

# ONLY ADULTS? GOOD PRACTICES IN LEGAL GENDER RECOGNITION FOR YOUTH

A REPORT ON THE CURRENT STATE OF LAWS AND NGO ADVOCACY  
IN EIGHT COUNTRIES IN EUROPE, WITH A FOCUS ON RIGHTS OF YOUNG PEOPLE  
NOVEMBER 2019



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# ABOUT

## IGLYO

The International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) Youth & Student Organisation (IGLYO) is a network of 96 national and local lesbian, gay, bisexual, transgender, queer and intersex youth and student organisations across the Council of Europe region. IGLYO's objectives are: to build young activists; to increase the visibility and highlight the diversity of LGBTQI youth identities; make education safe and inclusive for all; and to develop and sustain an engaged and connected network of member organisations.

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# FOREWORD

In recent decades, we have seen heartening progress in LGBTQI+ rights across Europe and around the world. Such progress is hard-won and ongoing, yet uneven and not to be taken for granted.

In particular, there is a long way to go in advancing rights and protections for trans people. A small but growing number of countries have adopted laws allowing trans people to have their gender identity legally recognised through self-determination rather than medical diagnosis or court order. However, we have seen less progress for trans youth. Most self-determination laws exclude people under 18 or impose requirements that significantly limit their access to these important legal processes.

Barriers to having their gender legally-recognised can intensify the discrimination and harassment trans young people face, particularly in schools. A 2017 survey from Stonewall in the UK found that more than four in five trans young people had self-harmed. Nine in ten trans young people had thought about taking their own life and four in ten had attempted to do so. These are unacceptable figures. Gender identity is an integral part of one's self and should not lead to abuse or motivate self-harm.

We applaud the work of IGLYO and Dentons in leading this research, and we are pleased to have supported the project through TrustLaw, the Thomson Reuters Foundation's global legal pro bono network.

The report looks at laws governing gender recognition across Europe, with a focus on rights of young people and their experiences in Norway, Malta, Belgium, Denmark, France, Ireland, Portugal and the United Kingdom. Experienced NGOs also gave their insights on movement building and key lessons on the often difficult path to meaningful change.

We hope this report will be a powerful tool for activists and NGOs working to advance the rights of trans youth across Europe and beyond.



**Glen Tarman**  
**Director of TrustLaw**  
**Thomson Reuters Foundation**

# INTRODUCTION



REUTERS/DEMETRIUS FREEMAN



# INTRODUCTION

For someone that has never experienced what it's like being transgender, the idea of having your gender marker changed on official ID is something far removed from your reality. But for transgender people, whose gender identity doesn't match their gender and sex assigned at birth, it's a pivotal point in their identity being recognised legally. This isn't only a legal human right everyone should have, but it also affirms who people are and it has real and tangible effects on their mental health, safety and well-being.

As someone who had the opportunity to come out as transgender in my teenage years, I know first-hand what it is like to not have documents that reflect who I am. It meant that I had to constantly out myself to strangers when I sought services where I had to show my ID. I was unable to change my registration in school, which caused many practical problems for me as I was going through school and this negatively impacted my mental health and safety.

It meant that teachers would often call my old name during name call, and all assignments and exams were in my old name. So I was constantly being outed to other students in my class, which often resulted in looks, negative comments and bullying. If I had had the chance to change my name and gender legally, it would have really supported me in my identity, and it would have avoided so many practical issues that I had to endure.

It also impacted my ability to travel, as I was often questioned and berated at the passport control at airports by people who simply didn't believe it was my passport. Luckily I personally was never denied travel, but I also made a conscious choice not to travel to countries where it wouldn't be safe to be transgender. Not everyone has been so lucky, and there are countless cases of transgender people being put through humiliating treatments at airports and even denied travel.

With acceptance towards transgender people slowly increasing in certain countries around the world, we are also seeing transgender people come out at a younger age. This means that people can have the opportunity to come out during their childhood, which is something many transgender people wish they would have been able to do.

However, despite the fact they have this opportunity, they still face many barriers. Most countries do not have any type of legal gender recognition for minors, leaving transgender children and young people unable to change their gender marker to reflect who they really are. If you come out quite early, you are often forced to have a legal name and gender for your entire childhood and teenage years that do not reflect who you are, that are simply not yours.

This can cause problems when children and young people are just trying to live out their lives and don't want to be constantly outed to their peers or school staff. It takes away their ability to fully enjoy and feel safe in their identity, as it's constantly something that is causing problems, or can potentially lead to bullying by their peers. Transgender children and young people should never have to hide or be ashamed of who they are, but it should be up to them who they tell and when.

Research shows that transgender children being accepted and allowed to live as themselves benefits their mental well-being massively. It allows them to enjoy their childhood and teenage years and everything that comes with it: school, friendship, games and playing, affection, everything that makes a child be a child – without the extra stress of having to worry about being transgender. Legal gender recognition for minors is therefore an essential part in safeguarding and ensuring the mental and physical well-being of transgender youth.

Children and teenagers need to be allowed to define themselves however it suits them, both in social and legal terms. Allowing youth to change their gender marker is therefore a human right they should be afforded. This is already the case in a handful of countries—including in Iceland where I am from—and the sky hasn't fallen. All that's happened is that these children and teenagers can finally be themselves legally, having a huge impact on their well-being. This needs to become common practice so that transgender youth are equal to their peers.

I know for sure that if it had been an opportunity for me growing up, I would have taken it in a heartbeat. It's time we respect the right of children and teenagers to self-determine their own identity and stop placing unnecessary and harmful obstacles for them.

The future is theirs—let's help them make the most of it.

*This introduction was written on behalf of IGLYO by Ugla Stefanía Kristjönudóttir Jónsdóttir, who is a young trans activist and former IGLYO board member from Iceland. IGLYO hopes that this report is one modest step ahead towards achieving a better life of transgender youth.*

## KEY FINDINGS



REUTERS/DANIEL MUÑOZ



# KEY FINDINGS

This report explores the current state of legal gender recognition, with a particular focus on rights of minors,<sup>1</sup> in eight European jurisdictions: Norway, Malta, Belgium, the UK, Denmark, Portugal, Ireland and France (together the “**Focus Jurisdictions**”). It explores “good practices” in each jurisdiction in relation to legal frameworks and the ways in which non-governmental organisation (NGO) advocacy assisted in bringing about changes to the law. It also sets out the relevant international and regional human rights law, norms and guidance with respect to legal gender recognition.

We identified three jurisdictions as examples of “good practice” in terms of legal gender recognition laws, particularly with regard to minors. These jurisdictions are Norway, Malta and Belgium (together the “**Good Practice Countries**”). No one country has ‘perfect’ laws, but our aim was to identify examples of more progressive approaches being taken across Europe.<sup>2</sup> To better understand the barriers to progress, we also identified five jurisdictions as case studies that have adopted (or, in the case of the United Kingdom, were considering adopting) self-determination-based gender identity recognition, but either adopted a more restrictive approach for minors or excluded them entirely. For this, we looked at the Denmark, France, Ireland, Portugal, and the United Kingdom.

## HOW TO USE THIS REPORT

IGLYO’s aim was to create user-friendly resource for itself, its members and the broader advocacy community for use in campaigning efforts for better gender recognition laws across countries in the Council of Europe.

We hope the report is particularly valuable in its focus on the rights of young people. Beyond looking at legal frameworks, the report includes practical accounts from NGOs on the often difficult (and not always successful) journey to adopting accessible, rights-based gender recognition laws, especially for young people, offering critical lessons for future advocacy.

In the following pages we set out key findings in relation to good practices for legal gender recognition in terms of: international law, national law and NGO advocacy.

## GOOD PRACTICES FROM INTERNATIONAL LAW

Before we explore national approaches, it is useful to briefly set out good practices that have been established at the international level. We also elaborate the fundamental rights and principles these practices underpin and seek to guarantee.

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1 In this report, by “minors” we generally, but not exclusively, refer to persons between the ages of 16 and 18, as generally legal gender recognition provisions for minors under 18 are limited to minors between 16 and 18. We also refer to “young trans persons” and trans “minors” interchangeably.

2 Our research scoping work began in 2018 and, as such, this report does not address all progressive models now in place or developing. Luxembourg, for example, passed a self-determination law in mid-2018, which includes a process for minors. Iceland passed a similar law in mid-2019. To track the status of laws across Europe, Transgender Europe (TGEU) publishes a valuable annual index. The latest version is available here: Trans Rights Europe & Central Asia Map & Index 2019 (<https://tgeu.org/trans-rights-europe-central-asia-map-index-2019/>).

Human rights are interdependent. The right to legal gender recognition is crucial for young trans persons to secure all other rights. Each right contributes to the realization of a young person's human dignity through the satisfaction of their developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others.

For instance, limiting access to legal gender recognition is likely to violate the right to privacy, as the acknowledgement of one's gender identity is an integral part of one's private life. Further, where official documents do not reflect their name and gender identity, access to gender segregated activities and facilities in school may be denied and the right to education infringed. As a result, the right to development of the child could also be limited. Such difficulties to express one's gender and having to constantly explain one's gender identity can create an environment where bullying and violence can thrive or may lead to depression or even self-harm and may, consequently, lead to a violation of the right to health. The same applies for the right to be heard and the principle of "best interests of the child" which are crucial in the exercise of other human rights such as the right to recognition.

## KEY INTERNATIONAL RIGHTS & OBLIGATIONS

Currently, no binding international human rights treaty specifically protects the rights of LGBT persons, nor are there any explicit provisions in existing treaties or conventions relating to young trans persons.<sup>3</sup> Nevertheless, the absence of a specialized convention does not mean the human rights of young trans people are not protected under international human rights law. UN Treaty bodies have, in fact, repeatedly confirmed that sexual orientation and gender identity are included among prohibited grounds of discrimination under international human rights law.

Various provisions within the Convention on the Rights of the Child and the International Convention of Civil and Political Rights are relevant. Moreover, human rights bodies have dealt sporadically with LGBT rights. The following provisions are applicable to young trans people:

### **1. Principle of non-discrimination<sup>4</sup>**

States are not allowed to discriminate against any child or young person on the basis of sex or other status. The category "other status" has been interpreted broadly by the UN Human Rights Council<sup>5</sup>, Committee on the Rights of the child<sup>6</sup> and the Committee on Economic, Social and Cultural Rights<sup>7</sup>, to include sexual orientation and gender identity as a protected category.

In practice this would mean, for example, that states should combat bullying against young trans people because of their gender expression or identity.

3 UNICEF, 'Eliminating Discrimination against Children and Parents based on Sexual Orientation and/or Gender Identity' (2014) Current Issues (9) 3.

4 UN General Assembly, Convention on the Rights of the Child, 20 November 1989. (CRC), Article 2; International Covenant on Civil and Political Rights 16 December 1966, Article 2; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966 (ICCPR), Article 2; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 (ECHR), Article 14; European Court of Human Rights, Identoba and Others v. Georgia, No. 73235/12, 12 May 2015, para. 96. See also: European Union, Charter of the Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, Article 21; European Union, Consolidated version of the treaty on the European Union, 13 December 2007, 2008/C 115/01, Article 10; Inter American Court of Human Right, Advisory opinion, OC-24/17, 24 November 2017, para 68-78.

5 UN Human Rights Council, Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity, 22 March 2011.

6 UN Committee on the Rights of the Child, General comment No.15 on the right of the child to the enjoyment of the highest attainable standard of health, 17 April 2013, CRC/C/GC/15, para 80.

7 UN Committee on Economic Social and Cultural Rights, General comment No.20 on non-discrimination in economic, social and cultural rights, 2 July 2009, E/C.12/GC/20, para 32.

## **2. Principle of equality<sup>8</sup>**

The principle of equality is closely linked with the principle of non-discrimination. Any young trans person should be treated equally to any young cisgender person<sup>9</sup>, without discrimination.

In practice this would mean, for example, that states must treat young trans people equally to young cisgender people when providing access to healthcare.

## **3. Principle of “best interests”<sup>10</sup> & Right to be heard<sup>11</sup>**

The best interests of the child should be a primary consideration in legal procedures, and the child’s view should be given proper weight, taking into account their individual maturity and development. A child’s best interests must include respect for the child’s right to express their views freely and due weight given to said views in all matters affecting the child.<sup>12</sup>

In practice this would mean, for example, that a statement from a public authority suggesting that children of a certain age are too young to be aware of their identity is contradictory to the “best interest” principle and the right to be heard. Instead, the state should ensure that the child’s best interests are appropriately and consistently applied in every action taken by public institutions.

## **4. Right to recognition<sup>13</sup>**

Persons of diverse gender identities should enjoy legal capacity in all aspects of life. Specifically, the child has an independent legal personality distinct from his parent and family. As a legal person, the child enjoys, and is subject to, rights and duties. This is a prerequisite for all other rights: the child’s best interest requires recognition of a separate legal personality, as well as the right for one’s separate viewpoint to be heard.

In practice this would mean, for example, that states must ensure that young trans persons are recognised as having rights and responsibilities and that their gender identity does not prevent them for securing their rights as subjects before the law.

