

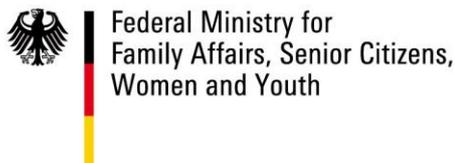
## List of issues and questions

with regard to the consideration of Germany's combined 7th and 8th periodic report on the Convention on the Elimination of All Forms of Discrimination against Women

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*In the 2013 coalition agreement, the Federal Government declared its intention to “focus on the special situation of trans- and intersex individuals”. Prior to this, the CEDAW committee had in its concluding observations of the sixth periodic report called upon the Federal Government “to enter into dialogue with nongovernmental organizations of intersexual and transsexual people in order to better understand their claims and to take effective action to protect their human rights”.*

*Against this background, the following questions arise with regard to the human rights situation of transgender women/individuals in Germany:*

### **Compensation for forced sterilisations**

> Art. 12; General Recommendation No. 21(22)

Until 2011,<sup>1</sup> trans women/individuals had to undergo sterilisation in order to have their civil status changed in accordance with s.8 TSG. A reappraisal of, and debate on individual or collective compensation for the legislator’s violation of fundamental rights (the right to bodily integrity, the right to found a family) which possibly affected up to 15,000 individuals from 1981 to 2011,<sup>2</sup> has so far not taken place in Germany. In April 2016, the Swedish government announced a legislative initiative to compensate trans individuals for forced sterilisation under the former Swedish “Gender Act”. In doing so, it set an example of a responsible approach to injustice committed by the state.

- How does the Federal Government intend to compensate individuals for forced sterilisation in accordance with the Transsexual Act as it applied from 1981 to 2011?

### **De-psychopathologisation and access to health care**

> Art. 12; concluding observations 54/54

Health insurance companies frequently create unreasonable hurdles (lengthy application procedures, invasive assessments, real life tests, seemingly arbitrary rejection of applications) before granting necessary health benefits for the purpose of achieving optimum psychological and physical health. On the one hand, trans women/individuals who want to make use of sex reassignment measures are obliged to undergo a psychotherapy for 12 or 18 months, respectively, even if they are mentally healthy. They are also forced to accept the psychopathologising diagnosis of “transsexualism”. On the other hand and taking into consideration the best available specialised treatment standards for trans women/individuals needing support, there are not enough psychological helpdesks and treatment facilities in Germany. The “German Standards for the Diagnostic Assessment and Treatment of Transsexuals” have not been revised since 1997.

- What does the Federal Government conclude from the demand of the World Medical Association (WMA) on October 2015 to make affordable, individualised

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<sup>1</sup> Federal Constitutional Court decision on January 11, 2011 (1 BvR 3295/07)

<sup>2</sup> Estimate based on the numbers of cases processed by German local courts under the Transsexual Act since 1995

healthcare available to all trans individuals<sup>3</sup> against the background of the professional critique of the current rigid treatment standards and the regulatory practices prevalent in reimbursement procedures?

- What does the Federal Government conclude from the demands of the World Medical Association to abolish coercive treatment against the background of two compulsory assessments required by the Transsexual Act and compulsory psychotherapy suggested by the Medical Advisory Service of the Central Association of the Statutory Health Insurance Companies (MDS) before granting somatic measures?
- Is the Federal Government aware of the positions of the German medical professional societies with regard to the revision of trans-specific diagnostics during the ICD-11 revision process conducted by the WHO? What does the government conclude from the WMA declaration on October 2015 that transgender is not a mental disorder?

### **Trans women/individuals in particularly vulnerable life situations**

> Concluding observations 59/60; General Recommendations No. 18, 27, 32

Minors, elderly trans women/individuals, those with physical, mental or cognitive impairments, individuals without secure residence status or in care facilities experience particular impediments to participation in social life. In so far as they depend on legal representatives or care services, who might not be sufficiently informed about trans individuals' rights and needs, they might encounter limits to living according to their gender identity in a self-determined way.

- Which training and further education in the areas of
  - child and youth welfare
  - care of the elderly
  - services for individuals with disabilities
  - job centres
  - the Federal Agency of Migration and Refugees and immigration authoritiesenable employees in Germany to deal competently and respectfully with their trans clients and with an orientation towards self-determination?

### **Dialogue with trans and inter NGOs; the Transsexual Act**

> Concluding observations 61/62

In its last periodic state report, the Federal Government states that it established the Inter-Ministerial Working Group on Intersexuality/Transsexuality. One of this agency's tasks is to examine necessary legislative amendments. Despite several Federal Constitutional Court decisions on the unconstitutionality of individual rules, the Transsexual Act (1981) is not consistent with human rights.

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<sup>3</sup> <http://www.wma.net/en/30publications/10policies/t13/>

- Does the Federal Government plan to introduce a bill to revise the Transsexual Act within this legislative period?
- Will the reform bill be based on the requirements for regulations to acknowledge gender identity as the Council of Europe outlined them for its member states (quick, transparent and accessible procedures for changing the name and registered sex based on self-determination; abolish compulsory assessments; consider including an additional gender option for those who seek it)?<sup>4</sup>
- Which trans NGOs are going to participate in the consultations with the Inter-Ministerial Working Group and according to which selection criteria?

### **The General Act on Equal Treatment (AGG)**

> Concluding observations 17/18

The General Act on Equal Treatment does not offer trans women or trans individuals in general sufficiently effective protection: Short periods for filing suit and the lack of an option for associations to initiate proceedings or for representative action, respectively make it difficult for individuals traumatised by discrimination to make use of the right to file an action. A large proportion of discrimination and hostilities trans women/individuals experience occur beyond the scope of the application of the Act, i.e. in public places, schools and universities, families of origin or when dealing with representatives of public authorities. Moreover, there is a lack of clarity about whether transgender is covered by the protection ground “sexual identity” or - in accordance with the case law of the ECJ - “gender”. In 2014, the Regional Court Rhineland-Palatine ruled that an applicant’s “transsexuality” was unknown to the employer after a change of civil status. Therefore, transsexuality could not have served as a reason for not having employed her. This ruling suggests an unfavourable prognosis for the protection of trans women/individuals under the AGG.<sup>5</sup>

- Does the General Act on Equal Treatment also protect trans women/individuals against discrimination after a change of their legal gender according to the Transsexual Act (TSG)?
- What protection do individuals enjoy when they are discriminated against on the basis of their gender expression?

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<sup>4</sup> Parliamentary Assembly of the Council of Europe (2015), Resolution 2048 – Discrimination against transgender people in Europe. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>

<sup>5</sup> LAG Rheinland-Pfalz, decision on Apr. 09, 2014, Az. 7 Sa 501/13