

IN THE EUROPEAN COURT OF HUMAN RIGHTS

A.H. and others against Germany  
(Application no. 7246/20)

11 November 2020

WRITTEN COMMENTS

Submitted jointly by  
Transgender Europe  
ILGA Europe  
Bundesverband Trans\*

1. The present case concerns the effects of legal gender recognition (LGR) in relation to rules on filiation between a trans parent and their biological child, from the standpoint of the right to respect for family life under Article 8 of the Convention. It challenges existing legal institutions that privilege the heterosexual family and comes against the backdrop of rapid social change across Europe and beyond, caused by an increased diversity of different family formats in need of recognition and protection.<sup>1</sup> The first part of the intervention details the emergence of a range of family formations involving trans people in a frequently indifferent or restrictive legal environment. The second part looks at the effects of LGR with respect to filiation. The third part provides contextual information regarding trans parenthood in Germany.

### *Transgender parenthood and the law*

2. Many trans parents live with children at any given time or place. A large LGBTI survey conducted in the EU<sup>2</sup> found that 77 % of 140,000 respondents live with someone else: 67 % live with their partners, while 12 % of all respondents also live with children belonging to one of the partners. Overall, 14 % of all respondents with a partner say that they are raising a child, including 19 % of trans persons. 70 % of trans respondents who share guardianship of their or their partner's child say that both partners are legal guardians. Other studies approximate that 25–49% of the trans population have children.<sup>3</sup>
3. Trans people, like cisgender people, have several possible pathways to parenthood - begetting biological children with or without the use of assisted reproduction, through gestational surrogacy, adoption, or step-parenthood/second-parent adoption. They

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<sup>1</sup> See for example Jens M. Scherpe, *The Present and Future of European Family Law*, Volume IV, Edward Elgar Publishing Ltd, 2016; Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 *Harvard Law Review* 1185 (2016); Bala, Nicholas, and Christine Ashbourne. "The Widening Concept of Parent in Canada: Step-Parents, Same-Sex Partners, & Parents by ART." *American University Journal of Gender Social Policy and Law* 20, no. 3 (2012): 525-560. The trend of adapting traditional filiation rules to current realities is also visible in the Court's jurisprudence, in relation to international surrogacy arrangements (*Mennesson v. France*, no. 65192/11, ECHR 2014 (extracts) and *Labassee v. France*, no. 65941/11, 26 June 2014), same-sex couples with children (*X and Others v. Austria [GC]*, no. 19010/07, ECHR 2013), adoption (*Gözüüm v. Turkey*, no. 4789/10, 20 January 2015), or children born out of wedlock (*Marckx v. Belgium*, 13 June 1979, Series A no. 31).

<sup>2</sup> EU FRA, *A long way to go for LGBTI equality*, 2020, p. 29-30.

<sup>3</sup> Myrte Dierckx et al. (2015), *Families in transition: A literature review*, *International Review of Psychiatry*, p. 2.

commonly have children prior to their gender transition, but also, increasingly, after their gender transition, as countries gradually lift the restrictions on LGR, particularly with respect to sterilisation. Even sterile individuals may still retain some options for reproduction, subject to availability of knowledge, accessible healthcare providers and/or financial resources.<sup>4</sup> Reports of men giving birth have become increasingly common, prompting public debate.<sup>5</sup> Trans families are equally diverse, involving one parent, two parents or multiple parents; gay, lesbian or bisexual parents; parents who are, and parents who are not, legally-recognised or documented; parents living in marriage, registered or cohabiting partnerships.

4. Historically, States sought to control transgender people's reproductive rights and disrupt parent/child relationships through legal restrictions and court practice that were underpinned by hetero-normative and transphobic assumptions. The sterilisation requirement, motivated by a concern for preserving traditional gender roles, used to be the norm across Europe and still is the law in 13 States. Sweden used to have in place a ban on saving own reproductive material in addition to the sterilization requirement,<sup>6</sup> while other countries prevented trans individuals with children from accessing gender recognition procedures.<sup>7</sup> Married trans people are often required to end their marriage before being able to rectify their identification documents. The United Kingdom makes LGR in the case of married trans people contingent on spousal consent.<sup>8</sup>

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<sup>4</sup> Through procedures such as embryo cryopreservation, oocyte cryopreservation and ovarian tissue cryopreservation (for trans men), and sperm cryopreservation, surgical sperm extraction and testicular tissue cryopreservation (for trans women), see Chloe De Roo et al., *Fertility options in transgender people*, *International Review of Psychiatry*, 2016, VOL. 28, NO. 1, 112–119.

