

# The Human Rights of LGBTI People in Finland

Submission by Seta LGBTIQ Rights in Finland, Trans ry, Trasek, Transfeminiit and Isio to the UN Human Rights Committee for its 131st Session, 7th periodic report of Finland regarding the International Covenant on Civil and Political Rights.



Trans ry is a Finnish trans rights association combining grassroots activism with community support, public advocacy and expertise in all things related to trans people and trans rights. <https://www.transry.fi/>



## Transfeminiit

Transfeminiit strives to advocate for the rights of transfeminines and to organise peer support for them. <https://transfeminiit.fi/wordpress/>



Trasek is a Finnish association for transgender and intersex rights. Trasek advocates for human rights, anti-discrimination measures as well as proper medical care for transgender and intersex individuals. [www.trasek.fi](http://www.trasek.fi)



Isio - intersex human rights, raises awareness about and advocates for intersex person's human rights in Finland. <https://intersukupuolisuus.fi/isio/>



Seta LGBTIQ Rights in Finland Seta is a national LGBTIQ human rights organisation bringing 30 NGOs together. Seta advocates for an equal society and individual welfare that includes everyone, regardless of sexual orientation, gender identity, gender expression and sex characteristics. [www.seta.fi](http://www.seta.fi)

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## **Non-discrimination, gender equality and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26), Questions 5 and 6 of the List of Issues**

### **Discrimination and hate crime encountered by LGBTI people**

The Non-Discrimination Act provides for the protection from discrimination explicitly on the ground of sexual orientation. Discrimination on grounds of gender identity and gender expression (also sex characteristics) is prohibited explicitly by the Act on Equality between Women and Men. However, it is evident that people who experience discrimination on ground of their sexual orientation, gender identity, gender expression or sex characteristics only rarely report it to any instance. The Non-Discrimination Ombud reports c. 10- 20 cases/year regarding sexual orientation discrimination and the Equality Ombud reports of only few cases where the person contacting has belonged to gender minorities.

Experiences of discrimination are more common. According to the EU Fundamental Rights Agency's reports 14 % of Finnish LGBTI people have experienced discrimination in working life (within the previous 12 months), 31 % of Finnish LGBTI people have experienced discrimination in public places, cafes, restaurants, hospitals or shops. Altogether 32 % had experienced harassment within the previous 12 months. Only 8 % of those who had experienced discrimination had reported it to any instance. Reasons for not reporting discrimination included inter alia: incidents being so common that people felt it was not worth reporting, believing that reporting would not change anything, concern over not being taken seriously, not wanting to disclose one's LGBTI identity, not knowing who to report to or being too distressed by the incident to be able to report it.

Significant underreporting of discrimination indicates that LGBTI people are lacking an effective access to justice.

A similar trend of significant underreporting can be noticed about hate crime experienced by LGBTI people. In 2019 72 hate crime cases with a bias related to sexual orientation or gender identity were reported to the police. Within the time period 2015-2019 the number of such cases has varied between 57 and 73. In contrast c. 140 (n = 4711) Finnish LGBTI people responding to the EU LGBTI Survey carried out in 2019 reported experiencing physical or sexual violence within the last year. Only 23 % of Finnish respondents said that they had reported the latest such incident to any instance. Reasons for not reporting hate motivated violence included inter alia; the incident was considered too minor or reporting did not even occur as an option, thinking that they could not do anything about it, not trusting the police and fearing a negative reaction for being LGBTI, feeling shame or embarrassment about the incident.

### **Recommendations to the Finnish Government**

- Reform the legislation so that the Non-Discrimination Ombud can bring cases before the courts on its own motion and that the Ombud has a mandate to assess work place discrimination.
- Ensure that the National Non-Discrimination and Equality Tribunal can award compensation to victims of discrimination.
- Reform the Law on the Equality between Men and Women so that it includes an explicit obligation to promote equality also on grounds of gender identity and gender expression (as opposed to only preventing discrimination on these grounds).

- Provide law enforcement officials systematic training on hate crimes against LGBTI persons and on investigating them.

## **Discrimination on the grounds of gender identity and intersex status (arts. 2, 7, 9, 17, 24 and 26) (Questions 8 and 9 List of Issues)**

### **Legal gender recognition**

The reform of the legislation regulating legal gender recognition in Finland is long overdue, several government's have been unable or unwilling to carry out the reform. Thus people needing legal gender recognition are still subject to requirements which are not compatible with human rights standards. These include proving they are infertile (coerced sterilization) and obtaining a mental health diagnosis. In addition, legal gender recognition is not accessible for minors.

The present government has included the reform of the trans legislation in its program. A committee report regarding the rights of trans and intersex persons and exploring options for legal gender recognition was published in early 2020. Nothing has happened since. Just recently the Ministry of Social Welfare and Health has indicated that the reform will be initiated in March 2021 and a proposal will be submitted to the parliament in December 2021.

