

1. The present case concerns the effects of legal gender recognition (LGR) in relation to rules on filiation between the trans parent and their biological child, and the corresponding obligations 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.¹ 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. Restrictive LGR procedures hinder the ability of trans people to enjoy their family life, particularly through eligibility requirements that seek to control their reproductive rights or which trigger the termination of any existing marriage. Some countries do not allow individuals with children to access LGR.² While the childlessness requirement has been mostly abandoned, the requirement placed on married trans people who to end their marriage before being able to rectify their identification documents is more common. This requirement puts a strain on families wishing to stay together during an already difficult transition period. While this Court has found the divorce requirement to be compatible with the Convention in some circumstances,³ the UN Human Rights

¹ 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 (*Menesson 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).

² For example, Order No. 60 of the Ukrainian Health Ministry «On improvement of medical assistance to persons in need of change (correction) of sex" of 3 February 2011, cancelled on 31 December 2016, automatically disqualified trans people with minor children from LGR.

³ *Hämäläinen v. Finland [GC]*, no. 37359/09, ECHR 2014.

Committee and the EU Court of Justice have reached the opposite conclusion.⁴ Some countries make LGR in the case of married trans people contingent on spousal consent,⁵ which results in the non-transitioning partner being able to effectively block their legal transition by withholding their agreement to a divorce. Some countries still impose sterilization as a pre-condition to LGR.⁶ Sweden even had in place a ban on saving own reproductive material (eggs or sperm) in addition to the sterilization requirement.⁷ The sterilization requirement has been widely condemned for being in breach of fundamental rights, including by this Court and the European Committee on Social Rights.⁸

3. Despite such restrictions hindering family life, many trans people live in families with children or wish to have children.⁹ Trans people may have biological or adoptive children prior to changing their legal gender. Post-LGR, trans people may become parents because they retained their reproductive capacity, through assisted reproductive technologies, adoption or recognition of social parenthood.¹⁰ Cases of men giving birth became increasingly common over the past few years, attracting considerable media attention¹¹ and scientific interest.¹² At the same time, family formats involving trans

⁴ HRC, *G. v. Australia*, Communication no. 2172/2012, 17 March 2017, §7.12; CJEU, Case C-451/16, *MB v. Secretary of State for Work and Pensions* [2018].

⁵ For example England and Wales, under the Legal Gender Recognition Act 2004.

⁶ Thirteen Council of Europe states still require sterilization for LGT purposes, TGEU Trans Rights Europe and Central Asia Map and Index 2018, available at http://tgeu.org/idahot_forum_map-launch/.

⁷ See testimony of Aleksa in RFSL, *Forced Sterilization of Trans People – Personal Stories* (video testimonies) (2017) of being threatened by healthcare providers to withhold the permission for LGR if she had saved sperm, available at: <https://www.rfsl.se/en/organisation/tvaangssteriliseringar-och-skadestaand/forced-sterilisation-of-trans-people-personal-stories/>.

⁸ *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others, 6 April 2017; Committee of Social Rights, *Transgender Europe and ILGA-Europe v. the Czech Republic*, compl. no. 117/2015, 15 May 2018.

⁹ Between 25 and 50% of trans people have children, see Myrte Dierckx, Joz Motmans, Dimitri Mortelmans & Guy T'sjoen (2015): *Families in transition: A literature review*, International Review of Psychiatry, DOI: 10.3109/09540261.2015.1102716, p. 2, [*Families in transition*]; Rebecca L. Stotzer, Jody L. Herman, Amira Hasenbush, *Transgender Parenting: A Review of Existing Research*, the Williams Institute, 2014, [*Transgender parenting*]. 16% of the trans respondents in a pan-European survey live with at least one child under the age of 18 in their household, see EU FRA, *Being Trans in the European Union: Comparative analysis of EU LGBT survey data*, 2014, p.127.

¹⁰ 42,4% of the respondents in a Belgian study wanted to have children, Joz Motmans, *Being Transgender in Belgium*, 2010, p.93. Also Light et al., *Transgender Men Who Experienced Pregnancy After Female-to-Male Gender Transitioning in Obstetrics & Gynecology*, 2014.