<sup>5</sup> One of the first documented cases in the USA is that of Thomas Beatie, a trans man who gave birth to three children, which ended up before the Arizona Court of Appeal (*Beatie v. Beatie*, 2014 Ariz. App. LEXIS 156, 2014 WL 3953199 Arizona Court of Appeals, August 13, 2014). Also see MacDonald et al. *Transmasculine individuals' experiences with lactation, chestfeeding, and gender identity: a qualitative study*, in *BMC Pregnancy and Childbirth*, 2016; Alexis D. Light et al., *Transgender Men Who Experienced Pregnancy After Female-to-Male Gender Transitioning*, *Obstet Gynecol* 2014.

<sup>6</sup> Jenny Gunnarsson Payne & Theo Erbenius (2018) *Conceptions of transgender parenthood in fertility care and family planning in Sweden: from reproductive rights to concrete practices*, *Anthropology & Medicine*, 25:3, 329-343,

<sup>7</sup> In Ukraine, Order No. 60/3 February 2011 of the Health Ministry, withdrawn on 31 December 2016, automatically disqualified trans people with minor children from LGR. In Japan, original statutory provisions, upheld by the Supreme Court in 2007, required trans people applying for LGR to be childless, justified with the need to prevent 'disturbance of the family order' and potential 'harm for children' as well as Japan's unique customs, traditions and family structures. There was partial reform in 2008 and now only the absence of minor children is required, Jens M. Scherpe (ed.), *The legal status of transsexual and transgender persons*, Intersentia, 2015, p. 638.

<sup>8</sup> For example England and Wales, under the Legal Gender Recognition Act 2004.

5. Children in trans families may experience feelings of loss, grief, betrayal or shame over a parent's transition, which may be assuaged by stable and loving relationships within the family.<sup>9</sup> Various studies reported that children avoid being seen with their trans parents in public, difficulties with being open in public about the trans identity of their parent, as well as fear of stigmatization and bullying.<sup>10</sup> This information is consistent with concerns expressed by the applicant in the present case regarding forced disclosure in various social interactions involving her child.

*The effects of legal gender recognition in relation to filiation rules*

6. Council of Europe standards provide considerable support to the position of principle that a trans person's officially recognized gender identity should be determinative of all their rights and obligations. The Committee of Ministers called on States to "take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life."<sup>11</sup> In *Christine Goodwin v. United Kingdom*, the Court remarked that although the legal changes envisaged with respect to LGR had significant "repercussions" in terms of birth registration, access to records, family law, affiliation, inheritance, criminal justice, employment, social security and insurance, these were "far from insuperable." The Court was unable to identify any specific 'hardship or detriment' flowing from LGR being made available and stated that "society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost."<sup>12</sup> The Court clarified in its case-law that LGR applies equally for the purposes of marriage<sup>13</sup> and gendered pension eligibility requirements.<sup>14</sup>

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<sup>9</sup> *Families in transition*, p. 3.

<sup>10</sup> *Idem*.

<sup>11</sup> *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, §21.<sup>[SEP]</sup>

<sup>12</sup> *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, §91, ECHR 2002-VI. The Court has recently restated the same principle as follows: "states are required, in accordance with their positive obligation under Article 8, to recognize the change of gender undergone by post-operative transsexuals through, *inter alia*, the possibility to amend the data relating to their civil status, and the ensuing consequences," *Hämäläinen v. Finland* [GC], no. 37359/09, §68, ECHR 2014.

<sup>13</sup> *Idem*, §103.

<sup>14</sup> *Grant v. the United Kingdom*, no. 32570/03, §43, ECHR 2006-VII.