The government's plans to reform the legislation for legal gender recognition are indicated in the government's program. The plans include substantial improvements such as separating the processes of legal gender recognition and medical gender reassignment, but the planned reform does not yet fully meet the requirements for self determination as it requires a "detailed account of belonging to the opposite gender" and it includes a waiting period, which has not yet been determined. As such the planned reform falls short of UPR recommendation for instituting self determination for trans people given by the Republic of Ireland and the recommendation to consider using the Yogyakarta Principles as a guide to policy development given by the Republic of Slovenia, which the government of Finland had supported.

A severe concern relating to the government's plans regards the situation of minors. The national school health survey results prove that LGBTI youth experience significantly poorer health and have more often experienced violence than their peers. Experiences of bullying and physical threats are especially common for gender minority youth. Trans children and youth are an especially vulnerable group which needs special protection.

Access to legal gender recognition would enhance trans children and youth's right to privacy and protect them from discrimination and violence. Reform of the legal gender recognition legislation needs to pay full attention to the special challenges and needs of trans children and youth.

### **Access to gender affirming health care**

The current legislation on legal gender recognition interlinks the process of legal gender recognition with access gender affirming health care (gender reassignment treatment). This has left many of trans/non-binary specific health care issues unaddressed. A major obstacle to assessing gender affirming health care are the delays in accessing treatment. Another problem concerns the on-going pathologisation of trans and non-binary identities.

There are two specialist units for gender affirming treatment in Finland, both in Southern Finland (Helsinki and Tampere). These units are responsible for gender affirming treatment. The Parliamentary Ombud has paid attention to the lengthy waiting times in accessing care. The European Commission on Racism and Intolerance has indicated the lack of resources for gender affirming care and urged the government to establish a third specialist unit.

In 2020 the Council for Choices in Health Care in Finland (COHERE Finland) published guidelines for treating gender dysphoria experienced by trans and non-binary persons. The guidelines are outdated and do not take into account the depathologisation of trans and non-binary identities adopted in the International Classification of Diseases version 11 (ICD-11). The guidelines fail to remove barriers to gender affirming treatment. Instead, the guidelines rather restrict access by instating discriminatory requirements linked to other health issues, gender identity (lower level of care for non-binary persons) and age (cautioning health care for minors). The guidelines also promote basic healthcare as the primary instance of care for gender dysphoria. This is contrary to the principle that a person should always at their request get a referral to the specialist unit located either in Helsinki or Tampere.

## Intersex persons' bodily integrity and self-determination

The right to bodily integrity and self-determination of intersex children is not fully respected in Finland. The study “No information or options: the rights and experiences of intersex people in Finland” conducted as part of the National Action Plan on Fundamental and Human Rights (2017-2019) was published in 2019. According to the study intersex children are still subjected to non-vital medical operations aimed at “normalising” the sex characteristics of the child. Intersex children and their parents are also not provided with non-medicalised and non-stigmatised information about the diversity of the sexes and variations of sex characteristics. Neither are they provided with efficient psychosocial support and peer support.

The Programme of the Government of Sanna Marin (2019) states that “intersex children’s right to self-determination will be strengthened, and cosmetic, non-medical surgeries on young children’s genitals will no longer be performed”. However, so far no progress has been made. It is expected that the working group set by the Ministry of Social Welfare and Health to reform the Trans Act (March 2021) will address the issue. However, there exists concerns that the working group will only give yet another recommendation to stop such non-vital medical operations, and not prohibit such practices by law. This would be an unwelcome result as such a recommendation has already been given by the National Advisory Board on Social Welfare and Health Care Ethics in 2016 and it has not had any effect on the medical practices.

## Recommendations to the Finnish government

- Ensure access to a simple legal gender recognition procedure which is based on self-determination and protects bodily integrity and privacy of those who seek it. Taking fully into account best interests of the child as a primary consideration and respect for the child’s right to express views in accordance with age and maturity, make sure that legal gender recognition is available to minors.
- Ensure timely access to gender affirming treatment for all who need it. Gender affirming treatment must be based on de-pathologisation of trans and non-binary identities as according to ICD-11 and be in line with international standards of trans and non-binary care.
- Provide obligatory training about gender diversity to all medical and health care staff.
- Enact a law that prohibits any non-vital surgeries or other medical interventions performed to ‘normalise’ children’s sex characteristics without the child’s informed consent. With the exception of situations where a child’s health is at immediate risk, no

interventions aiming to modify sex characteristics should be performed until the child is capable of making an independent decision on the matter.

- Provide clinical practice guidelines for the healthcare of intersex children that take full account of the child's best interests and rights to participate in making decisions concerning their treatment in accordance with their age and maturity, in keeping with the obligations of the Convention on the Rights of the Child.
- Guarantee access to to psychosocial support and peer support as well as non-medicalised and non-stigmatised information regarding variations of sex characteristics and the diversity of human sexes for intersex people and their parents.