, we led down the introduction of a legal clarification so gender or sex assigning interventions on children would only be justified in very urgent cases where there is a danger to the life and the limb of these persons.

D. Recommendations for Cycle III (2018)

a) Remarks of States

- **Australia:** Australia is pleased to work with Germany to combat discrimination and violence against LGBTI persons globally.
- **Brazil:** We congratulate Germany for adopting the act introducing the right of persons of same-sex to marry, as well as other measures to eliminate discrimination against LGBTI persons.
- **Canada:** Canada welcomes the legalization of same-sex marriage and encourages Germany to continue its efforts to implement the ruling regarding the possibility for individuals to choose their gender.
- **Luxembourg:** Moreover, we note with satisfaction the introduction of the right to marriage for people of the same-sex.
- **Montenegro:** We commend the ratification of the Lanzarote and Istanbul conventions that will contribute to better prevention against woman and child abuse, violence and neglect, as well as entering into force of a law granting same-sex couples the right to marry.

- **Netherlands:** We welcome the importance Germany attaches to the anti-discrimination based on sexual orientation, and we are pleased with adoption of 2017 law allowing for same-sex marriages.
 - **United Kingdom:** The UK also commends Germany's introduction of legislation to permits same-sex marriage and its continued efforts to eliminate discrimination on the grounds of sexual orientation.
- b) The following recommendations have been examined by Germany which will provide responses in due time, but no later than the thirty-ninth session of the Human Rights Council**
- **Australia:** Further enhance protection of lesbian, gay, bisexual, transgender and intersex persons from discrimination and violence domestically by introducing a third gender category for people who do not identify as either male or female or who are born with an ambiguous sexual anatomy (6.111).
 - **Canada:** Recognize under family law unmarried couples in established relationships, both opposite-sex and same-sex (6.167).
 - **Greece:** Continue supporting projects to reduce discrimination of LGBTI people and working for the protection and recognition of sexual diversity (6.109).
 - **Israel:** Consider introducing in legislation a third gender option for intersex and non-binary trans people based on self-determination (6.113).
 - **Mexico:** Adopt legislative and administrative measures to avoid the detention of migrants and allow the early identification of migrants in situations of vulnerability, including transsexuals and victims of torture, with a view to their being considered in the asylum application processes, as well as in the terms of appeal before the expulsion (6.254).
 - **Netherlands:** Continue efforts aimed at combatting discrimination based on sexual orientation or gender identity, including by ensuring resources for an autonomy of the Federal Anti-Discrimination Agency and by strengthening anti-discrimination laws (6.110).
 - **Sweden:** Set up a national compensation fund for transsexual persons who were coerced into sterilisation or unwanted gender reassignment treatment in the years 1981-2011 (6.114).
 - **Uruguay:** Adopt measures for the protection of the fundamental rights of LGBTI persons, and update the care guide in the health sector, ensuring the inclusion of the rights of trans people (6.112).

E. SOGIESC Recommendations Shared by HRDs During ILGA's UPR Advocacy Week in Geneva

Bundesvereinigung Trans*

- Initiate a major legislative reform based on the research of the Ministry for Family Affairs. Replace the "Law on Transsexuals" with quick, transparent and accessible procedures based on self-determination. Implement the ruling of the Constitutional Court by creating a third gender option that is open to all non-binary persons regardless of sex characteristics. Ensure full access and recognition also for minors, parents, refugees, detainees, migrants and persons with disabilities;
- To establish a department knowledgeable about and working on trans* issues in the Federal Ministry of Health to eliminate discrimination against trans* people in the health care system, ensuring adequate access to trans* related health care;
- To extend the definition of "vulnerable groups" in the sense of EU Directive 2013/33 EU on a federal level to include trans* refugees and put according protective measures in place. Ensure

access to gender recognition procedures and full health care from the date of application for refugee status;

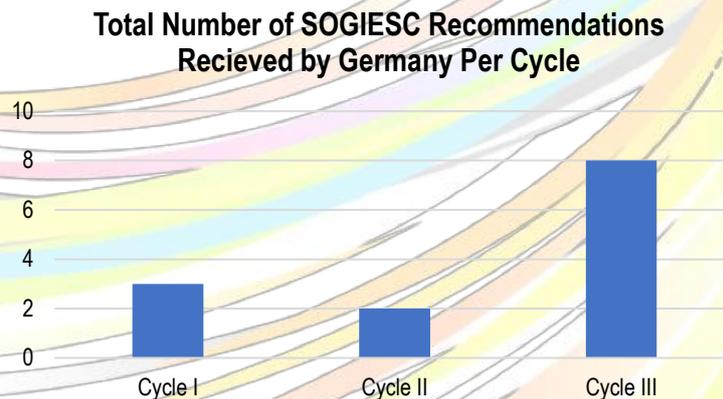
- To ensure access to qualified counseling on trans* issues for any person who needs it. Force the Länder to provide counseling by implementing it as a right into federal law. There should be at least one full time counselor to one million people;
- Set up a national compensation fund for trans* people who were coerced into sterilization or unwanted gender reassignment treatment or chose to not seek gender recognition because of these requirements between 1981 - 2011.

F. Recommendations for Cycle II (2013)

a) Accepted Recommendations

- **Netherlands:** Continue its efforts and continue to take initiatives against hate crimes based on sexual orientation or gender identity. Such advances can be achieved by implementing anti-discrimination laws and strengthening financial resources of investigation authorities and the autonomy of the Federal Agency against discrimination.
- **Norway:** Continue its important efforts to combat hate crime based on sexual orientation.

G. Graphic Comparison Between Cycles (1—3)



H. [Video of Germany's UPR Working Group Session](#)

I. SOGIESC Mentions During Germany's UPR Outcome (Item 6 of the Agenda of the Human Rights Council)

This section will be completed during the 39th Session of the Human Rights Council.