## **5. Right to health<sup>14</sup>**

Young trans people must have access to healthcare and be able to attain the highest standard of health as a state of ‘complete physical, mental and social well-being and not only the absence of disease or infirmity.’<sup>15</sup>

In practice this would mean, for example, that in combination with the non-discrimination principle (on the grounds of sexual orientation or gender), states must take measures to prevent health issues arising among young trans persons, e.g. resulting from lack of legal recognition, invasions of privacy, bullying, harassment and violence against such persons.<sup>16</sup>

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<sup>8</sup> Universal Declaration of Human Rights Article 1 and 7, UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (ICESCR), Article 26; European Union, Consolidated version of the treaty on the European Union, article 8.

<sup>9</sup> Cisgender: people whose gender identity matches the sex they were assigned at birth.

<sup>10</sup> CRC, Article 3.1; Charter of the Fundamental Rights of the European Union, Article 24.2.

<sup>11</sup> CRC, Article 12; Charter of the Fundamental Rights of the European Union, Article 24.1.

<sup>12</sup> UN Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as primary consideration, 23 May 2013, CRC/C/GC/14, para 43.

<sup>13</sup> ICCPR, Article 16, UN Yogyakarta Principle 3.

<sup>14</sup> CRC, Article 24.

<sup>15</sup> World Health Organization, Preamble to the Constitution of WHO, July 1946

<sup>16</sup> UN Committee on the Rights of the Child, General comment No.15, para 8.

## 6. Right to development of the child<sup>17</sup>

States must protect the physical, mental, moral, social, cultural, spiritual development of children.<sup>18</sup>

For example, states should take action against parents who are obstructing the free development of a young trans person's identity in refusing to give parental authorization when required.

## 7. Right to private life<sup>19</sup>

The European Court of Human Rights held that the issue of legal gender recognition comes within the scope of the right to respect for private life.<sup>20</sup>

In practice this would mean, for example, that states must not deny the legal gender recognition such that young trans people are compelled to disclose their original identity as this could amount to a violation of the right to respect for private life.

## GOOD PRACTICES IN INTERNATIONAL INSTRUMENTS

In recent years, the issue of gender identity has been considered and incorporated in new soft law instruments (recommendations, resolutions) and normative standards, both universal and regional. Unlike treaties and the rulings of international and regional human rights courts and monitoring bodies, they are generally not binding on states. However, they can clarify how human rights standards may apply to the kinds of abuses experienced by young trans people in the context of legal gender recognition. In addition, some of the human rights bodies have provided recommendations to guide states in developing gender recognition laws. The most significant non-binding recommendations are the "Yogyakarta Principles plus 10" which set out several best practice principles and state obligations with respect to the application of international human rights law in relation to sexual orientation and gender identity issues.<sup>21</sup>

According to these instruments, states should:

### 1. Abolish sterilization and other compulsory medical treatment<sup>22</sup> and review requirements for legal recognition to avoid abuse.<sup>23</sup>

No eligibility criteria, such as medical or psychological interventions, psycho-medical diagnosis, economic status, health, marital or parental status, or any other third-party opinion, should be a prerequisite for

17 CRC, Article 6.2, UN General Assembly, Declaration on the Right to Development, 4 December 1986, Article 6.2.

18 UN Committee on the Rights of the Child, General comment No.15, para 16.

19 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Article 8; Inter-American Court of Human Right, Advisory opinion OC-24/17, 24 November 2017, para 85-92.

20 European Court of human Rights, L. v. Lithuania, No. 27527/03, 31 March 2008

21 Yogyakarta Principles plus 10: These additional principles have been published by a distinguished group of international human rights experts to complement the original document: Yogyakarta Principles launched as a global charter at the United Nations Human Rights Council in Geneva in 2007. For the first time, all information related to international human rights law related to people of diverse sexual orientations and gender identities are brought together in one document. See *An Activists' Guide to the Yogyakarta Principles*: <http://ypinaction.org/activists-guide/>

22 Parliamentary Assembly of the Council of Europe, Resolution on Discrimination against transgender in Europe 2048(2015), 22 April 2015, para 6.2.2; Inter-American Court of Human Right, Advisory opinion OC-24/17, 24 November 2017, para 160.

23 Committee of Ministers, Recommendation to member states on *measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, CM/REC(2010), para 20; UN Yogyakarta Principle 31 (YP+10), Inter-American Court of Human Right, Advisory opinion OC-24/17, 24 November 2017, para 170; Human Rights Committee, Concluding observations on the 3rd periodic report of Ireland, 20 July 2008, CCPR/C/IRL/CO/3, para 8; See also Human Rights Committee, Concluding observations on the 4th periodic report of Ireland, 19 August 2014, para 7; Statement of a group of experts: Embrace diversity and protect trans and gender diverse children and adolescent. International Day against Homophobia, Transphobia and Biphobia, 17 May 2017.

changing legal gender.<sup>24</sup>

## **2. Eliminate the minimum age requirement.**

Where legal recognition procedures require prior medical treatment or investigation, these are often only available at the legal age of maturity and thus discriminate based on the age of the applicant. In other cases, where there is no medical requirement, minors are barred from legal recognition unless they have parental authorization. This remains a huge hurdle for young trans people who are yet to reach the age of maturity.

## **3. Recognise the right of transgender persons to change their identity** and adapt the legislation facilitating legal recognition of a change of gender.<sup>25</sup>

## **4. Guarantee full legal recognition of a person's self-defined gender identity** in a quick, transparent and accessible way.<sup>26</sup>

*Self-defined:* Based on self-determination.

*Quick:* The time between applying and being granted legal recognition should be as fast as possible.

*Transparent:* The procedure leading to legal recognition should be clear and known by the public.

*Accessible:* No barriers should render the procedure inaccessible. If a young trans person cannot fulfil certain requirements, for example an age requirement, they should not be barred from having their gender identity recognised.

## **5. Take measures to ensure the highest attainable standard of health without discrimination** on grounds of gender identity.<sup>27</sup>

In particular, states should take into account the specific needs of transgender children/minors in the development of national health plans including suicide prevention, health surveys and training courses.

## **6. Ensure that the best interests of the child** are a primary consideration in all decisions concerning children.<sup>28</sup>

States must ensure that the best interests of the child are analysed during legal transition procedures, and that the minor's view is given proper weight, taking into account their individual maturity and development.

## **7. Identify individual children and groups of children** the recognition and realization of **whose rights may require special measures.**

Young trans people (especially those under the age of legal maturity) must be recognised as a vulnerable

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24 The World Health Organization (WHO) "Classification of Diseases and Related health Problems" (ICD-11) still pathologizes transgender minors. According to the TGEU, full depathologization of trans and gender diverse people requires the complete removal of: psycho-medical classifications; legal and bioethical gatekeepers; corporate-driven medical care & treatments; normative gender stereotypes; and all forms of socioeconomic injustice.

25 Report of the UNHCHR on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011. 19/41, para 71

26 Recommendation CM/REC(2015)5, para 21; PACE Resolution 204892015), para 6.2.1; UN Yogyakarta Principle 31 (YP+10); Inter-American Court of Human Right, Advisory opinion OC-24/17. 24 November 2017; Statement of a group of experts: Embrace diversity and protect trans and gender diverse children and adolescent. International Day against Homophobia, Transphobia and Biphobia, 17 May 2017.

27 Recommendation CM/REC(2010)5, para 33.

28 PACE Resolution 2048, para 6.2.5; Recommendation CM/REC(2010)5, para 26

group. Measures such as collecting data, revising legislation, taking educational measures and changing attitudes could help in addressing discrimination against this group.<sup>29</sup>

## GOOD PRACTICES IN NATIONAL LEGAL FRAMEWORKS

This section looks at the legal framework in Norway, Malta and Belgium (i.e. the Good Practice Countries) and identifies the good practices that have emerged from these countries in respect of legal gender recognition.

The three countries operate on a model of self-determination<sup>30</sup> and as such they are recognised as being more progressive by European and national trans rights organisations. Based on an analysis of the developments across these countries, we identify several key aspects of an “ideal” law on gender recognition, including in relation to inclusion of young people.

### **1. Quick and affordable access to legal gender recognition based on the model of self-determination**

The ‘good practice’ which has emerged from our research as being favoured by the most progressive countries is the model of self-determination. This means individuals can elect to change their legal gender on their own volition, without the need for medical diagnoses or court determination. The procedure should be accessible and involve a simple administrative process. In terms of costs, the most progressive and internationally recognised processes are inexpensive to allow accessibility to people from all backgrounds. Crucially, there should be no requirement to live in the desired gender for a certain amount of time before changing gender.

### **2. Extending the process to minors**

It is recognised that the requirement for parental consent or the consent of a legal guardian can be restrictive and problematic for minors. During interviews and research into the standards set in ‘good practice’ countries, there was some disparity in terms of the access for minors to legal gender recognition. Norway is the most liberal, with legal gender recognition being available at any age, although with certain conditions for different age groups. For example, minors under the age of 6 can only have their legal gender altered if they are intersex. For minors between 6 and 16, it is available with parental consent, and for those over 16 a self-determination model operates. In contrast, in Belgium, legal gender recognition is unavailable for minors under the age 16, and for those between 16 and 18 years old parental consent is required.

There are many reasons, both social and political, why different countries have different models in place for minors. However, it is generally recognised that minors need additional support and care when going through such processes.<sup>31</sup>

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29 UN Committee on the Rights of the Child, General Comments No. 5 on general measures of implementation of the convention of the Rights of the Child, 27 November 2003, CRC/GC/2003/5, para 12.

30 According to a leading trans rights NGO, Transgender Europe ('TGEU'), self-determination exists when the following criteria are met: legal gender recognition is based exclusively on the expressed wish of the person concerned e.g. by declaration; legal gender recognition does not require third party involvement, e.g. judge, medical expert, intercessor; and intersex status and/ or sex characteristics are not a contraindication. NB, under this definition Belgium would not be categorised a self-determination model (as recognition requires third party involvement i.e. the prosecutor is required to provide an opinion, see more in section 2 below). See also: TGEU, Checklist – Gender Recognition Legislation ([https://www.tgeu.org/sites/default/files/Checklist\\_LGR.pdf](https://www.tgeu.org/sites/default/files/Checklist_LGR.pdf))

31 TGEU suggests that there is no explicit age restriction for minors for changing their legal gender only when there are no other abusive requirements such as sterilisation, CID /medical diagnosis or surgical/medical intervention. TGEU does not consider parental consent to be such an abusive requirement.

### **3. No requirement for sterilisation, surgical, medical treatment or diagnosis**

The countries leading the way in legal gender recognition do not require individuals to undertake any surgical operations, sterilisation or medical treatment. This means that there is no need to obtain a professional or medical diagnosis to change legal gender. Having to obtain a medical diagnosis of gender dysphoria is confirmed by many trans people as being a deterrent to seeking legal gender recognition. For example, many transgender persons have testified that they “fear[ed] the requirement to be officially diagnosed”. Others felt “questioned and even challenged to have to constantly prove their gender in front of stranger”.<sup>32</sup> Generally, transgender persons express a feeling of being “over diagnosed but underserved.”<sup>33</sup> The stigma surrounding a diagnosis, together with the delays and time spent in obtaining it, can result in many individuals being unable or unwilling to access the process of legal gender recognition, which can impact negatively on other areas of life.

### **4. Relationships should only be altered if favourable**

There should be no effects of altering one’s legal gender on marriage or succession. In addition, the individual should not be required to ask permission from their spouse.

As for parenthood, trans parents should be recognised in accordance with their legal gender identity in their children’s birth certificates. This should apply equally to parents who change their legal gender after having had children and parents who have children after having changed their legal gender. The goal is to protect the rights of parents and children in rainbow families without discrimination based on sexual orientation or gender identity and avoid practical problems in cases of denied legal recognition.<sup>34</sup>

### **5. Legal gender recognition at birth**

The leading countries do not require children to be assigned a legal gender at birth (e.g. Malta, which allows intersex children to wait until they are 18 before declaring their legal gender). Alternatively, countries may allow a delay to parents declaring their child’s legal gender at birth (for example of up to a month in Norway). Such provisions should apply to all children, regardless of whether they were born in the country or brought to it.

Linked to this is the position of children who are born intersex.<sup>35</sup> The countries which exhibit “good practices” prohibit surgery on intersex children unless it is deemed a medical necessity (i.e. for the child’s health). However, it should be noted that surgery on intersex children is often justified by doctors (and parents) as a medically necessary intervention, while intersex advocates reject these traditional notions of medically necessary interventions.<sup>36</sup>

### **6. Recognition of a third gender**

The good practice countries also tend to recognise the existence of a third gender and this can be expressed as a neutral ‘X’ where an individual does not want their legal gender identified.

<sup>32</sup> Testimonies from the International Day of Action for Trans Depathologization.

<sup>33</sup> TGEU, “Overdiagnosed but under served. Trans Healthcare in Georgia, Poland, Serbia, Spain and Sweden: Trans Health Survey”, 2017.

<sup>34</sup> See the Resolution of the Parliamentary assembly of the Council of Europe, 10 October 2018 which for the first time addresses the situation of transgender parents directly and provides recommendations to strengthen the rights of trans parent and trans children. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25048&lang=en>

<sup>35</sup> Intersex: a person who has a variation of sex characteristics and does not fit the typical medical and societal definition of male or female

<sup>36</sup> See ILGA and OII Europe, “Protecting intersex people in Europe: a toolkit for law and policy makers”, Page 10.