¹¹ 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). Australian authorities reported that 54 transgender men have given birth in Australia during the first half of 2017 following an earlier change in policy allowing persons registered as male to also get support for pregnancy-related care,

parents have multiplied, depending on several variables such as the sex assigned at birth and implicitly the reproductive capabilities of the individual in question, the use of various artificial reproductive techniques or the nature of the relationship between the putative parents (marriage, registered partnership or de-facto partnership).¹³ Trans people undergoing treatment that results in sterilization theoretically retain some options for reproduction.¹⁴ However, these options are often subject to availability of knowledge, accessible healthcare providers and/or considerable financial resources.

4. 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.¹⁵ 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.¹⁶ This information is consistent with concerns expressed by the applicant in the present case regarding the forced disclosure of his identity every time he has to present his son's birth certificate.

The effects of legal gender recognition in relation to filiation rules

5. Standards in the Council of Europe region 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

Marquita Harris, *More transgender men gave birth this year than you may think*, 13 July 2017, available here: <http://www.refinery29.com/2017/07/163184/54-transgender-men-in-australia-have-given-birth>.

¹² MacDonald et al. *Transmasculine individuals' experiences with lactation, chestfeeding, and gender identity: a qualitative study*, in *BMC Pregnancy and Childbirth*, 2016. Alexis D. Light, MD, MPH, Juno Obedin-Maliver, MD, MPH, Jae M. Sevelius, PhD. Jennifer L. Kerns, MD MPH, *Transgender Men Who Experienced Pregnancy After Female-to-Male Gender Transitioning*, *Obstet Gynecol* 2014.

¹³ A typology of trans families based on these various criteria is included in Anna Śledzińska-Simon, *Transgender Rights on the Move: Towards Recognition and Gender-Neutral Definition of Parenthood*, in Carlo Casonato and Alexander Schuster, *Rights on the Move: Rainbow families in Europe (conference proceedings)*, University of Trento, 2014, p. 311-326.

¹⁴ 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, Kelly Tilleman, Guy T'Sjoen, Petra De Sutter, *Fertility options in transgender people*, *International Review of Psychiatry*, 2016, VOL. 28, NO. 1, 112-119.

¹⁵ *Families in transition*, p. 3.

¹⁶ *Idem*.

States to “take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life.”¹⁷ 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.”¹⁸ The Court clarified in its case-law that LGR applies equally for the purposes of marriage¹⁹ and gendered pension eligibility requirements.²⁰

6. An interesting case regarding the implications of gender reassignment for families is *X, Y and Z. v. United Kingdom*.²¹ 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 father be allowed to stand.

7. 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

¹⁷ *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.□

¹⁸ *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.

¹⁹ *Idem*, §103.

²⁰ *Grant v. the United Kingdom*, no. 32570/03, §43, ECHR 2006-VII.

²¹ *X, Y and Z v. the United Kingdom*, 22 April 1997, Reports of Judgments and□Decisions 1997-II.

operated upon LGR.²² 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.”

8. 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.²³ At the same time, the *Yogyakarta Principles* specify that “States shall issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents.”²⁴

9. 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 particularly relevant here.²⁵ 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 in 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 “best interests of the child” principle derived from the Convention on the Rights of the Child. The principle of full

²² 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.

²³ Parliamentary Assembly, Resolution on “Private and family life: achieving equality regardless of sexual orientation,” 10 October 2018, 4.6.

²⁴ *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.

²⁵ 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*, 2dn edition, November 2016, p. 59.

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.’

10. 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 Italy²⁶ and in Israel²⁷ reached similar verdicts as those in Sweden.

11. The adoption of legislation permitting same-sex marriage in many Member States may provide a more accommodating framework for trans parents. For example, Malta adopted legislation²⁸ 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.²⁹

²⁶ 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/>.

²⁷ 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>.

²⁸ Marriage Act and other Laws (Amendment) Act, 2017.

²⁹ 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.

Transgender parenthood in Germany

12. The German Transsexual Law (TSG, *Transsexuellengesetz*, 1980)³⁰ 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*)³¹. Nonetheless, the birth certificates of existing biologic or adoptive children cannot be changed. Parents, grandparents, former spouses and children the person had before the reassignment, are only obliged to use the new name when in connection to public record. The ruling does not change the legal relationship between the trans person and their parents, nor that between them and existing children.³² Children adopted after the ruling are legally adopted according to the person's new 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 2017,³³ the Federal Court of Justice decided that a "Female-to-Male Transsexual"³⁴ who has given birth to a child is legally the child's mother." In addition, the birth register and the child's birth certificate will have the parent's pre-transition name and not their current legal name and 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".³⁵ Registrars are bound by these court decisions and have to act accordingly.³⁶ German law has different rights and obligations according to gender (maternity protection, paternity, parentage). On that ground, the Federal Constitutional Court ruled