7. The Court examined the implications of gender reassignment in the sphere of family life in the case *X, Y and Z. v. United Kingdom*.<sup>15</sup> The main applicant, a trans man, complained about the authorities' refusal to register him as father to his long-standing partner's child, born by artificial insemination by donor. The Court rejected the application, partially based on the fact that the main applicant would have been considered simultaneously a man in relationship to his child and a woman for other legal purposes. The same situation would apply today, should the German authorities' option to deny the applicant registration as mother be allowed to stand.
8. The same principle is often spelled out explicitly in national legislation. For example, Maltese law specifies that all public or private actors have an obligation to issue updated identification documents reflecting the amendments to the birth certificate operated upon LGR.<sup>16</sup> Furthermore, "every norm, regulation or procedure shall respect the right to gender identity. No norm or regulation or procedure may limit, restrict, or annul the exercise of the right to gender identity, and all norms must always be interpreted and enforced in a manner that favours access to this right."
9. In 2018, the Parliamentary Assembly adopted a resolution asking States to inter alia provide for transgender parents' gender identity to be correctly recorded on their children's birth certificates.<sup>17</sup> The *Yogyakarta Principles* specify that "States shall issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents."<sup>18</sup>
10. Two cases decided in Sweden, concerning trans men who gave birth before and after gender reassignment respectively and who asked to be registered as fathers, are

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<sup>15</sup> *X, Y and Z v. the United Kingdom*, 22 April 1997, Reports of Judgments and <sup>[SEP]</sup>Decisions 1997-II.

<sup>16</sup> *Act No. XI of 2015 for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.*

<sup>17</sup> Parliamentary Assembly, Resolution on "Private and family life: achieving equality regardless of sexual orientation," 10 October 2018, 4.6.

<sup>18</sup> *The Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation in gender identity, gender expression, and sex characteristics to complement the Yogyakarta Principles.* The YP were mentioned by Judges Sajó, Keller and Lemmens in their dissenting opinion, §16, in *Hämäläinen v. Finland* [GC] and the CJEU in Case C-473/16, *F. v. Bevándorlási és Állampolgársági Hivatal* [2018], §62. Principle 24 letter i.

particularly relevant here.<sup>19</sup> The Tax Agency, acting as defendant in both cases, argued that it lacked a legal basis for changing their designation as “biological mothers”, relying on normative provisions that assigned motherhood to the person who gave birth to the child. In addition, the registration as mother reflected historical fact at least in relation to the first petitioner as well as ensuring the traceability of identities in the population registry. The petitioners prevailed in both cases. In the absence of specific rules on the effects of LGR in the area, the law had to be interpreted in accordance with relevant international law. In that respect, the courts mentioned the principle derived from this Court’s jurisprudence and relevant Swedish law that the official recognition of gender identity should apply for all legal purposes, as well as the “best interests of the child” principle derived from the Convention on the Rights of the Child. The principle of full LGR and the duty to preserve the confidentiality of all parties involved outweighed the rules governing motherhood which prescribed that all children had to be assigned a biological mother. It was also noted that in any event the rules in question were not absolute and that exceptions were permitted for instance in relation to lesbian partners who were allowed to register as mother and parent respectively, without the need to register a ‘biological father.’ On 1 January 2019, a new law entered into force in Sweden recognising trans people who are parents according to their legally recognised gender identity in their child’s documents. Trans men who give birth are designated as “father” and trans women who beget a child as “mother”. Courts in Italy<sup>20</sup> and in Israel<sup>21</sup> reached similar verdicts as those in Sweden.<sup>22</sup>

11. Legislation conferring rights on same-sex couples in many Member States may provide a more accommodating framework for trans parents. For example, Malta

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<sup>19</sup> Gothenburg Administrative Court, Case no. 6186-14, 5 October 2015 and Stockholm Administrative Court, Case no. 3201-14, 9 July 2015; more detailed summaries included in TGEU, *Legal Gender Recognition in Europe Toolkit*, 2nd edition, November 2016, p. 59.

<sup>20</sup> Tribunale di Trento, Sentenza 21 marzo 2018, involving a trans woman who had her entry in her pre-LGR children’s birth certificates changed from father to mother, available here: <http://schuster.pro/tribunale-di-trento-sentenza-21-marzo-2018-atti-nascita-figli-genitore-trans/>.

<sup>21</sup> In 2017, the Israeli High Court of Justice accepted a trans man’s request to be registered as father in his biological child’s birth certificate. See “After Court Battle, Israeli Transgender Man, Male Partner Are Both Registered as Child’s Fathers”, 4 April 2017, available here: <https://www.haaretz.com/israel-news/.premium-transgender-man-and-his-male-partner-both-registered-as-child-s-fathers-1.5457168>.