### **7. Gender confirmation treatment should be available and reimbursable**

Gender confirmation treatment should be accessible and state-supported (or in certain circumstances, supplemented). It is crucial that there are no limitations to access this treatment such as the requirement to be diagnosed with gender dysphoria to have access to these treatments.

### **8. Established sanctions for breaching the law on gender recognition**

Finally, based on our research, the message that has come out strongly has been that the law on legal gender recognition should be binding upon public officials who apply it. A refusal to grant the requested legal gender should not be arbitrary and must be motivated by legitimate grounds specifically provided for by the law. More generally, any discrimination based on gender reassignment or gender identity should be prohibited. Any person who has been discriminated against should be able to file a complaint and receive compensation. Good practices show that an equality and discrimination tribunal can be invoked to specifically deal with such complaints.

## **GOOD PRACTICES FOR NGO ADVOCACY**

In recent years, varying advocacy techniques have been employed by NGOs and politicians in their efforts to effect change in their countries with regard to legal gender recognition.

While cultural and political factors play a key role in the approach to be taken, there are certain techniques that emerge as being effective in progressing trans rights in the ‘good practice’ countries.

### **1. Target youth politicians**

Activists found it particularly helpful to get youth wings political parties on side, as main wings of political parties are often keen to listen and take the views of their younger counterparts seriously. In some cases, activists found it useful to make the point that youth politicians are the senior politicians of the future and that any changes that they are in favour of will inevitably be the policies of the future and are more likely to be on “the right side of history”.

Some campaigns found that allowing youth politicians to advocate for legal gender recognition to be extended to minors was compelling, perhaps because they are well placed to empathise with the situation of their peers.

### **2. De-medicalise the campaign**

Many of the activists we interviewed mentioned de-medicalisation of gender recognition laws being important in their campaigns. De-medicalisation involves separating the legal gender recognition process from the public association with medical treatment or diagnoses. It was observed that the public often finds it difficult to separate these two concepts and this can result in apprehension about expanding access to legal gender recognition processes. Indeed, in certain countries, medical and legal processes are still interlinked.

Therefore, campaigns which seek to reform legal gender recognition laws have the task of separating these concepts through educational campaigns, so that legal gender recognition can be seen in the eyes of the public as distinct from gender confirmation treatments. This also means minors may be more likely to be

able to access the processes, as one of the reasons often cited by opponents and critics in such countries for denying such access to minors is that young people should not have irreversible surgeries until they are of the age of maturity. Activists have sought to educate the public that legal gender recognition is a purely civil process.

### **3. Use case studies of real people**

Telling real stories of people who have gone through the legal gender recognition process humanises and personalises the campaign, better enabling politicians and the general public to relate, increasing empathy and understanding. This technique has been used in several countries to great effect, most notably in Malta.

This campaign technique is not always possible due to the cultural environment in the specific country. For example, in the UK, the debate surrounding reform of legal gender recognition laws has been politically charged and trans people have suffered more hate crime than in previous years. Therefore, the employment of such techniques should proceed with caution and organizations should take all necessary measures to protect the individuals involved.

### **4. Anonymise the narratives**

Most notably in Malta, TV programmes and/or other fictional narratives based upon real stories which are acted out have made an impact on swaying public perceptions. These can be helpful where a person does not feel safe to be put on a platform (online or otherwise) for fear of abuse.

### **5. Get ahead of the government agenda and the media story**

In many of the NGO advocacy campaigns that we studied, there were clear benefits where NGOs managed to get ahead of the government and publish progressive legislative proposal before the government had time to develop their own. NGOs need to intervene early in the legislative process and ideally before it has even started. This will give them far greater ability to shape the government agenda and the ultimate proposal than if they intervene after the government has already started to develop its own proposal. Where NGOs fail to intervene early, the ultimate gender recognition legislation may be far less progressive than activists would like.

This lesson applies equally to the media. There is a real risk that where advocates fail to intervene early, sensitizing the media and the public to trans rights in general and legal gender recognition in particular, persistent negative and pernicious narratives about the trans rights agenda may take hold in the public imagination which will negatively influence the legislative process and the prospects for success.

### **6. Use human rights as a campaign point**

Based on our research, human rights arguments have been instrumental to the success of several campaigns for more progressive gender recognition laws.

In Norway, human rights arguments were a cornerstone of activists' campaigns. Prior to the most recent legal reforms, those seeking to legally change gender in practice had to undergo sterilisation (although this requirement did not appear in formal legislation). The result was that Norwegian campaigners had a compelling argument that the human rights of trans people were being breached and this was a key factor in the success of their campaign.

Belgium had a similar situation, with their laws being publicly condemned by the UN in 2014 for violating human rights by requiring sterilisation before gender could be reassigned. This prompted a campaign to legislate to prevent these violations, and now Belgium has one of the more progressive pieces of legal gender recognition legislation in the world.

Irish activists also used human rights arguments in their political campaign, factoring in human rights principles in their video campaigns.

It is unclear exactly why this approach has been successful. It could be that the political stigma of a human rights violation, and the resultant international scrutiny is a factor at play. Another possibility is that the approach humanises trans people and makes their situation more relatable.

### **7. Tie your campaign to more popular reform**

In Ireland, Denmark and Norway, changes to the law on legal gender recognition were put through at the same time as other more popular reforms such as marriage equality legislation. This provided a veil of protection, particularly in Ireland, where marriage equality was strongly supported, but gender identity remained a more difficult issue to win public support for.

### **8. Avoid excessive press coverage and exposure**

Another technique which has been used to great effect is the limitation of press coverage and exposure. In certain countries, like the UK, information on legal gender recognition reforms has been misinterpreted in the mainstream media, and opposition has arisen as a result. The effects of this can be dangerous: two out of five transgender people experience hate crime each year in the UK, with young people the least likely to report incidents to the police.<sup>37</sup> One in four trans people (26 per cent) directly experience transphobic abuse online each month.<sup>38</sup> The UK Home Office have reported that hate crime in general has risen by 48 per cent between 2014 and 2017, with the number of recorded hate crimes and incidents based on sexual orientation rising by 70 percent over the same period.<sup>39</sup>

Against this background, many believe that public campaigning has been detrimental to progress, as much of the general public is not well informed about trans issues, and therefore misinterpretation can arise.

In Ireland, activists have directly lobbied individual politicians and tried to keep press coverage to a minimum in order to avoid this issue. Similarly, in Norway, campaigners developed strong ties with youth politicians, who then presented to the senior members of their parties on the changes that were needed. This technique was effective at persuading more senior politicians, as the changes were being suggested from within their own party rather than an external organisation. We also saw this technique in Denmark.

### **9. Carpe diem**

It is really important for NGO activists to seize the moment when promoting legal gender recognition. Activists need to quickly capitalise on political momentum. Such momentum may, for example, arise from:

37 Chaka L. Bachmann and Becca Gooch, 'LGBT in Britain: Hate Crime and Discrimination', Stonewall, ([https://www.stonewall.org.uk/system/files/lgbt\\_in\\_britain\\_hate\\_crime.pdf](https://www.stonewall.org.uk/system/files/lgbt_in_britain_hate_crime.pdf))

38 Ibid. The Stonewall report also notes; The UK Home Office reported that hate crime in general rose by 48 per cent between 2014 and 2017, with the number of recorded hate crimes and incidents based on sexual orientation rising by 70 percent over the same period. However, trans people's experiences of hate crime were only included in the report in 2017, so the specific rate of change could not be addressed.

39 Ibid

changing dynamics in the domestic political constellation following elections; public backlash against anti-LGBTI sentiment among certain political parties; international condemnation of a state by the international community with respect to its record on trans rights; or strategic litigation related to trans rights either domestically or at a regional human rights court or international human rights body.

These political moments can be brief, but present a window of opportunity which NGOs that we interviewed have used very effectively to lobby for improved legal gender recognition processes.

### **10. Work together**

It is crucial for NGO activists to work collaboratively; with domestic LGBTI organisations, with international and regional trans rights organisations; and with human rights experts in academia.

In the campaigns we studied, such collaboration has a number of positive effects: it ensures that those organisations and individuals with the most relevant expertise (e.g. in relation to trans youth) are brought into the campaign at the right moment to make sure key perspectives and nuance are not omitted; it ensures that the highest human rights standards emerging from comparative experience are drawn upon; it ensures that NGOs that may be weaker on one aspect (e.g. lobbying) but stronger on another (e.g. grass roots campaigning with trans youth) are supported by organisations with complementary skills; and it ultimately gives greater legitimacy to a national campaign and maximizes the prospects of success.

### **11. Be wary of compromise**

A final lesson from the campaigns we studied, is that activists should be wary of compromise; compromise can be a double-edged sword. For example, in Ireland, compromise on legal gender recognition for young trans persons was critical to getting the legislation passed, but it might take years to revise the legislation to render it more favourable to trans youth.

## **NOTE ON METHODOLOGY**

IGLYO was connected with Dentons through TrustLaw, the global legal pro bono network of the Thomson Reuters Foundation, on a pro-bono basis. IGLYO asked Dentons Europe and UKMEA (Dentons) to create a user-friendly report on good practices for legal gender recognition, specifically for people under 18, based on self-determination.

This report is intended to be used by IGLYO and its members who are campaigning and lobbying for better gender recognition legislation, especially for minors, across Council of Europe countries. It will also be used by IGLYO and its partners to lobby and advocate for gender recognition for minors through European institutions.

### **Research – Legal**

Dentons and Thomson Reuters Foundation (TrustLaw) relied on their networks of international legal contacts in the Focus Jurisdictions to gather information on existing laws, including the NextLaw Referral Network. These local lawyers are noted in the Acknowledgements section of this report.

In order to gather this information, with assistance from IGLYO, Dentons created a template legal questionnaire which was filled out by a team of lawyers in each of the Focus Jurisdictions. Where Dentons

had questions, the local lawyers responded and further detailed any legal points.

The information in these questionnaires was used to form the basis of the sections on Key Findings and Country Analysis: Legal Frameworks in this report.

### Research – Advocacy

IGLYO connected Dentons with a network of NGOs across the Focus Jurisdictions. Dentons also conducted its own research to connect with other NGOs in the Focus Jurisdictions. All NGOs are noted in the Acknowledgements section of this report.

Dentons conducted interviews via video conference with each NGO contact to gather information on legal developments and the journey to adopting accessible and rights-based gender recognition laws for adults and young people. Throughout these interviews, Dentons attempted to identify common effective strategies and common roadblocks.

The interviews were recorded and used by the team at Dentons to create detailed notes which have formed the basis of the relevant sections on Key Findings and Country Analysis: Advocacy Insights in this report.

# COUNTRY ANALYSIS: LEGAL FRAMEWORKS



REUTERS/DEMETRIUS FREEMAN



# COUNTRY ANALYSIS: LEGAL FRAMEWORKS

This section provides a summary analysis of existing laws, with a focus on whether (and if so, the extent to which) these laws apply to minors and/or emancipated minors and forms the basis for our Key Findings on legal frameworks.

Local law firms who supported the research in each country are noted in the Acknowledgement section of this report.

## GOOD PRACTICE COUNTRIES

### NORWAY

**Primary legislation:** Legal gender amendment act 2016 (*Lov om endring av juridisk kjønn*); The Public registry Act 2016 (*Folkeregisterloven*)

Does Norway operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	There is no age requirement.
Can <b>minors</b> apply for gender recognition?	<p>YES. Minors above 16 can apply for a change of legal gender under certain conditions: (additional to the requirements applicable to adults)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Age restriction:</b> The minimum age is 16. Additional conditions apply for minors younger than 16.</li> <li><input type="checkbox"/> <b>Parental/legal guardian consent:</b> For minors between 6 and 16 parental or legal guardian consent is necessary. For minors under the age of 6, the application must be filled by the person who has the parental responsibility for the child. If the parents have shared custody, but the application is only filled by one of them, the legal gender may nevertheless be changed if this is in the minor's best interest.</li> <li><input type="checkbox"/> <b>Professional/medical consent:</b> For minors under the age of 6, it is required that the child is born with a congenital uncertain somatic gender development. The applicant must submit documentation of the condition from health professionals.</li> </ul> <p>The rules for emancipated minors remain the same as for un-emancipated minors.</p>

Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of their spouse or court order is required. <input type="checkbox"/> <b>Self-declaration:</b> the applicant must provide a self-declaration that they want to change gender.
Are there <b>effects</b> of altering the legal gender:	<input type="checkbox"/> On <b>marriage</b> : NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in Norway. <input type="checkbox"/> On <b>succession</b> : Possibly. The Legal Gender Amendment Act states that the main rule is that legal gender should be used as a basis for application of other rules and regulations, which include the Inheritance Act. If there are some uncertainties the intention should be interpreted in accordance with the testator's will. <sup>40</sup> <input type="checkbox"/> On <b>parenthood</b> : NONE
Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. According to the Norwegian Equality and Discrimination Act 2017 section 6 it is illegal to discriminate on the basis of gender. Norway has an Equality and Discrimination Tribunal to which persons who claim they have been discriminated against can file a complaint. The Tribunal can decide whether they have been discriminated against, and/or whether the person who was discriminated against should receive compensation.
Is <b>gender confirmation treatment</b> available?	YES. Reimbursement is generally available for treatment (excluding consultations, hormones and day surgery for patients above the age of 16).
Do children need to be assigned a <b>legal gender at birth</b> ?	YES. The birth of the child must be registered with their legal gender within 1 month after the birth or after the arrival in Norway if the baby is born abroad.