³⁰ Transsexuellengesetz vom 10. September 1980 (BGBl. I S. 1654)

³¹ § 5 TSG as well as § 10 Abs. 2

³² § 11 TSG

³³ BGH XII ZB 660/14

³⁴ the plaintiff of the current ECtHR case

³⁵ BGH XII ZB 459/16

³⁶ see e.g. attached letter from registry office Reinbek, Germany, 22.5.2019

that the State has a vested interest in clear and long-term personal status and in minimizing distinctions between biological and legal genders.³⁷

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 with a simple 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 to legally change their names and genders without costly and personal psychiatric evaluations and court proceedings. The legal status of children of people who have changed their gender through §45b, is currently unclear.

15. A recent bill to reform the parentage law (*Abstammungsrecht*)³⁸, as well as a recent bill to reform the TSG,³⁹ would leave the situation with regard to trans parenting unchanged. Legal “males” and legal “diverse” who have given birth to children are declared to be “mothers”, while legal “females” and legal “diverse” who provided the sperm are to be “fathers”. The option against gender-neutral designations has been ascribed to political expediency, as it is presumed that the public would more readily accept the law, and consistent law making would become more difficult. The reform of the parentage law states that the birth certificate and the names on it are to be managed in accordance with personal status law⁴⁰. The TSG reform proposal refers the question of parenthood recognition back to the reform of the parentage law.⁴¹ These proposals go against reports by the Humboldt-University Berlin and commissioned by the Federal

³⁷ Bundesministerium für Familien, Senioren, Frauen und Jugend - Gutachten: Geschlechtervielfalt im Recht. Status quo und Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtervielfalt Band 8, S. 32

³⁸ Diskussionsteilentwurf des Bundesministeriums der Justiz und für Verbraucherschutz - Entwurf eines Gesetzes zur Reform des Abstammungsrechts 13. März 2019, S. 59, S. 60

³⁹ Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz und des Bundesministeriums des Innern, für Bau und Heimat - Entwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrags, Bearbeitungsstand 08.05.2019 §20 Absatz 2

⁴⁰ § 1600h

⁴¹ S. 24, Begründung zu § 20

Family Ministry⁴², the BVT*⁴³ and academia,⁴⁴ which recommend that trans parents be registered in accordance with their officially recognized gender identity.

16. Approximately 25-50% of trans people are parents,⁴⁵ 36% of trans non-parents and 19.4% of trans parents want to have a child in the future⁴⁶ and 17.4% of trans and non-binary people have children⁴⁷. Trans parents experience greater levels of discrimination in relation to government officials, schools, kindergartens and medical personnel⁴⁸. The legal situation hinders some trans people in fulfilling their wish⁴⁹, because the legal system doesn't recognize them and discriminates against them⁵⁰. In an online survey on the experience with the TSG, 16,4% of respondents who had not yet used the TSG-procedure mentioned the need to reform regulations related to trans parenthood.⁵¹ Dealing with the authorities requires more time, money and emotional strain than for cisgender people.⁵² Discrimination against parents has a negative effect on child welfare. In addition, the current situation outs children of trans parents as such, exposing them to potential discrimination and bullying⁵³.

⁴² Adamietz/Bager, Report on the Reform of the Transsexuals Act, commissioned by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth - Report on Reform of the Transsexuals Act Band 7a Berlin, 2017; Bundesministerium für Familien, Senioren, Frauen und Jugend - Gutachten: Regelungs- und Reformbedarf für transgeschlechtliche Menschen Band 7, 2017, S. 22, S. 31, S. 53-54.

⁴³ BVT* (2016) Policy Paper Recht des Bundesverbandes trans - Paradigmenwechsel - zum Reformbedarf in Bezug auf trans S. 14. Bundesvereinigung Trans* (BVT*, <https://www.bv-trans.de/>) is a nationwide umbrella nonprofit organization and advocacy group committed to the rights of trans* people in Germany.

⁴⁴ NJW-Aktuell Standpunkt Heft 3/2014.

⁴⁵ Stotzer, Rebecca L.; Herman, Jody L.; Hasenbush, Amira (2014): Transgender Parenting. A Review of Existing Research. Los Angeles. Online verfügbar unter <https://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014/>,

⁴⁶ Pyne, Jake; Bauer, Greta; Bradley, Kaitlin (2014): Transphobia and Other Stressors Impacting Trans Parents. In: Journal of GLBT Family Studies 11 (2), S. 107-126.