<sup>22</sup> But also see contrasting outcomes in France (Arrêt n° 519 du 16 septembre 2020 (18-50.080 ; 19-11.251) - Cour de Cassation - Première chambre civile) and England (R (McConnell and YY) v Registrar General [2020] EWCA Civ 559, 29 April 2020).

adopted legislation<sup>23</sup> that would *inter alia* remove the gendered connotations of parenthood as follows: references to “husband and wife” will be changed to the gender neutral “spouse”; the gender neutral “parents” will replace references to “fathers” and/or “mothers”; the ‘person/spouse who gave birth’ instead of ‘mother’. This solution may also prove suitable for trans parents seeking changes in their children’s birth certificates that conform with their gender identity.<sup>24</sup> Belgium differentiates between trans men and trans women who have had a child post LGR. A trans man who gave birth will be registered to be a mother, based on the principle ‘mater semper certa est.’ A trans woman on the other hand who helped conceive by contributing genetic material will be registered as a “co-parent.”<sup>25</sup>

### *Transgender parenthood in Germany*

12. The German Transsexual Law (TSG, *Transsexuellengesetz*, 1980)<sup>26</sup> provides for a judicial procedure for achieving LGR. Upon successfully completing legal proceedings, all documents (including the birth certificate) are changed. The law specifies that it be forbidden to reveal a trans person’s former name and gender (*Offenbarungsverbot*).<sup>27</sup> Nonetheless, the birth certificates of existing biologic or adoptive children cannot be changed. LGR does not change the legal relationship between the trans person and their parents, nor that between them and existing children.<sup>28</sup> Children adopted after LGR are legally adopted according to the person’s reassigned legal gender.
  
13. In 2011, the Federal Constitutional Court declared the sterilisation requirement (*fortpflanzungsunfähig*) in the TSG to be unconstitutional, therefore making it possible for trans people to have biological children after their legal transition. This change has rendered the legal situation of children born to trans parents unclear. In 2017, the Federal Court of Justice decided that a “Female-to-Male Transsexual who

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<sup>23</sup> Marriage Act and other Laws (Amendment) Act, 2017.

<sup>24</sup> In 2016, California adopted legislation along similar lines, providing that birth certificates of children born in California would no longer identify a mother and father, but would instead use the gender-neutral term “parent,” with check boxes after each parent’s name signifying “mother,” “father” or simply “parent,” Assembly Bill No. 1951.

<sup>25</sup> Article 62s, para 2 of the Civil Code.

<sup>26</sup> *Transsexuellengesetz* of 10 September 1980 (BGBl. I p. 1654)

<sup>27</sup> § 5 TSG as well as § 10 Abs. 2.

<sup>28</sup> § 11 TSG.

has given birth to a child is legally the child's mother."<sup>29</sup> In addition, the birth register and the child's birth certificate will have the parent's pre-transition name and not their current name and legal gender. Similarly and on the basis of that decision, the Federal Court of Justice ruled that a trans woman "can be seen in terms of parental right only as father and not as mother".<sup>30</sup> Registrars are bound by these court decisions and have to act accordingly. German law has different rights and obligations according to gender (maternity protection, paternity, parentage). On that ground, the Federal Constitutional Court ruled that the State has a vested interest in clear and long-term personal status and in minimizing distinctions between biological sex and legal gender.<sup>31</sup>

14. In December 2018, a new subsection, §45b, was added to the Personal Status Law (PStG, *Personenstandsgesetz*), allowing intersex people to change their name and legal gender by submitting a medical certificate confirming a variance of sex development. They may choose between "female", "male", "diverse" and no gender marker at all. Although intended to benefit intersex people, some trans people have also successfully used this law, bypassing the lengthy, expensive and more pathologising court procedure of the TSG. Parents who have changed their legal gender through §45b to "diverse", or who do not have a gender marker any more, face similar problems getting legally recognized, as trans parents who used TSG procedures, when trying to register their child. Registrars refuse to record filiation in agreement with the reassigned gender marker, leaving the birth certificate blank where the parent would usually be registered instead.<sup>32</sup>

15. In 2019, the federal government published draft bills to reform the parentage law (*Abstammungsrecht*)<sup>33</sup> and the TSG<sup>34</sup> respectively, which would both leave the

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<sup>29</sup> BGH XII ZB 660/14.

<sup>30</sup> BGH XII ZB 459/16.

<sup>31</sup> Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2017). Gutachten: Geschlechtervielfalt im Recht. Status quo und Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtervielfalt, Band 8, p. 32.