<sup>40</sup> For example: If the eldest son referred to in the will is no longer a male/son, but a female/daughter, the will shall be interpreted so that the (previously) eldest son – but who has changed legal gender and is now a female - is to inherit X.

## MALTA

**Primary legislation:** Gender Identity, Gender Expression and Sex Characteristics Act, 2015 (CAP 540)

Does Malta operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	There is no age requirement.
Can <b>minors</b> apply for gender recognition?	<p>YES. Minors can apply for legal recognition under certain conditions (additional to the requirements applicable to adults):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Age requirement:</b> "minor" means a person who has not as yet attained the age of 16 years old.</li> <li><input type="checkbox"/> <b>Parent/guardian consent requirements:</b> the minor must have parental consent or consent of its legal guardian in order to initiate the request. The person exercising parental authority, or the legal guardian must file an application in the registry of the Civil Court requesting the Court to change the recorded gender and the first name of the minor with the express consent of the minor. When the application is made on behalf of a minor, the Court must: (a) ensure that the best interests of the child as expressed in the Convention on the rights of the Child are the paramount consideration; and (b) give a due weight to the views of the minor having regard to the minor's age and maturity.</li> </ul> <p>The same rules apply to emancipated minors.</p>
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of their spouse, court order is required.</li> <li><input type="checkbox"/> <b>Request for gender re-identification:</b> the request must be made to the Director of the Public registry and by means of a note of registration and a declaratory public deed. The decision is made on a discretionary basis.</li> </ul>
Are there <b>effects</b> of altering the legal gender:	<ul style="list-style-type: none"> <li><input type="checkbox"/> On <b>marriage:</b> NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same sex marriage is recognised in Malta.</li> <li><input type="checkbox"/> On <b>succession:</b> NONE</li> <li><input type="checkbox"/> On <b>parenthood:</b> Trans parents legal gender identity is recognised.</li> <li><input type="checkbox"/> On <b>other obligations:</b> NONE.</li> </ul>
Are there <b>sanctions</b> for breach of the law on legal recognition?	Anyone who knowingly exposes any person who has availed of the provisions of the Gender Identity Act, or insults or reviles a person, can be fined between €1,000 and 5,000. In addition, anyone who knowingly violates any of the provisions of the Act can be fined between €500 and 1,000.

Is <b>gender confirmation treatment</b> available?	YES. The government set up the Gender Wellbeing Clinic which provides a range of trans specific healthcare services. <sup>41</sup>  However, genital surgeries are not available in Malta and the only possibility is to undertake such surgeries in a foreign jurisdiction. <sup>42</sup>
Do children need to be assigned a <b>legal gender at birth</b> ?	Malta's provisions regarding the "right to bodily integrity and physical autonomy" of intersex persons provides that such assignment can be deferred until the person to be treated can provide informed consent but not later than the age of 18 years old [Article 14]. Note, however, that this provision only applies to intersex persons.

<sup>41</sup> It provides a range of trans specific healthcare services including hormone therapies; voice therapy; psycho-social services; and is currently (as at July 2019) assessing trans patients for surgical interventions available locally such as hysterectomies and mastectomies. Minors can also access puberty blocker through the National Health Service's Pediatric Endocrinology department.

<sup>42</sup> The reason is that Malta currently does not have the required expertise and lacks the number of patients that would make such expertise possible. This means that protocols need to be established between the National Health Service and external service providers.

## BELGIUM

**Primary legislation:** Belgian Civil Code: Law of 25 June 2017 on the reform of regulations on transgender persons with respect to the indication of gender in civil records and the consequences thereof; Law of 10 May 2007 on the suppression of discrimination between women and men.

Does Belgium operate a model of <b>self-determination</b> for changes of legal gender?	YES. Some argue that it can be better categorized as a regime of self-determination "with limitations". <sup>43</sup>
At what <b>age</b> can a person apply for legal gender recognition?	From age 18 in principle, 16 under certain conditions, 15 for emancipated minors.
Can <b>minors</b> apply for gender recognition?	<p>YES. Minors above 16 can apply for legal recognition under certain conditions (additional to the requirements applicable to adults):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Age restriction:</b> persons under 18 are in principle prohibited from altering their legal gender. However, at the age of 16, minors are able to initiate the applicable administrative procedure.</li> <li><input type="checkbox"/> <b>Professional/medical consent:</b> minors above 16 must provide a declaration by a child psychiatrist confirming that the minor "<i>has sufficient discernment to have the continuing conviction that the gender mentioned in their birth certificate does not correspond to their internally experienced gender identity.</i>"</li> <li><input type="checkbox"/> <b>Parent/guardian consent requirements:</b> minors above 16 must have parental consent or consent of its legal guardian in order to initiate the administrative procedure. In the event that one or both parents (or legal guardian) oppose the change of legal gender, the minor may request the competent family court to appoint a "temporary legal guardian". The minor may also request the assistance of a pro bono lawyer for this procedure.</li> </ul> <p>Emancipated minors over 15 years old can apply for legal recognition under the same conditions as adults.</p>
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of their spouse or court order is required.</li> <li><input type="checkbox"/> <b>Standstill period:</b> The applicant must wait a period of 3 to 6 months between the first and second declaration stating that they have had the conviction of inconsistency between their registered sex and their gender identity "for a long time" Also, during this standstill period, the prosecutor will be requested to provide an official opinion. The opinion may only be negative if the request would somehow conflict with Belgian public order.<sup>44</sup></li> </ul>

<sup>43</sup> See the complementary measures of the procedure of self-declaration introduced by the Belgian legislator: <https://blog-iact-aidc.org/the-third-gender/2018/6/3/new-belgian-gender-recognition-act-shouldnt-self-determination-also-include-non-binary-people-gwh56>

<sup>44</sup> For this reason, Belgium is no longer listed by the TGUE as a "self-determination" country. See footnote 37.

Are there <b>effects</b> of altering the legal gender:	<input type="checkbox"/> On <b>marriage</b> : NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in Belgium. <input type="checkbox"/> On <b>succession</b> : NONE <input type="checkbox"/> On <b>parenthood</b> : Trans parents legal gender identity is recognised
Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. The public official at the civil registry may refuse to carry out the requested change of legal gender but must clearly motivate this refusal from among a limited number of reasons (e.g. the person requesting the legal gender change is clearly intoxicated or the procedure has not been followed properly). The refusal can be subjected to appeal before the competent family court within 60 days following the refusal.
Is <b>gender confirmation treatment</b> available?	YES. Reimbursement is generally available for treatment.
Do children need to be assigned a <b>legal gender at birth</b> ?	YES. The birth of the child has to be declared with their gender within one week of the birth.

## COMPARATOR COUNTRIES

### DENMARK

**Primary legislation:** Central person register law (Lov om Det Centrale Personregister) para 3; Name law (Navneloven), para 13, 13(2), 14(2)

Does Denmark operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	From age 18.
Can <b>minors</b> apply for gender recognition?	NO.
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of their spouse or court order is required. <input type="checkbox"/> <b>Written statement:</b> The applicant must state that the desire for a new social security number is justified by an experience of belonging to the other gender. <input type="checkbox"/> <b>Standstill period:</b> The applicant must confirm their request 6 months after the first request.
Are there <b>effects</b> of altering the legal gender:	<input type="checkbox"/> On <b>marriage:</b> NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in Denmark. <input type="checkbox"/> On <b>succession:</b> NONE <input type="checkbox"/> On <b>parenthood:</b> NONE <input type="checkbox"/> On <b>name:</b> A person's name must correspond with their legally recognised gender. Trans people may apply for an exception to this rule before their gender is legally recognised. <input type="checkbox"/> On <b>conscription:</b> Every Danish man is subjected to military service. This also applies to those who have been legally recognised as male. Those that are no longer legally recognised as male are not subject to military service.
Are there <b>sanctions</b> for breach of the law on legal recognition?	NO.
Is <b>gender confirmation treatment</b> available?	YES. Most gender confirmation treatments are publicly funded.
Do children need to be assigned a <b>legal gender at birth?</b>	YES. The birth of a child must be registered within 14 days with their legal gender.

## FRANCE

**Primary legislation:** Law No. 2016-1547 of 18 November 2016, Article 56-II incorporated in civil code, Book I, Title II, Section 2 bis " De la modification de la mention du sexe a d'état civil" (Article 61-5 to 61-8); Decree No. 2017-450 of March 2017 incorporated in Code of Civil Proceeding (Articles 1055-5 to 1055-9).

Does France operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	From age 18 in principle or 16 for emancipated minors.
Can <b>minors</b> apply for gender recognition?	NO. Unless they are emancipated minors who apply under the same conditions as adults. A minor can be emancipated at 16.
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of spouse is required.</li> <li><input type="checkbox"/> Not having received a medical or undergone operation cannot be a reason for dismissing the application.<sup>45</sup> <i>However, because the person seeking to recognise their gender identity within official documentation has to file a request before the French Court, it is advisable to provide information about medical treatments received and/or operations undergone.</i></li> <li><input type="checkbox"/> <b>Court order:</b> The applicant needs to file a request before the High Court (<i>Tribunal de Grande Instance</i>) demonstrating, by sufficient facts, that the gender mentioned in their official documentation does not correspond to the gender in which the person describes themselves and is known. These facts may be that: <ul style="list-style-type: none"> <li>o the applicant presents themselves publicly as belonging to the gender claimed;</li> <li>o the applicant is known by their family, friends or co-workers as a person belonging to the gender claimed; and/or</li> <li>o the applicant has obtained the change of their first name so that it corresponds to the gender claimed.</li> </ul> </li> </ul>

<sup>45</sup> Article 61-6 Civil code.

Are there <b>effects</b> of altering the legal gender:	<input type="checkbox"/> On <b>marriage</b> : NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in France. <i>However, a spouse may (i) file for divorce or (ii) ask a court to nullify their marriage due to an error of substantial nature of the person who had their legal gender altered if, at the time of the conclusion of the marriage, this person was already transgender, but had concealed it.</i> <input type="checkbox"/> On <b>succession</b> : NONE <input type="checkbox"/> On <b>parenthood</b> : NONE <input type="checkbox"/> On <b>other obligations</b> : NONE. The obligation entered into with third parties are not affected either.
Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. Discrimination including discrimination based on physical appearance, gender identity and genetic characteristics are prohibited. <sup>46</sup> This offence notably includes: (i) refusing the sale of a good or the provision of a service, (ii) interfering with any economic activity and / or (iii) refusing to hire, sanction or dismiss a person. The penalty for this offence can go up to three years imprisonment and a €45,000 fine. When committed in a public area, the penalty can be up to five years imprisonment and a fine of €75,000.
Is <b>gender confirmation treatment</b> available?	YES. Although there is no legal requirement for such surgery gender confirmation treatment exists and can be reimbursed.
Do children need to be assigned a <b>legal gender at birth</b> ?	YES. Legal gender must be assigned within 5 days from the date of birth. Exceptionally, if the gender of the child cannot be determined and if such sex can be definitively determined after a medical treatment has been performed, then the assignment of the gender may be delayed by up to one or two years.

46 Articles 225-1 to 225-4 of the Criminal Code.

## IRELAND

**Primary legislation:** The Gender Recognition Act 2015

Does Ireland operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	From age 18 in general, 16 under certain conditions. (Regarding emancipated minors, there is no such concept in Ireland).
Can <b>minors</b> apply for gender recognition?	<p>YES. Minors can apply for gender recognition under certain conditions (additional to the requirements applicable to adults):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Age requirement:</b> The minimum age is 16.</li> <li><input type="checkbox"/> <b>Professional/medical consent:</b> The applicant must present certificates from 2 doctors, one certificate being from the child's primary treating medical practitioner and one who has no connection with the child. Both doctors must be either endocrinologists or psychiatrists.</li> <li><input type="checkbox"/> <b>Parent/guardian consent:</b> Both parents must consent. However, this requirement may be dispensed with if the Court is satisfied that: the consent cannot be obtained because the person cannot be identified or found or is failing or neglecting to respond to a request or, should not be obtained because the nature of the relationship between the child concerned and the person shows that it would not be in the interest of the safety or welfare of the child to contact the person.</li> <li><input type="checkbox"/> <b>Associated cost:</b> As the application must be presented to the Circuit Court, it invariably attracts costs.</li> </ul>
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis, permission of spouse or court order is required.</li> <li><input type="checkbox"/> <b>Declaration:</b> The person who applies to the Minister for Employment Affairs and Social Protection for a gender recognition certificate must furnish a statutory declaration that they: <ul style="list-style-type: none"> <li><input type="checkbox"/> Have a settled and solemn intention of living in the preferred gender for the rest of their life;</li> <li><input type="checkbox"/> Understand the consequences of the application; and</li> <li><input type="checkbox"/> Make the application of their free will (i.e. informed, freely and without undue influence).</li> </ul> </li> </ul>
Are there <b>effects</b> of altering the legal gender:	<ul style="list-style-type: none"> <li><input type="checkbox"/> On <b>marriage:</b> NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in Ireland.</li> <li><input type="checkbox"/> On <b>succession:</b> NONE</li> <li><input type="checkbox"/> On <b>parenthood:</b> NONE</li> </ul>

Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. A person who knowingly or recklessly provides false information in a material with respect to the Minister or who fails or neglects to surrender a gender recognition certificate granted by the Minister without reasonable excuse is guilty of an offence. The penalty for such an offence is maximum €2,000 and/or a term of imprisonment of maximum 6 months.
Is <b>gender confirmation treatment</b> available?	NO. However, treatment can be arranged in another country and funded by the State under the "Treatment Abroad Scheme".
Do children need to be assigned a <b>legal gender at birth</b> ?	YES.

