

## **To the Human Rights Committee**

125th session, 4th to 19th March 2019, Geneva

### **Trasek's contribution to CCPR List of Issues prior to reporting to Finland**

#### **Trasek ry**

Trasek is a Finnish association for transgender and intersex rights. Trasek advocates for the human rights and anti-discrimination measures as well as proper medical care for transgender and intersex individuals. Trasek also advocates for the self-determination of gender, and separating the juridical gender recognition from the medical treatment process.

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#### **Introduction**

The current Finnish Trans Act, *The Act on legal recognition of the gender of transsexuals*, has been in effect since 2003. Finland has received multiple recommendations to remove violations of transgender people's human rights and individual freedom from its legislation. The recommending parties include the United Nations Human Right Council (more on page 4), as well as

numerous human rights organizations like Trasek, Amnesty, and Seta - LGBTI Rights in Finland.

Trasek has concluded that Finnish legislation violates Article 2, Article 7, Article 16 and Article 17 of the International Covenant of Civil and Political Rights. We hope that the Human Rights Committee takes into account our list of issues regarding the realization of transgender people's civil and political rights in Finland.

## **Proposed questions for the List of Issues prior to reporting**

### **Forced sterilization and compulsory medical treatment (Articles 2, 7)**

- 1. When is Finland going to remove the sterilization requirement from the Trans Act?**
- 2. How will Finland ensure that the gender reassignment process is based on the trans person's (non-binary trans people included) individual needs and self-determination?**

*According to the Finnish Act on legal recognition of the gender of transsexuals, a person may be legally recognized as belonging to the "opposite gender" only if they are able to present a medical statement stating that their gender identity is permanently of the "opposite gender's", that they live in that gender role, and that they have been sterilized or are otherwise infertile. Trans persons are required to undergo a long psychiatric monitoring process*

to receive a psychiatric diagnosis of "transsexualism" in order to change their legal gender. To ensure their infertility, trans persons are required to undergo hormone treatment.

On the other hand, some trans persons seeking medical treatment are denied diagnosis and are thus left without appropriate health care services.

Non-binary trans individuals are diagnosed with "other gender identity disorder" and thus cannot receive the medical statement to change their legal gender. In addition, non-binary trans persons' access to medical treatment is limited compared to those diagnosed as "transsexuals".

The compulsory sterilization and medical treatment as legal requirements for gender recognition and, on the other hand, the denial of treatment for some trans people both violate trans persons' right to physical integrity and self-determination. Likewise, these practices are violating trans persons' right to be free from torture, degrading treatment or non-consensual medical experimentation.

The pathologization of transgender identity in order to change one's juridical gender is unnecessary and violates one's right of physical integrity. The World Health Organization has removed trans identities from the mental health disorders chapter in ICD-11, a classification that Finland also follows.

The concluding observations in the seventh periodic report by Ukraine (CCPR/C/UKR/CO/7), the Human Rights Committee expresses its concern about compulsory psychiatric examination and mandatory corrective surgery as conditions for legal recognition of trans person's gender. The Committee recalls, that any abusive or disproportionate requirements for legal recognition of a trans person's gender should be repealed. The Committee also states that "any medical treatment should be provided in the best interests of the individual with their consent, should be limited to those

medical procedures that are strictly necessary, and should be adapted to their own wishes, specific medical need and situation”.

A report by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that involuntary sterilization and other involuntary treatments violate a person’s right to physical integrity and self-determination. The Special Rapporteur calls upon all States to repeal any law allowing forced sterilization and other intrusive and irreversible treatments. (A/HRC/22/53).

During the United Nations Human Right Council Universal Periodic Review (27th Session, 2017,) Finland received several recommendations to remove the requirement of infertility or sterilization as a condition for the legal recognition of a trans person’s gender (rec number 100.46—100.53).

We recommend Finland to remove the sterilization requirement and other compulsory medical treatments from the Trans Act, and to ensure that gender reassignment process is quick and accessible. The legal recognition of gender and access to proper medical treatment should not be dependent on whether or not a person meets certain diagnostic criteria, but on their own needs, consent and self-determination.

## **Normalizing surgeries of intersex persons**

### **(Articles 2, 7)**

**3. How will Finland ensure that intersex persons are not subjected to unnecessary normalizing surgeries or other unnecessary medical treatment?**

Intersex newborns and small children, who cannot yet express their gender identity or consent are systematically subjected to normalizing surgeries and other medical treatments. Intersex persons' treatments are generally based on cultural gender norms and often have no medical necessity. These irreversible and unnecessary surgeries are causing intersex people permanent physical and psychological harm. Non-consensual medical treatment contradicts with the best interest of the child.

The Special Rapporteur calls upon all States to end forced genital normalizing surgery and other intrusive and irreversible treatments that are enforced without a free and informed consent. (A/HRC/22/53).