<sup>32</sup> Queer. de (15th May 2020). Standesamt erkennt "diverse" Eltern nicht an. Retrieved from [https://www.queer.de/detail.php?article\\_id=36130](https://www.queer.de/detail.php?article_id=36130).

<sup>33</sup> Draft law proposal by the Federal Ministry of Justice and Consumer Protection. Diskussionsteilentwurf: Entwurf eines Gesetzes zur Reform des Abstammungsrechts (from 13 March 2019).

<sup>34</sup> Draft law proposal by the Federal Ministry of Justice and Consumer Protection and Federal Ministry of the Interior, Building and Community. Entwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrags, (from 08 May 2019), §20 Abs. 2.



situation with regard to trans parenting unchanged. Legal men and “diverse” persons who have given birth to children are declared to be “mothers”, while legal women and “diverse” persons who beget children are to be “fathers”. Both draft laws refer the question of regulating trans parenthood to the other draft law proposal. These proposals go against recommendations for trans law reform commissioned by the Federal Family Ministry,<sup>35</sup> the trans community and their representatives<sup>36</sup> and academia,<sup>37</sup> which recommend that trans parents are registered in accordance with their officially recognized gender identity.

16. Approximately 25-50% of trans people are parents<sup>38</sup> and 36% of trans non-parents and 19.4% of trans parents want to have a child in the future.<sup>39</sup> Trans parents experience greater levels of discrimination in relation to government officials, schools, kindergartens and medical personnel.<sup>40</sup> The current legal system makes being a transgender parent more difficult.<sup>41</sup> In a German online survey on the experience with the current law, 16,4% of respondents who had not yet used LGR procedures mentioned the need to reform regulations related to trans parenthood.<sup>42</sup> Discrimination against parents also has a negative effect on child welfare, as the current situation outs children of trans parents as such, exposing them to potential discrimination and bullying.<sup>43</sup>

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<sup>35</sup> Adamietz/Bager, commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Report on Reform of the Transsexuals Act Band 7a Berlin, 2017, p. 18; Adamietz/ Bager, Regelungs- und Reformbedarf für transgeschlechtliche Menschen, Gutachten im Auftrag des Bundesministeriums für Familie, Frauen, Senioren und Jugend, Nov 2016, p. 22, p. 31, p. 53-54.

<sup>36</sup> BVT\* (2016) Policy Paper Recht des Bundesverbandes Trans: Paradigmenwechsel. Zum Reformbedarf in Bezug auf Trans, p.14.

<sup>37</sup> NJW-Aktuell Standpunkt Heft 3/2014.

<sup>38</sup> Stotzer, Rebecca L.; Herman, Jody L.; Hasenbush, Amira (2014): Transgender Parenting. A Review of Existing Research. Los Angeles.

<sup>39</sup> Pyne, Jake; Bauer, Greta; Bradley, Kaitlin (2014): Transphobia and Other Stressors Impacting Trans Parents. In: Journal of GLBT Family Studies 11 (2), p. 107–126.

<sup>40</sup> Hoenes, Sauer, Fütty. Dritte Option beim Geschlechtseintrag für Alle? BVT (eds), Berlin (2019), p.33.

<sup>41</sup> Rewald, Sascha (2019). Elternschaften von trans Personen - Trans Eltern zwischen rechtlicher Diskriminierung, gesundheitlicher Unterversorgung und alltäglicher Herausforderung. In: Appenroth, Max Nicolai, Castro Varela, María do Mar (Hrsg.). Trans & Care - Trans Personen zwischen Selbstsorge, Fürsorge und Versorgung, Bielfeld: transcript, p. 195.

<sup>42</sup> Adamietz/ Bager, Regelungs- und Reformbedarf für transgeschlechtliche Menschen, Gutachten im Auftrag des Bundesministeriums für Familie, Frauen, Senioren und Jugend, Nov 2016, p. 221.

<sup>43</sup> Stellungnahme der Bundesvereinigung Trans\* (BVT\*) e.V. zum Referentenentwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrages von BMJV und BMI vom 8. Mai 2019, p.18.