## PORUGAL

**Primary legislation:** Law no. 38/2018 on the right to self-determination of gender identity, expression of gender and protection of the sexual characteristic of each person.

Does Portugal operate a model of <b>self-determination</b> for changes of legal gender?	YES.
At what <b>age</b> can a person apply for legal gender recognition?	From age 18 in principle, for minors between the ages of 16 and 18 under certain conditions.
Can <b>minors</b> apply for gender recognition?	<p>YES. Minors between 16 and 18 can apply for gender recognition under certain conditions (additional to the requirements applicable to adults):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Age restrictions:</b> The minimum age is 16.</li> <li><input type="checkbox"/> <b>Parent/guardian consent:</b> the legal representative of the applicant must request the change of legal gender.</li> <li><input type="checkbox"/> <b>Applicant consent:</b> The head of the civil registry must conduct a hearing of the applicant in order to establish their free and informed consent.</li> <li><input type="checkbox"/> <b>Medical/psychological consent requirements:</b> The applicant must present a report prepared by any doctor registered in the psychologists' bar association or any psychologist registered in the medical bar, attesting to the minor's capacity of decision making and informed willingness.</li> <li><input type="checkbox"/> <b>Other:</b> the request must be presented in person.</li> </ul>
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or other medical treatment, professional/medical diagnosis or court order is required.</li> <li><input type="checkbox"/> <b>Permission of spouse:</b> The change of legal gender and the corresponding change of first name requires the consent of a spouse, provided by an official statement to the registrar or through authentic or authenticated document.</li> </ul>
Are there <b>effects</b> of altering the legal gender:	<ul style="list-style-type: none"> <li><input type="checkbox"/> On <b>marriage:</b> NONE. There is no requirement to dissolve a marriage to obtain legal gender recognition. Moreover, same-sex marriage is recognised in Portugal.</li> <li><input type="checkbox"/> On <b>succession:</b> NONE</li> <li><input type="checkbox"/> On <b>parenthood:</b> NONE</li> </ul>
Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. Discrimination based on the exercise of the right to gender identity and to gender expression and the right to protection of the sexual characteristics is prohibited. In accordance with Law no. 38/2018, the practice of any discriminatory act, by action or omission, grants to the injured party the right to compensation for material and non-material damages.

Is <b>gender confirmation treatment</b> available?	YES.
Do children need to be assigned a <b>legal gender at birth</b> ?	YES.

## UNITED KINGDOM

**Primary legislation:** Gender Recognition Act 2004

Does United Kingdom operate a model of <b>self-determination</b> for changes of legal gender?	NO.
At what <b>age</b> can a person apply for legal gender recognition?	From age 18.
Can <b>minors</b> apply for gender recognition?	NO. Same applies to emancipated minors.
Are there any <b>requirements</b> when a person seeks to alter their legal gender within official documentation?	<ul style="list-style-type: none"> <li><input type="checkbox"/> No surgery, sterilization or court order is required.</li> <li><input type="checkbox"/> <b>Other medical treatment:</b> The applicant must provide a report from a medical professional detailing any medical treatment.</li> <li><input type="checkbox"/> <b>Professional/medical diagnosis:</b> The applicant must provide a medical diagnosis of gender dysphoria. The waiting time to receive this medical diagnosis can often be 1-2 years.</li> <li><input type="checkbox"/> <b>Permission of spouse:</b> The applicant must provide the consent of their spouse.</li> <li><input type="checkbox"/> <b>Declaration:</b> the applicant must provide a statutory declaration proving: <ul style="list-style-type: none"> <li>○ they lived for at least 2 years in their acquired gender (e.g. bank statement, payslips, passport); and</li> <li>○ they intend to live in the acquired gender until death.</li> </ul> </li> <li><input type="checkbox"/> <b>Associated costs:</b> Payment of a fee of £140 or proof of low income for reduction/removal of the fee.</li> </ul>
Are there <b>effects</b> of altering the legal gender:	<ul style="list-style-type: none"> <li><input type="checkbox"/> On <b>marriage:</b> YES. The spouse of the person seeking legal gender recognition is required to give consent to a change of marriage status. If the consent is withheld, the person seeking legal gender recognition will have to apply to end the marriage before the gender recognition certificate can be issued. Same-sex marriage is not recognised in Northern-Ireland, so if someone was married in Northern-Ireland they have to apply for an interim gender recognition certificate which would allow them to easily end their marriage and then get a full gender recognition certificate. If they want to remain legally bound to their spouse then they would have to opt for a civil partnership.<sup>47</sup></li> <li><input type="checkbox"/> On <b>succession:</b> Possibly. If a will refers to someone in a gendered way, the law will be interpreted according to the person's gender at the time the will was made.</li> </ul>
Are there <b>sanctions</b> for breach of the law on legal recognition?	YES. Discrimination on the basis of gender reassignment by public bodies/those in public office is prohibited under the Equality Act 2010.

<sup>47</sup> N.B. With recent changes, however, same sex marriage is set to be recognised in Northern Ireland from early 2020.

Is <b>gender confirmation treatment</b> available?	YES. Reimbursement is generally available for treatment.
Do children need to be assigned a <b>legal gender at birth</b> ?	YES.

## COUNTRY ANALYSIS: ADVOCACY INSIGHTS





# COUNTRY ANALYSIS: ADVOCACY INSIGHTS

These summaries provide an overview of the strengths, weaknesses and ‘lessons learned’ from NGO advocates and their campaigns in each jurisdiction and form the basis for our key findings in part 1.3. This section looks at the key advocacy tools used in each of the Focus Jurisdictions and highlights where they differ in advocacy dynamics.

The NGOs who contributed are noted in the Acknowledgement section of this report.

## GOOD PRACTICE COUNTRIES

### NORWAY

In Norway, the laws around legal gender recognition are some of the most progressive in Europe and are particularly favourable to minors. Charities and NGOs played an instrumental role in helping to change the law around legal gender recognition by helping to raise awareness among politicians and the general public of the issues faced by those wishing to have their true gender legally recognised.

#### **Background**

Part of the reason why the laws in Norway are so progressive and change was able to take place so quickly, is that the previous law was draconian. In order to apply for legal gender recognition, applicants had to undergo sterilisation, a step which activists argued was a violation of their human rights.

In Norway, there are strong links between the State and charities/NGOs as many organizations are partially or heavily State-funded.

As we have seen in other countries which have more progressive legal gender recognition laws, the route that Norwegian charities and NGOs took was to advocate directly to politicians. They developed strong ties with youth politicians, who then presented to the senior members of their parties on the changes that were needed. This technique was effective at persuading politicians, as the changes were being suggested from within their own party rather than an external organisation, and were therefore perhaps more palatable and perceived as more legitimate. The youth politicians brought up the issue at every meeting of any sort – even ones which were not directly relevant, to ensure the issue was at the forefront of everyone’s minds. The youth politicians also presented their arguments to the department for health, which created a committee to prepare a report on the issue. The report, called ‘the Right to Gender and Health to All Genders’ focussed on the requirement for sterilisation from a human rights perspective.

#### **Media**

The charities and NGOs also launched campaigns to encourage public support, with school programmes, presentations by trans people and an emphasis on the human rights violations posed by mandatory

sterilisation. This was easier said than done, as there was no law that trans people had to undergo sterilisation before they could have their legal gender recognised, it was a practice that had developed over time to become an implied condition. This meant that it was even harder for activists to argue against it as it was an intangible ghost of a concept, rather than a concrete law. The campaigns were successful, and now Norway has one of the most progressive legal gender recognition laws in the world.

### **Minors**

Under the new law, a child can have their legal gender changed under the age of 6 if they are intersex; over the age of 6 with the consent of one parent; and over the age of 16 parental consent is not required. For those under 16, if one or both guardians oppose the change of legal gender or are not informed, there must be approval from the County Governor. The background to advocacy for the inclusion of minors in the legislation is unclear, but it seems likely that the involvement of young politicians and the desire to ensure that any new legislation was human rights compliant were strong factors (also with the UN Convention on the Rights of the Child).

### **Reflections**

Activists still believe there is room for improvement, as a third gender is still not legally recognised. Unfortunately, a campaign in 2017 for the recognition of a third legal gender was not popular, and was seen by activists to have been met with widespread ignorance. The same techniques that were successful in the previous campaign, such as school programmes and youth politicians speaking to their parties, had less of an effect. This has coincided with a rise in right-wing movements, as well as opposition from within the LGBTI community, with a lesbian movement which believes that women's rights would be negatively affected by the introduction of a third gender. Another right-wing organisation (which has been banned in Finland) whose slogan is 'Destroy the Gay Lobby' is actively trying to incite violence against the trans community. Fortunately, the general public for the most part do not share the group's views and donations to LBGTI organisations rose sharply when the group became active.

In summary, although the laws in Norway are very progressive, there is still room for improvement. Activists successfully campaigned to change the law, and a key factor was youth involvement. Campaigning directly to politicians was shown to be effective, and gives an insight into ways that other countries may hope to follow suit.

## MALTA

Malta is recognised as having some of the most progressive laws in respect of legal gender recognition in Europe. The organisation known as 'Malta LGBTIQ Rights Movement' ('MGRM') played an important part in Malta's journey to becoming a good practice country for LGBTQI rights.

### **Background**

Following the introduction of sub-legislation in Malta in 2004, it became possible for an individual to alter their legal gender under certain conditions: (i) there had to be irreversible gender reassignment; (ii) the person could not be married; and (iii) it was only available to people over the age of 18.

Prior to the law coming into force in 2004, MGRM had been engaged in addressing legal gender recognition issues for a number of years. MGRM also offered support services and the people who made use of these services were often trans people and especially trans youth. The group were continually working with people who had experienced difficulties with legal gender recognition, particularly those who could not afford costly gender reassignment process due to the fact that this was not available in Malta, and consequently, it had to be accessed abroad.

During the period between 2004 and 2015 (when the new law came into force), there were 21 people who went through the legal gender recognition process. All of the known cases of legal gender recognition prior to 2015 are of trans women. Following the entry in force of the Gender Identity Act of 2015, 44% of legal gender recognition cases have been of trans men.

In 2010, MGRM commissioned a position paper on legal gender recognition which looked at the current legal framework. The paper also put forward a proposal for a new law in respect of legal gender recognition and that was authored by Dr Neil Falzon, a human rights lawyer. The new legislation was tabled in Parliament by a member of Parliament from the opposition side but it was never discussed. The position paper itself helped to set the framework for what the LGBTQI movement was asking for and the human rights infringements that were involved in the old legislation.

### **Media / Public Sentiment**

The public discourse in respect of legal gender recognition was very much human rights-led. In particular, the case of a trans woman, Joanne Cassar, helped to raise awareness of trans issues and legal gender recognition in Malta. In 2007, Joanne Cassar had started a legal case against the Director of the Public Registry. Although she had changed her legal gender she was still not allowed to marry a man. Legal gender recognition was considered purely 'cosmetic' and not a true recognition of Joanne's identity.

Joanne's garnered media attention and MGRM supported Joanne by accompanying her to court sittings and also providing some financial support.

In 2013 there was a change of government, from Christian Democrat to Socialist. One of the first things that the new Labour government did when it came into power in March 2015 was to settle Joanne's case (which had already reached the European Court of Human Rights). The case was settled and the legislation was revised in 2013, to state that a change of legal gender had to affect all areas of life, including marriage.

According to MGRM, Joanne's case helped the status of legal gender recognition in Malta because it was a human story. There were also other trans women who were visible at the time and spoke eloquently about their experience. For example, there was a trans woman acting in a TV soap (as a trans woman) and this gave trans people visibility among the general public.

In terms of public sentiment, there was not a great deal of political opposition. The opposition party in Malta said they would vote in favour of the bill as they had previously abstained in the vote about civil unions, which had caused a backlash. Legal gender recognition legislation followed quickly after that backlash and this was a strong factor in increasing the campaign's support. In this regard, the political position is very particular to Malta. Further, whilst there was public debate and discussion, it was not vicious or damaging to the cause.