We recommend Finland to end all unnecessary medical treatment of intersex persons, including normalizing surgeries. All medical treatment should be carried out according to the intersex person's needs and with fully informed consent. The families of intersex children should be provided with correct and necessary information and support. All decisions about treatment of intersex children should follow the principle of the best interest of the child.

## **Recognition as a person before the law**

### **(Articles 2, 16)**

#### **4. What actions is Finland going to take in order to ensure that a trans person's gender recognition is easy, quick and accessible?**

Being recognized as a person before the law is essential for a person's ability to enjoy their civil and human rights. A trans person may obtain legal gender

recognition only after receiving a medical statement proving they have been diagnosed by a psychiatrist as a "transsexual", and that they are infertile. Medically defined criteria for one's legal gender recognition places unnecessary obstacles to recognition as a person before the law. Thus those who cannot be recognized as persons are placed in an unequal position compared to those who are. Due to the long and difficult gender reassignment process, trans persons are forced to live with official gender markers that are in contradiction with their gender appearance. This causes a multitude of problems in everyday life and may limit access to services. Non-binary trans persons cannot receive legal recognition at all, since Finnish legislation doesn't recognize other genders than male or female.

We recommend that a trans person's gender recognition should be based solely on their own announcement and not depend on medical criteria. Likewise, a person should have right to change their name to a desired one without a medical statement.

##### **5. How is Finland going to ensure that gender recognition is accessible for underage transgender individuals by their own announcement?**

There are many underage transgender people who have been aware of their transgender identity from a young age. At the moment Finland's current Trans Act does not allow persons under 18 to transition medically, or to receive legal gender recognition. Young trans individuals may suffer years with their official gender markers contradicting their identity and appearance, which creates difficult situations in everyday life, e.g. when applying to school or work. The current Trans Act does not allow an underage trans person's gender recognition and thus does not treat them as the person they are before the law.

The United Nations Convention on the Rights of the Child acknowledges the child's right to express their opinion on matters regarding them, and to have those opinions heard and acted upon when appropriate. In Norway the age limit for legal gender recognition is 16, and the process doesn't require any psychiatric assessment. Also, from ages 6 to 16 gender recognition is allowed with parental consent.

We recommend that the Finnish law should not set an age limitation for gender recognition. Legal gender recognition is a formative part of child's positive gender experience.

## **Violation of the right to privacy and family**

### **(Articles 2, 17)**

#### **6. What actions is Finland going to take in order to ensure that a trans person's right to privacy and family is respected?**

According to the Trans Act, a trans person has to be sterilized or be otherwise infertile in order to change their legal gender marker. This requirement is a violation against human rights to private life and family. Sterilization is an irreversible procedure that denies a person's right to parenting. According to the UN Special Rapporteur, forced sterilization interferes with both the person's right to family and reproductive life, and intrudes into an individual's physical integrity (A/HRC/22/53).

In the case of *A.P., Garçon and Nicot v. France*, European Court of Human Rights notes that the legal concept of "private life" can refer also to individual's physical and social identity, including gender identity. The Court

stated, that requirement of irreversible changes in trans person's appearance in order to recognize their gender violates Article 8 ECHR, which protects individual's right to respect for one's private life and family life. According to the Court, irreversible changes refer not only to the sterilization, but also to other medical treatments, such as hormonal treatment that may lead to infertility. The Court notes that sterilization has large impact on "the individual's integrity, including their physical and mental well-being and their emotional, spiritual and family life". Thus, the gender reassignment process should be carried out with respect to an individual's self-determination and physical integrity. All medical requirements for legal gender recognition should be abolished.

Likewise transgender individual's right to privacy should be reviewed. The Finnish Population Information System tracks information of a trans person's transition, according to the Population Information Act (13 § 1. mom part 15). This violates a trans person's right to privacy protection and data confidentiality. These kind of registries of transgender people do not add to transgender person's safety, and Trasek has recommended that the Population Information system should not track person's information on gender reassignment.

## **Summary of The List of Questions**

1. When is Finland going to remove a sterilization requirement from the Trans Act? (Articles 2,7)
2. How will Finland ensure that the gender reassignment process is based on the trans person's (non-binary trans people included) individual needs and self-determination? (Articles 2,7)

3. How will Finland ensure that intersex persons are not subjected to unnecessary normalizing surgeries or other unnecessary medical treatment? (Articles 2,7)

4. What actions is Finland going to take in order to ensure that a trans person's gender recognition is easy, quick and accessible? (Articles 2, 16)

5. How is Finland going to ensure that gender recognition is accessible for underage transgender individuals by their own announcement? (Articles 2, 16)

6. What actions is Finland going to take in order to ensure that a trans person's right to privacy and family is respected? (Articles 2, 17)