⁴⁷ Hoenes, Sauer, Fütty. Dritte Option beim Geschlechtseintrag für Alle?, Berlin (2019), S.33

⁴⁸ Hoenes, Sauer, Fütty. Dritte Option beim Geschlechtseintrag für Alle?, Berlin (2019), S.33

⁴⁹ Sascha Rewald - Was brauchen trans Eltern? (2018) S. 56-58, S. 72

⁵⁰ Sascha Rewald - Was brauchen trans Eltern? (2018) S. 69, S. 71

⁵¹ Adamietz/ Bager, Regelungs- und Reformbedarf für transgeschlechtliche Menschen, Gutachten im Auftrag des Bundesministeriums für Familie, Frauen, Senioren und Jugend, Nov 2016, S. 221

⁵² Sascha Rewald - Was brauchen trans Eltern? (2018) S. 59-60

⁵³ 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, S.18

17. One pregnant trans man decided to go to Sweden to give birth to take advantage of more favourable filiation rules,⁵⁴ involving additional emotional and financial burden for the family in question.⁵⁵ Another trans father reported feelings of depression and suicidal thoughts as a result of being issued with a birth certificate that designated him as “mother” (with his previous names). 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 countries⁵⁶. This may cause problems while travelling with a minor, which requires consent of the parent. Trans parents reported to the BVT* and TGEU⁵⁷ that they chose not to travel abroad with their children, fearing an inability to prove their parenthood to security staff or border patrols while at a foreign airport.

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 as they appear in the birth certificate, regardless of the legal situation in those countries. The family fears having to go through three separate, lengthy and expensive legal proceedings to have their situation recognized. This introduces complicated documentation (court ruling) in order to gain access to services such as kindergarten or social services⁵⁸ and outs the parents as trans.⁵⁹

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

⁵⁴ Additional testimonies by German trans men who gave birth have been collected by BVT* and are attached as an annex to the present brief.

⁵⁵ Personal Communication between the BVT* and the trans man, spring 2019

⁵⁶ 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, S.18

⁵⁷ <https://tgeu.org/council-of-europe-recognises-trans-parents/>.

⁵⁸ Sascha Rewald - Was brauchen trans Eltern? (2018) S. 52-54

⁵⁹ Bundesministerium für Familien, Senioren, Frauen und Jugend - Gutachten: Regelungs- und Reformbedarf für transgeschlechtliche Menschen Band 7 S. 17

maintain two separate legal identities: that of the “mother” and that of the “father”⁶⁰. Furthermore, children of trans parents are left in limbo, as they cannot easily prove their legal status in relation to their trans parent, seeing that they may lack evidence of their parents having legally transitioned, which may become relevant for different legal purposes, including inheritance.

20. This also constitutes discrimination against biological parents and in favour of parents who are not genetically related. A trans man married to a cisgender woman who gave birth is automatically recognized under German law as the father under his/their legal name, while a trans man who gives birth will not be recognized either as a father or by his/their name⁶¹. The state de facto dictates a single possible parenting structure, enforces gender norms (a pregnant person is always a mother) and erases the lived reality of other possibilities⁶². Trans people already suffer the stigma of doubts regarding their parental ability during interactions taking place in schools, kindergartens or social services.⁶³ 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 father under his former female name, under the pretext that such documents have to match the child’s birth certificate. Another trans father who had given birth reported to the BVT* that after he had started a new job he was forced to reveal his trans identity to his manager because he had to hand in his child's birth certificate in order to prove that he has a child. He fears discrimination at work, job loss and thus financial instability for his family. Another trans father reported that he actually lost two job offers due to the fact that the birth certificate outed him as trans: he is married to a woman, thus the certificate would have looked like a usual certificate if he had been listed with his legal name and gender. But since he had to out himself as

⁶⁰ 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.

⁶¹ Sascha Rewald - Was brauchen trans Eltern? (2018) S. 61

⁶² Rix Weber - trans und Elternschaft (2018)S. 20-21, 25

⁶³ Rix Weber - trans und Elternschaft (2018)S. 48

transgender in order to prove that he is the person that is listed in the birth certificates of his children, he got rejected as a high school teacher by two schools.⁶⁴

⁶⁴ Reported to the BVT* in June, 2019