### **Minors**

#### Importance of the LGBTQI Consultative Council

In 2013, the government set up the LGBTQI Consultative Council (the Council), which was composed of civil society representatives, to advise government and prepare legislation on LGBTQI rights. In 2014, after the introduction of the Civil Union legislation, the Council was asked to start working on new gender identity legislation. This was spearheaded by a Ministry official, Silvan Agius, in consultation with the Council. It was therefore a partnership between government and civil society. This involved Silvan Agius reviewing good practice legislation in force at the time (Argentina was seen as the most progressive, along with Portugal, Spain, the UK and Denmark) and then developing legislation for Malta. The Maltese legislation built on the good practices demonstrated by Argentina by including the additional protections of bodily integrity for intersex people. This was introduced at the insistence of the government, following a meeting with the Intersex Forum by Minister Helena Dalli in 2013.

#### Interaction between NGOs

Part of Malta's unique context is that it is a small country so activists did not need to conduct a wide public campaign to get the law passed. MGRM already had government support which was enough to get the law passed through Parliament. There was an internal consultation within the Council which brought together all the LGBTQI NGOs to discuss what the law would consist of, for example, whether the process would be accessible to minors and whether there would be a gatekeeping process. The Council then agreed on the terms of the law. It also consulted with the organisation Transgender Europe ('TGEU') in respect of the issue of minors and the need to incorporate their interests into the law. They also made use of TGEU's checklist which was very useful in ensuring that all key areas relating to legal gender recognition were addressed.<sup>48</sup>

Members of the Council discussed their concerns as to whether minors were mature enough to make decisions in respect of legal gender and to be able to assess the impact this would have on their lives. It was recognised that a minor's gender identity is capable of evolving over time in a fluid manner. There were concerns, at that time, in respect of the influence of parents regarding minors' gender identity.

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48 TGEU, Checklist – Gender Recognition Legislation ([https://www.tgeu.org/sites/default/files/Checklist\\_LGR.pdf](https://www.tgeu.org/sites/default/files/Checklist_LGR.pdf))

### TGEU'S Advice

NGOs discussed how important these concerns were and TGEU advised that the process should be even simpler for children, due to the fact that a child's identity can develop and change. It was the TGEU's position that no harm could come from the process of self-discovery and would be very unlikely to have a negative impact.

As a result, the Maltese government passed legislation for legal gender recognition which improved access for minors; initially for those under age of 18 and then for minors under the age of 16. The process is administrative and is relatively accessible. At the time of the interview, MGRM had supported at least three minors through the process.

In Malta, parental support and consent is still required for minors under the age of 16 (as they do not have legal status) which means that their parents act on their behalf. MGRM acknowledged that if parents do not agree with the transition process, this would pose a problem. This is inevitably an obstacle and given that children and young people are generally dependent on their parents to meet their basic needs, if a minor does not have parental support, it is difficult for them to transition both legally and socially.

### **Reflections**

The Maltese experience provides a lot of lessons that could be adopted in NGO struggles for legal gender recognition in other parts of Europe and across the globe. Firstly, an important role can be played by high profile impact or "strategic" litigation, even where that litigation is not successful at the national level. The case of Joanne Cassar no doubt played an important role in sensitizing the media, politicians and the public to the issue of legal gender recognition.

Another important lesson from Malta relates to the timing of and escalation of an advocacy campaign. It is crucial to "seize the moment" where there are changing dynamics in the domestic political constellation and to build on public backlash against anti-LGBTI sentiment among certain political parties.

Equally, the Maltese example also demonstrates the importance of relying on the experience and expertise of leading human rights lawyers and international and pan-regional trans rights and LGBTI organizations. The early involvement of Dr Neil Falzon and the subsequent involvement of TGEU helped Maltese advocates to both set the agenda early and set a very high bar for legal gender recognition legislation. Undoubtedly, this was critical to the success of the Maltese campaign.

When the legislation was passed in Malta, it was the best that it could have been at the time according to local activists. However, the law is not by any means perfect. Since the legislation was passed, it has been amended a number of times. For example, it was decided that the age of minors should be reduced from 18 to 16 years old. This was in line with other legal amendments such as lowering the age of consent to 16 and extending the right to vote in general elections to those over 16 years of age. A change in Malta's Health Act also allows minors to visit the doctor on their own from the age of 16.

It is evidently a positive step that Malta introduced amendments to the law which depathologise gender identity. In Malta, it is now illegal to diagnose an individual with gender dysphoria or gender identity disorder. A recent amendment introduced in 2018 during the enactment of gender based violence legislation in line with the Istanbul Convention, puts surgical interventions on intersex children without

informed consent on a par with female genital mutilation.

In February 2018, Malta amended Schedule V of the Social Security Act to introduce ‘gender identity and sex characteristics related conditions’ as eligible under the National Health Service. In November 2018, the government set up the Gender Wellbeing Clinic which is managed by a multidisciplinary group of professionals both psychosocial and medical (i.e. endocrinologists, nurses, surgeons, social workers, psychologists, speech therapists, psychiatrists, etc.). They began meeting with patients and carrying out initial assessments in 2018 and the first prescriptions for free hormones started shortly after. This was widely recognised as being a progressive and positive step for the trans community.

Going forward, local activists believe that the privacy of individuals undergoing a change of legal gender should be better protected. At present, the process involves a public deed and an annotation on the individual’s birth certificate<sup>49</sup>. It will be challenging to improve the process as searches on the public registry will need to remain accessible (and therefore public). Nevertheless, it is imperative for the privacy and safety of trans people that this information is protected.

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49 With reference to CAP 540.

## BELGIUM

### Background

#### Importance of the political context

Belgium adopted a law in 2007 which, for the first time, included the rights of transgender people. According to this law, transgender people could now officially change their name but under certain conditions; (i) psychological diagnosis; and (ii) medical treatment. However, minors were not mentioned in the law at that time. Civil society attempted to change the requirements in order to change the law regarding legal gender and, at the same time, to include minors. Nevertheless, the political context in Belgium was not amenable and it was only three years ago that the new law on gender identity was adopted. For those NGOs that were more politically oriented, they initially considered it to be premature for a new debate. It was felt that the Parliament would not have been ready to vote in a new law at such short notice and in such close succession to the previous law. Therefore, it is understood that the reason for the delayed discussion was very much a product of the specific political climate at that time.

#### Condemnation from the international community

In 2014, NGOs started to work on a new bill on gender recognition after seven UN agencies<sup>50</sup> published a declaration in May 2014 condemning the use of forced sterilization on certain groups, including trans and intersex people. This historical condemnation triggered civil society to react as Belgium was considered to be a country which respected human rights. Different LGBT NGOs collaboratively drafted a bill to amend the law of 2007. Unfortunately, the government was already drafting its own proposal and did not take into consideration the major improvements that the NGOs included in their bill.

### Interaction between NGOs

However, the NGO draft bill proved to be hugely beneficial in terms of communication between the different NGOs in Belgium. Effectively, this discussion brought together "Flemish", "Wallons" and Brussels-based NGOs which were able to overcome regional divisions. The various NGOs that took part in the discussion were able to align themselves politically on the issues at stake in order to bring about a new law. It also presented an opportunity to identify and address issues about which there was no consensus. It would have been more of a challenge to put these issues before the Parliament if they had not formed a consensus on certain issues in advance. Therefore, a key factor was to find common ground in order to put forward a strong argument before the Parliament.

#### Involvement in parliamentary debates

In terms of the legislative process in Belgium, the Parliament involved stakeholders from civil society as a part of the ordinary consultative process. When the Minister of Justice took the initiative to draft a bill, the "Federation Wallone Arc en ciel" (which include all LGBT NGOs in Wallonie) asked the NGO 'les CHEFF' if it could represent them during a "parliamentary commission" before the vote of the new law. Furthermore, different NGOs were involved at various stages in the parliamentary debates.

### Minors

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50 The OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO

The discussion on transgender minors was considered to be the most debated and controversial issue of the law. The different NGOs involved decided to agree on the collective positions that would be defended and promoted. Despite the fact that some NGOs were hesitant, the majority agreed with les CHEFF as it was the only NGO specialised in LGBT minors.

It is noteworthy that the discussion regarding the new law on legal recognition did not separate the rights of minors and adults; NGOs considered that minors should have the same choices as adults. This situation is particular to Belgium. However, the new law set up some additional requirements for minors, some of which have been the subject of much criticism.

Concerning the age requirement of 16 years, all NGOs agreed that if the age of sexual majority was set at 16 years old in Belgian law, young people should also be able to decide for themselves if they want to change gender.

In terms of parental authorisation, NGOs also agreed on this point as Belgian law requires such authorisation for minors with regard to other legal changes, for example to change one's name.

The last requirement on psychological declaration was considered a "failure" by NGOs as they had called for the adoption of similar conditions for minors and adults (except age and parental authorisation as explained above). The drafted bill required a declaration from a psychiatrist on the gender identity of the minor. NGOs did not support the fact that different conditions were applied to adults and minors. NGOs clearly stated before the Parliament that any kind of psychological declaration (on gender identity or even on maturity) was not favourable to minors. Further, psychiatrists were not specifically familiar with LGBT issues. In the end, the point of view of psychiatrists is taken into account to a certain extent. A compromise has finally been reached: a psychological declaration on the *maturity* of the minor is required. Therefore, this condition, as it is today, was adopted under more favourable terms in large thanks to the work of the NGOs. Even though NGOs had to give up on their initial position, their discussions lead to a change in the draft bill towards less restrictive conditions for minors.

### **Reflections**

The Belgian example provides some useful lessons for other campaigns, notably the importance of being ahead of the government and getting a favoured legislative proposal out before the government had developed their own. Possibly, the failure to achieve this in Belgium has meant that the gender recognition law is not as progressive as it could have been.

Another lesson relates to the importance of building on recommendations from international human rights bodies. Where a state has been "named and shamed" by a UN human rights body (as Belgium was condemned by seven UN agencies) or the Council of Europe or the EU (particularly where this is a state that takes pride in being a human rights respecting member of the international community), NGOs can use the negative publicity and the sense of shame, to force governments into action on trans rights.

A final lesson from Belgium is the importance of NGO coalition building and allowing NGOs with the most relevant expertise to play a larger role.

Currently, there is no ongoing discussion with the Parliament to improve the application of legal gender

recognition laws to minors. The NGOs noted that the reason is that new debates are unlikely to be fruitful as the political climate is not favourable. The new parliamentary majority will not initiate new discussions on this matter during the first year of its mandate. It will probably take some years from now to be able to open new discussions on the conditions applying to minors. At present, the discussion concerns the law's application to adults, namely because prosecutors in one region have been systematically requesting investigations when individuals request to change their legal gender. This was not provided for in the law.

## COMPARATOR COUNTRIES

### DENMARK

#### **Background**

Danish NGOs have relatively easy access to politicians and typically maintain regular contact (e.g. via telephone and email). For this reason, more combative advocacy strategies, such as strategic litigation are rarely used in Denmark. It is considered to be easier and more efficient to directly change the law via lobbying/ political influencing.

However, it can be complicated to gain the support of the political majority for particular advocacy objectives. Due, in part, to the proportional representation electoral system, Danish governments are often minority governments relying on the support of opposition parties to form a majority in the Folketinget (the Danish Parliament). While it is, of course, easier to obtain results if the government is in favour of a particular advocacy agenda, on the other hand, it is also possible to get legislation passed and parliamentary recommendations adopted against the wishes of the government if one can build consensus among various parties across the political spectrum.

In the first decade of the 21<sup>st</sup> century there was a right wing (liberal-conservative) government which was largely opposed to the development of LGBTI rights. Some progress was made though; for instance, a ban on access to medically assisted reproduction for female same-sex couples and singles was lifted with a single vote majority in the Parliament. Moreover, access to same-sex adoption was enacted against the will of the government.

During this time, the opposition made proposals regarding legal gender recognition with no success. But when a left wing (liberal-socialist) government was elected, the issue finally gained traction. For the first time ever, the government programme – i.e. the programme agreed upon when forming the government – contained an LGBTI-section including a commitment to look at legal gender recognition.

The existing law required castration to change legal gender in the national registry i.e. the Central Person Registry (CPR). A working group with members from a number of ministries was created to consider models for legal gender recognition. This bi-partisan group also had to be lobbied to ensure that it created desirable and workable proposals: at the beginning some departments were resistant to the idea of enacting less restrictive access to legal gender recognition and, crucially, there was a lack of understanding of the whole topic regarding transgender rights.

The CPR, which is in charge of the registry, was involved in the working group. Initially, they were very reluctant to support the introduction of liberal gender recognition models. NGOs were aware that the process would take time. During the mandate of the working group (which was established for 2 years), meetings with NGOs were frequent and NGOs were providing them with significant amounts of information. Importantly, they were also brought directly into contact with trans persons.

The working group also included the Ministry of Equality which helped driving forward the discussion as their view on the legal gender recognition was very progressive.

After a thorough process, a proposal containing 3 different models was drafted by the working group

- 1<sup>st</sup> model: The declaration model i.e. self determination
- 2<sup>nd</sup> model: The assessment model i.e. a psychiatrist assesses if the person is transsexual
- 3<sup>rd</sup> model: The diagnosis model i.e. the person must be diagnosed as transsexual by the Sexological Clinic in Copenhagen.

A fourth model with diagnosis and one year of hormone treatment was considered to possibly be in conflict with the European Human Rights Convention.