17. Parenthood requires more time, money and emotional strain for trans people than for cisgender people.<sup>44</sup> One pregnant trans man decided to go to Sweden to give birth to take advantage of more favourable filiation rules. Trans parents reported feelings of depression and suicidal thoughts as a result of being issued with a birth certificate that did not match their gender identity. The current situation, in which none of the identity documents (name and gender on passport, national ID, and birth certificate) of trans parents match their children's birth certificate, makes it hard to prove their identity as the parents of their children, and impossible to do so without coming out as transgender and presenting further documentation, not required of other parents, which may not be recognised by other countries.<sup>45</sup> This may cause problems when travelling with a minor, which requires parental consent. Trans parents reported to the BVT\* and TGEU<sup>46</sup> that they chose not to travel abroad with their children, fearing an inability to prove their parenthood at the border.
18. In January 2019, one family reported that their child, born in Germany, has the right to Israeli and Brazilian citizenship. These countries hold the German birth certificate to be legally binding, and would register the child with the information listed on the birth certificate, regardless of the legal situation regarding trans parenthood in those countries. The family fears having to go through three separate, lengthy and expensive legal proceedings to have their situation recognized. This situation complicates routine procedures such as registering their child for kindergarten or social services immensely<sup>47</sup>, frequently outing the parents as trans.<sup>48</sup>
19. Even routine interactions unrelated to the child, such as the change of residence or any contact with tax authorities have been reported to become lengthy as well as degrading procedures. In practice, the current situation forces many trans parents to maintain two separate legal identities as a “mother” and as a “father”

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<sup>44</sup> Sascha Rewald - Was brauchen trans Eltern? (2018) p. 59-60.

<sup>45</sup> Stellungnahme der Bundesvereinigung Trans\* (BVT\*) e.V. zum Referentenentwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrages von BMJV und BMI vom 8. Mai 2019, p.18.

<sup>46</sup> TGEU, Council of Europe recognises trans parents, 30 October 2018, available here: <https://tgeu.org/council-of-europe-recognises-trans-parents/>.

<sup>47</sup> Sascha Rewald - Was brauchen trans Eltern? (2018) p. 52-54.

<sup>48</sup> Adamietz/ Bager, Regelungs- und Reformbedarf für transgeschlechtliche Menschen, Gutachten im Auftrag des Bundesministeriums für Familie, Frauen, Senioren und Jugend, Nov 2016, p. 17.

respectively.<sup>49</sup> Furthermore, children of trans parents are left in limbo, as they cannot easily prove their legal status in relation to their trans parents. They may lack evidence of their parents having legally transitioned, preventing them from being recognized as their parent's children, which may be relevant for different legal purposes.

20. The current arrangements for trans parenthood also constitute discrimination against biological parents and in favour of parents who are not genetically related. A man (regardless if trans or cisgender) who acknowledges fatherhood is easily recognised as the father of the child, irrespective of his biological relation to the child, while a trans woman who begets a child will not be recognized either as a mother or by her/their name.<sup>50</sup> The state de facto dictates a single possible parenting structure, enforces gender norms (a person begetting a child is always a father) and erases the lived reality of other possibilities.<sup>51</sup> Trans people already suffer the stigma of doubts regarding their parental ability during interactions taking place in schools, kindergartens or social services.<sup>52</sup> Legal recognition of their parenthood may help alleviate that stigma.
21. The BVT\* reports that in one case the local youth office issued a custody notarization that referred to the trans parent under their former name, under the pretext that such documents have to match the child's birth certificate. Another trans parent reported to the BVT\* that after he had started a new job he was forced to reveal his trans identity to his manager because they had to hand in their child's birth certificate in order to prove that they are a parent. They feared discrimination at work, job loss, and thus financial instability for their family. Another trans parent reported that they actually lost two job offers due to the fact that the birth certificate outed them as trans.<sup>53</sup>

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<sup>49</sup> For example, one trans father reported that he wanted to lengthen his health insurance as a student due to taking parental leave from his studies. The insurance company gives this postponement automatically to mothers, but requires fathers to produce a document written by the mother, stating that the father is taking care of the child. In that situation, the father was forced by the insurance company to write a letter as the mother claiming that he as the father is responsible for the child.

<sup>50</sup> Sascha Rewald - Was brauchen trans Eltern? (2018) p. 61.

<sup>51</sup> Rix Weber - trans und Elternschaft (2018) p. 20-21, 25.

<sup>52</sup> Rix Weber - trans und Elternschaft (2018) p. 48.

<sup>53</sup> Reported to the BVT\* in June, 2019.

*Conclusion*

22. For the reasons set out above, the third party interveners submit that legal gender recognition should be determinative for the purposes of recording parental links between transgender parents and their children (i.e.: a trans man should be registered as father and a trans woman as mother).