The first model was perceived by many as very radical. For instance, Danish marriage legislation is very liberal and it is very simple to get married or divorced. Many years ago, in the 70s, it was felt that activists stressed “the system” by continuously marrying and divorcing. To avoid similar developments in regard to legal gender recognition, it was proposed to introduce a reflection period: after filing an application for change of gender in the registry the applicant would have to confirm the application after 6 months.

The working group presented the models to the government which had to pick one. A meticulous, and ultimately successful, lobbying effort was undertaken by activists to ensure the selection of the first model.

Ultimately, the CPR turned out to be very forthcoming. While implementing the new law, they involved additional staff members in order to cope with any queries the users might have.

### **Minors**

In addition to the waiting period, the other requirement is an age limitation of 18 years. The discussion to extend legal gender recognition to minors is ongoing. It was noted that the issue has been to find the right legal construction, in particular, with respect to possible disagreement between parents to gender recognition. Children are under parental authority until 18 which makes the legal framework difficult to adapt.

The discussions with the government continue and are fruitful even though the political majority has reverted to a right wing constellation (liberal-conservative). The new government has been very supportive of the LGBTI-agenda, adopting an LGBTI action plan and designating a minister in charge of LGBTI issues. The government was very proactive in changing the law regarding trans rights. Today, the administration is actively working on a proposal to lower the age limit.

NGOs want to eliminate the age limit entirely. There are broad attempts to also win support from children's organisations.

### **Media/Public Sentiment**

Public opinion was initially perceived as inhospitable towards transgender issues. However, the visibility of transgender persons has increased massively in the last years (on TV shows, media, real life). Civil society is becoming more familiar with and more aware of the rights of trans people. Public sentiment in relation to gender identity and transgender issues has changed massively and rapidly in recent years. Therefore, the general population was ready at the moment when the new legislation was adopted.

### Reflections

The example of Denmark provides ample illustration of the importance of NGOs taking time to carefully educate public officials about trans rights and the importance of legal gender recognition. Within a political system where activists have easy access to politicians and decisions-makers, this is clearly a sensible strategy, rather than taking a more confrontational approach.

The old adage that “facts cure prejudice” is evidenced in the Danish example, where activists were able to achieve dramatic changes to government policy not only by carefully educating politicians on the significance of legal gender recognition, but also by directly bringing them into contact with affected trans persons. It is also significant that NGOs were able to leverage on the more progressive stance of the ministry of equality which no doubt would have also played a crucial role in educating and persuading the relevant politicians and decision-makers.

## FRANCE

### **Background**

#### Relationship between NGOs and the State

In general, NGOs are widely involved in the adoption of new laws in France typically suggesting amendments during hearings with members of parliament (MPs). Where specific bills are under discussion affecting LGBTI rights, NGOs have played a key role in promoting more progressive provisions. NGOs recognise that it is essential to be involved with the legislator and to take part in the parliamentary debates. Making key contacts with MPs who are familiar with the issue and are willing to get involved have been very beneficial for NGOs in the French LGBTI rights movement. Knowing MPs on a personal level has been a key factor in trying to influence the adoption of the new law on gender recognition.

Through engaging in constructive and proactive dialogue with politicians and decision-makers and making sure that they intervene early, before the government proposals are fully formed, NGOs have often managed to set the LGBTI agenda rather than being led by government.

### **Media /Public Sentiment**

Civil society was strongly opposed to the pre-existing arrangement under French law which was equally oppressive (requiring castration) as it was lacking in clarity and consistent application. The main advocacy tool deployed by Mouvement d’Affirmation des jeunes Lesbiennes, Gais, Bi & Trans, de 15 à 26 ans (MAG) was a sensitization campaign about young transgender people with good media visibility. Numerous LGBTI NGOs and NGOs defending transgender people conducted advocacy campaigns. A pride demonstration (“marche des fiertés”) was organised in order to raise awareness about the recognition of the rights of transgender people. The involvement of political figures together with journalists and NGOs as well as the large scale of the march lead to significant media coverage.

### **Interaction between NGOs**

Interaction between LGBTI NGOs in France has been a result of specific advocacy projects. NGOs act relatively independently; at least MAG was not part of an inter-LGBTI network (of French LGBTI NGOs) and does not conduct common advocacy projects with other organisations. MAG has decided to focus on youth and wanted the voice of young LGBT persons to be heard directly and not diluted within a broader network of NGOs.

#### Influence from the international community:

France was condemned by the European Court of Human Rights in 2017<sup>51</sup> in connection with its sterilization criteria. This raised concerns and an awareness of the need to adopt a new law on legal gender recognition. This was considered to be a key factor which catalysed the debate for a new law on gender recognition.

### **Minors**

#### The specific role of youth organization

On the specific questions of legal gender recognition for minors, the discussion was conducted partly by

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51 ECtHR, AP, Garcon et Nicot v. France, No. 79885/12, 6 April 2017

youth LGBT organisations, such as MAG. Some other NGOs included provisions regarding minors in their propositions as well. However, the legislator rejected these requests and justified this on the basis that the legal framework that applied to minors was different from the one applying to adults, therefore it would lead unconditionally to some differences in the requirements. These requirements were criticised by NGOs but not taken into account in the final version of the law.

The first criticism concerns the requirement to have parental approval in order to change their legal gender or to change name. In practice, NGOs recognised that this requirement could be an obstacle for some transgender minors. However, some points still need to be clarified, such as the use at school of a name other than the one in official documents. These questions are not considered urgent by the Ministry of Education at present and generally the status of transgender minors has not been included so much in the debate lately in France. The other criticism concerned the judicial process itself in order to change legal gender. Legal remedy is lengthy and costly. LGBT NGOs are against such judicial process and were advocating for the same process applied to a change of name: a declarative process at city hall.

### **Reflections**

Overall, the involvement of NGOs was recognised as essential to adopting the new law on gender legal recognition. However, meetings between NGOs and the executive or legislative powers were sporadic as the law was hastily developed. This put NGOs on the back foot, reacting to a government-led agenda.

Moreover, LGBTI civil society organisations in France are largely reliant on voluntarism and there has been a real need to professionalise. It is crucial for NGOs to professionalise in order to conduct effective advocacy campaigns. Such professionalism can be achieved by developing a strong internal structure, a sustainable funding base and bringing in the right advocacy and lobbying expertise.

Finally, the debates were conducted without truly differentiating minors from adults because of underrepresentation of young trans people. The voice of trans children was less likely to be heard as more generalist LGBT organisations were conducting the debate, omitting the specific situation of minors.

## IRELAND

In Ireland, the campaign for changes to the laws around legal gender recognition came at a time of great social and political change for the country.

### Background

By way of background to the legislation, the Transgender Equality Network Ireland (TENI) got together a group of allies and lobbied the Irish Government for changes to allow legal gender recognition. The Irish Government then set up an advisory committee working on gender recognition and between 2010 and 2011 published an initial report. There were no trans people in that group and it followed the UK model so there was a lot of criticism about the recommendations for their lack of innovation.

As a result, TENI gave a voice to trans advocates in Ireland so that the public and the government were educated as to more progressive and appropriate alternatives. They did this by sharing personal stories, advocating why legal gender recognition was important to the community, using real life stories of trans people and asking them to talk to politicians to build up support. A few different ministers (such as Joan Burton, Labour Party Minister for Social Protection) really pushed for more progressive reform and the Labour Party championed this agenda before other parties did.

A new draft bill was published in late 2014 and was debated in early 2015. It would have been ready to go by Autumn 2015 but Ireland did not have marriage equality yet, so those seeking to legally change their gender who were married would need to divorce their partner and opt for a civil partnership. As a result, the progress of the legislation was paused to allow for marriage equality legislation to be passed. The law was passed in the summer of 2015.

### Minors

The law has been very successful and hundreds of people have gone through the process, with only a couple of revocations. One concerning factor is that less than 12 persons under 18 years of age have gone through the process. Those aged between 16 and 18 can apply to court if they have the consent of both of their parents and certificates from 2 medical consultants. This is very difficult, as there are only around four doctors in Ireland qualified to make the kind of assessment necessary (paediatric endocrinologists), and the legal process is time-consuming and expensive. Originally, the report prepared by the advisory committee on gender recognition had put forward recommendations that minors should be able to access legal gender recognition in a similar way to adults, however this was politically unpopular, with many opposing the idea. It was decided that in order to get the bill passed, the age of access would be 16, with additional measures in place for those between 16 and 18, and that this could be revisited in two years' time.

### Media/Public Sentiment

The legislation went under the radar in Ireland because marriage equality was gaining the most focus. In a way, this was helpful according to the activists, because it meant that they were able to focus on persuading politicians that the change was necessary.

This is a common technique that we have seen in many of the successful campaigns, and it was very effective in Ireland. Activists prepared materials such as videos with case studies and targeted politicians

to raise awareness of the seriousness of the issues. To do this, they looked at human rights principles, examples of other countries such as Malta and Iceland, and had trans people tell their personal stories in order to put a human face on the issues.

### **Reflections**

The most important lesson from the Irish experience is arguably that trans advocates can possibly be much more strategic by trying to pass legislation “under the radar” by latching trans rights legislation onto more popular legal reforms (e.g. marriage equality), rather taking more combative, public facing, approaches. Another lesson is that compromise is a double-edged sword. Compromise on legal gender recognition for young trans persons was critical to getting the legislation passed in Ireland, but it might take years to revise the legislation to render it more favourable to trans youth.

However, there may yet be a positive outcome for trans youth in Ireland. Once the 2015 Act was passed, it was agreed that there would be a review of the legislation two years later. This review was conducted by a panel of officials, activists and experts. Submissions and consultations contributed to a report which was published at the end of May 2018. Legislation is hoped to be drafted soon. The report proposed ten key recommendations:

- A system of gender recognition should be introduced for children of any age, subject to the following key principles:
  - Parental consent required (with an appropriate legal process to address cases where there is not consent from both parents or it is not possible or safe to obtain);
  - Process would be administrative;
  - Straightforward revocation process; and
  - Third party support for the child and family involved.
- Legal gender recognition should be made available to people who are non-binary.
  - As part of cross Government departmental review of proposed legislative amendments an impact assessment may be considered.
  - In the immediate term, Government Departments and other public bodies should take any positive steps they can take to improve the position of people who are non-binary.
- All measures taken to improve access to gender recognition, both with regard to age and gender identity (either binary or non-binary), should also provide access for intersex individuals.
- That the Department of Employment Affairs and Social Protection, with the General Register Office, should introduce a numbering system which looks identical to that used for birth certificates where the information is taken from the birth registers.
- A legal change of name should be possible as part of the gender recognition process. At the moment this must be done by Deed poll (i.e. a legal document obtained from the courts that proves

a change of name). through the courts and it is publicly available information, which goes against the protection of trans individual's privacy.

- That arrangements should be put in place to allow Irish citizens born in Northern Ireland and living outside the State, to apply for a gender recognition certificate.
  - The issue of revised birth certificates should be raised at official level with UK authorities.
- Government departments and agencies should examine ways of streamlining application processes; improving interconnection between Departments; and reducing costs for replacement of official documents such as birth certificates and passports.
- Each relevant Department/Government body should examine how administrative processes, once a Gender Recognition Certificate is obtained, can be streamlined while maintaining a person's privacy.
- A review of the Act and any impact assessment in relation to the introduction of legislation to provide legal gender recognition for non-binary people should be completed within five years of commencement of the provisions of any enacted amending legislation arising from this review. That review would cover any new provisions contained in any amending legislation.
- The Department of Employment Affairs and Social Protection should publish an easy to read booklet setting out the steps involved in obtaining a Gender Recognition Certificate and an entry in the register of gender recognition. This should also include advice regarding next steps to be taken, listing other Government departments and State bodies that may need to be contacted to update personal records.
  - The group also recommends that a booklet be prepared for Government Departments, other State bodies, and private sector organisations, setting out how the Act applies to them.

It remains to be seen whether all of these recommendations will be implemented, however it is encouraging that the 2015 Act is not being seen as a victory, but as a starting point to build on.

## PORUGAL

Overall, the general view of Portugal with regards the development of legal gender recognition rights is quite neutral by comparison to other European countries. It is acknowledged that this may be because of a reluctance or hesitation for change. However, there is still an optimism for change and it is recognised that there is still a great need for change with regards to the legal treatment of the trans community in Portugal.

### **Background**

#### Pre- 2011

In Portugal, the two major legislative changes took place in 2011 and 2018. Before the legislation came into force in 2011, those who wanted to change their legal gender had to go through a process of physical sterilisation (as well as undergo other physical changes) and they had to sue the government for wrongful attribution of identity.

The process, which is referred to as 'life proof', required the involvement of a psychologist and a sexologist. Trans people had to answer a host of gender (stereo-typical) related questions, for example: (i) do they prefer the colour blue or pink?; (ii) do they like wearing lipstick and skirts?; and (iii) did they play with dolls growing up?

Further, in order to pass the test and be considered for the application to change gender, the individual had to attain a 75% score. The entire process took a minimum of two years. In the event that the individual did not meet the requirements to change legal gender, they could then ask for an extension for a further two years. The individual was also required to live as the gender that they identified as, despite the fact that their legal documents remained unchanged.

If the individual was successful in the process, it was only at this stage that they were allowed to undergo medical treatment or surgeries (i.e. taking hormone treatment) in order to make physical changes. Trans people going through this process had to be examined by the Institute of Legal Medicine which would carry out invasive exams to confirm if the person's genitalia was of "a man" or of "a woman" and issue a report that would be the basis for the legal change.

#### Legislation introduced in 2011

In 2011, the new gender recognition law was approved and trans people were allowed to change their legal gender without having to undergo physical examination. However, trans people were still required to undergo a psychological examination which required them to 'prove' that they identified with a different gender identity. This was made through a mental health diagnostic of gender identity perturbation, later renamed as gender dysphoria.

During this period, the government instigated a debate and a number of LGBTQI organisations and NGOs were invited to be heard by Parliament on the proposal for new legislation in Portugal, which would eliminate the requirement for a psychological test. Overall, it is felt that the debate and consultation process went well. The Parliament listened to NGOs' recommendations and new legislation came into force in 2018.

### **Minors**

The new legislation introduced in 2018 allows trans people aged 16 and above to formally change their legal gender. The new law is comprised of the following components:

- Individuals aged 16 and over can change their legal gender provided they have consent from a parent or authorisation from their legal guardian, and a report from (either) a doctor or a psychologist. The purpose of the report is to state whether the individual is capable of making the decision to change their legal gender. It does not require a diagnosis of gender dysphoria.
- It is noteworthy that the President originally vetoed this proposal. This was a rare occurrence and shocked the broader public.
- Schools are required to allow pupils to use the bathroom according to the gender that they identify with.
- If a person was born intersex prior to 2018, and in cases where the doctor could not readily attribute the sex of the child, doctors were nevertheless forced to carry out 'adequation' surgeries. Following the 2018 legislative changes, in cases where a person is born intersex, it is now against the law to perform these surgeries, provided the child does not require the surgery to be in good health, until a gender identity is displayed by the individual. The terms "display a gender identity" is vague, with many interpretations and can be inadequately used. It should be highlighted that when this law was passed, there were no sanctions in place if the surgeon did perform the surgery. Further, the law did not address how the person should be identified in their legal documentation (i.e. their identity card) prior to "displaying a gender identity".

### **Media / Public Sentiment**

It was generally felt that the need for change in respect of legal gender recognition originated from NGOs and other LGBTQI organisations rather than from the public. It is acknowledged that the public is not against change. However, it was noted that the public is often not informed and thus change is not necessarily considered a priority.

During the period of legislative change in Portugal, there was some (mixed) media coverage, however not enough that it became a fracturing subject. In general, there was a neutral reaction. The fact that the President vetoed the law attracted some media attention. However, it did not attract as much attention as the subject of same sex marriage and the rejection of same-sex adoption.

In terms of lowering the age for minors, the media stoked fears that there would be an increase in fraud. The media were not generally well informed of the issues. In terms of political parties, right wing parties expressed concerns along with the other majority parties. This was also the case for the communist and socialist parties.

### **Interaction between NGOs**

There was some interaction between the NGOs in Portugal, particularly in connection with the 2018 legislative changes when all groups were invited to discuss their proposals. There was an initiative from the Secretary of State for Citizenship and Equality, who invited contributions from NGOs regarding guidelines

for trans and intersex issues and people in schools and in the health sector. These guidelines, developed within the Ministry of Education and the general health directorate, have yet to be finalised.

### Educational Programmes

Educational programmes that discuss and explore LGBTQI issues have been an important part of changing attitudes towards legal gender recognition (and minors) in Portugal. Since 2005, the organisation rede ex aequo has been invited to schools in order to lead discussions and debates with students. It was recognised that this gives students an opportunity to ask key questions with regards the gay, lesbian, bisexual, trans and intersex communities. The process also encourages students to ask questions openly in a safe environment. The objective of educational programmes is to encourage students to feel empathy towards groups of people that they may have been (inadvertently) offending through the use of derogatory and offensive words. It should be noted that the workshops are optional for students. rede ex aequo commented that the number of invitations from schools has increased since 2005 and the popularity of the program and level of engagement with it has grown.

After 2009, it became a legal requirement for schools to discuss issues in respect of sexuality / identity with students in Portugal and 10% (thereabouts) of a teacher's curriculum was required to cover this subject matter. There is wide discretion about which topics they can discuss, i.e. sexual violence, relationships, diseases or infections or preventative methods and sexuality. It was acknowledged that, in reality, a large number of teachers do not actually discuss these subjects with students, e.g. it can be awkward for them to initiate these discussions. The role of organisations like rede ex aequo providing educational programmes was therefore noted as being extremely important for minors in Portugal. In addition, the organisation arranged the National Gathering of Trans Youth which is a weekend-away opportunity for young people to debate and share LGBTQI stories. It was hoped that issues raised during these debates will be helpful for future proposals to improve legal gender recognition laws for minors.

### **Reflections**

Perhaps the most important lesson from the Portuguese experience is that in dealing with a mostly not well-informed and perhaps relatively neutral public, media and/or political establishment, developing public education campaigns early, and as a key aspect of the advocacy strategy, and keeping them running throughout the process, can have significant benefits. It is impossible to say what would have happened in the counter-factual, but it was observed that possibly, had Portuguese advocates not gotten ahead of the curve, negative, pernicious and persistent narratives about the trans rights agenda may have taken hold before legislation could be passed.

It was acknowledged that there are still a number of incomplete aspects of the legislation in Portugal and this will need to be updated and improved going forward. At present, discussions are not currently taking place in Parliament due to the fact there is no specific legislative proposal.

### Recommendations

rede ex aequo noted a number of recommendations to improve the experience of trans and in particular,

trans minors, in Portugal:

- Provide training for teachers so that they can directly educate youth on gender recognition and sexual identity.
- Eliminate the law that requires buildings (and restaurants) to have separate male and female bathrooms. REA considers the system of separate bathrooms to be highly problematic.
- Remove the requirement to state one's gender on their identity card.
- Informed consent should be the criteria to attribute a gender to an intersex person, and not "displays of gender identity".
- Provide shelters to take in victims of homophobic and bi-phobic discrimination. Currently there are no shelters that take people in specifically affected by this kind of discrimination.
- Make available a national helpline for those victims evicted due to LGBTQI+ discrimination linked to the already existing national support line.
- Article 13 of Portugal's constitution should be amended to specifically protect against discrimination based on 'gender identity and expression' (there are already protections against discrimination on the grounds of sexual orientation).

## UNITED KINGDOM

### Background

The United Kingdom (UK) is unique in this report as the only one of the Focus Jurisdictions which does not currently use a self-determination model in respect of legal gender recognition. It is important to note that legal gender recognition is a devolved matter and that therefore, the UK is accordingly split into three jurisdictions: (i) England and Wales; (ii) Scotland; and (ii) Northern Ireland. Despite this, all three jurisdictions currently operate under the common UK-wide Gender Recognition Act 2004.

This legislation was introduced after the government's loss in the European Court of Human Rights case of *Goodwin v United Kingdom* in 2002. In that case, the Court found a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights; a violation of Article 12 (right to marry and to found a family).

As is shown in the legal summary for the UK, trans people must endure a lengthy, complex and expensive process to have the opportunity to change their legal gender. Since the legislation came into force, 4,910 people have legally changed their gender<sup>52</sup>, which can be compared with the UK government's estimation that between 200,000 and 500,000 people identify as trans in the UK.<sup>53</sup>

In respect of England and Wales, the UK Government conducted a consultation on the Gender Recognition Act in order to gather opinions and feedback on the current law and any proposed reforms. This consultation began on 3 July 2018, closed on 22 October 2018 and received over fifty-four thousand responses. The amount of responses to the consultation is indicative of the ongoing debate. The consultation asked for responses which covered how best the government "might make the existing process under the Gender Recognition Act a better service for those trans and non-binary people who wish to use it."

The Scottish government's consultation ran from 9 November 2017 to 1 March 2018. This consultation did not include intersex people but the government have announced that a consultation on this subject is planned. However, despite all parties pledging to update the current legislation in their 2016 manifestos and the Scottish government stating that they are in favour of updating legal gender recognition laws to the self-determination model, introduction of the legislation has been delayed.

The Northern Irish Government have not yet consulted on the Gender Recognition Act, and have not currently announced plans to do so.

### Minors

People under 18 in the UK do not currently have access to the system for changing their legal gender. Further to this, due to various factors, such as the financial burden, the current process is particularly difficult for young people above 18 as these people are more likely to be in full-time education or, for other reasons, not have access to the necessary funds.

The current legislation also disadvantages young people, as it requires two years lived experience. Young people are less likely to have had this time or have had a supportive home environment in which to

<sup>52</sup> <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

<sup>53</sup> GRA Consultation Document

secure this and evidence this. Students and minors are also less likely to have been able to gain a gender dysphoria diagnosis, which is another requirement of the current legislation.

For the reasons above, NGOs noted that the current UK legislation not only makes things extremely difficult for trans adults, it also significantly disadvantages young trans people.

The Scottish government did propose changing the minimum age to access gender recognition laws from 18 to 16, but did not make any proposal for people under the age of 16.

NGOs observed that because the UK is so far behind the other Focus Jurisdictions in its progression on legal gender recognition, it seems as though minors have been largely left out of the political conversation as being a “step too far” for a nation which feels not ready to even have the option for adults.

### **Media / Public Sentiment**

Unfortunately, NGOs noted that the current cultural climate in the UK is “trans-hostile”, noting that the debate on gender recognition had been picked up by the right-wing press.

For this reason, NGOs in the UK agreed that using human stories and real trans experiences to campaign for legal change is effective but are currently unable to profile anyone due to the aggressive nature of the current debate. This is especially a concern in relation to young people as there are circumstances where they could be particularly vulnerable as a result of trans-hostile rhetoric.

The NGOs observed that many mainstream and right-wing media outlets have given platforms to the voices of trans exclusionary radical feminists (“TERFs”), a term coined by a journalist at the Guardian, a national newspaper. These voices normally come from women’s groups who express concern over streamlining the process for legal gender recognition. Their concerns largely include female prisoners and female public toilets.

The UK has been unable to avoid excessive coverage in the media. The NGOs observed that this has meant much of the debate has been confused and does not actually discuss the point at issue, being legal gender recognition, but rather intertwines it with discussions regarding medical surgeries. This is something which the NGOs in the UK are trying to counter-act, as they recognise it as a good practice for advocating trans rights.

### **Reflections**

The major lesson NGOs drew from the UK experience is the importance of avoiding, where possible, excessive and negative press coverage. Largely as a result of such press coverage, legal gender recognition continues to be an incredibly divisive issue in the UK.

Despite the government consultations, there are no current dates for introducing a self-determination model and further to this, it appears that, in the event of legislative reform, it is unlikely that transgender children under the age of 16 will have access to the process to change their legal gender.

Unfortunately, the Scottish government and UK government have not yet put in place a plan for updating the Gender Recognition Act after their consultation and it is possible that this delay is due to the political uncertainty, busy nature of Parliament at this time and Brexit taking priority. There is currently no date set for the UK government response to the consultation or the draft legislation from the Scottish government.



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# CONCLUSION

Both laws and attitudes towards legal gender recognition have changed rapidly in the past 20 years, and continue to do so, but there is still a long way to go.

In this report, we sought to examine good practices in terms of the law, advocacy and the cultural and political climates across various European countries, with a particular focus on minors.

We have found that the countries that have the most progressive models may have adopted them in part because their previous system had human rights issues. For example, in Belgium and Norway, it had previously been necessary to undergo sterilisation before being able to apply for legal gender recognition, and in Malta, it was previously necessary for married people to divorce prior to submitting an application. This demonstrates that part of the incentive for change can come from public perception of a need to redress injustice. Human rights arguments have been used to great success, as well as directly campaigning to politicians and using real stories of those affected.

Surprisingly, many activists noted an intention to avoid excess publicity and press coverage, for fear of attracting the wrong type of attention and inciting hate crime. We have seen this most clearly in the UK, where the dialogue on proposed changes has been overwhelmingly negative, and hate crime against trans people has dramatically increased in the past few years.

However, having interviewed activists from good practice countries, there is hope that given the right environment and techniques, change can be achieved.

Many activists in good practice countries still believe that there is more to be done, and there are many countries such as Ireland, where change is hopefully forthcoming. Despite the rise in right-wing groups, and the increase in hate crime towards trans people in the UK, overall the general trend that has emerged from this research is one of changing attitudes and increased awareness of trans rights.

In terms of progress for minors, there seems to have been little focus on this generally, except in countries such as Ireland where there are active plans to improve on existing legal gender recognition laws. Part of the reason for this could be that many countries, like Ireland, had to focus on getting laws passed in the first instance, and extending access to minors was a political sticking point. Given the general lack of awareness and the innovative nature of some of the legislation, the focus seems to have been on getting something in place, even if that law is not perfect, allowing society to acclimatize to it, and then pushing for more progressive reforms later. There is logic in this method, as it is important to protect trans people generally and ensure that the majority may access legal gender recognition. However, there is no doubt that in the future activists will seek to put pressure on politicians to open up access to minors, as can already be seen in some countries.

By using good practices in advocacy outcomes, it is hoped that report readers will be empowered to campaign for better recognition and protection of trans people, including minors, both in Europe and further afield.



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