



December 2010

Joint contribution by ILGA-Europe¹, Transgender Europe² and OII-Germany³ towards the European Commission's assessment of the state of affairs vis-à-vis gender discrimination in education and the provision of financial services

This submission, collated by ILGA-Europe⁴, collects evidence of discrimination on the grounds of sex, gender, gender identity and gender expression in the areas of education and financial services. In preparing towards this paper, ILGA-Europe and Transgender Europe launched a call to their EU-based member organisations to collect fresh evidence of discrimination. Along with the new evidence, OII-Germany has for the first time also submitted its own report about the experience of discrimination of intersex people. Additionally, some evidence of discrimination found in published reports was also gathered and included.

For the purpose of this paper, we have not included any reference to discrimination based on sexual orientation *per se* as it is covered under the anti-discrimination set of legal instruments rather than the Gender Goods and Services Directive (2004/113/EC). However, sexual orientation was brought into this submission with regard to experiences of multiple-discrimination, particularly when discrimination on the grounds of sexual orientation compounded with the ground of sex and other grounds leads to an aggravated experience of discrimination.

Trans people are covered by EU gender equality legislation following the 1996 *P v S and Cornwall County Council* judgement by the European Court of Justice which affirmed that the principle of equal treatment between women and men enshrined in “the

¹ ILGA-Europe is a European NGO with 277 regional, national and local lesbian, gay, bisexual, transgender and intersex (LGBTI) member organisations in 40 countries, and works for human rights and equality for lesbian, gay, bisexual, transgender and intersex people at European level. ILGA-Europe enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC), participative status at the Council of Europe and receives financial support from the European Commission. It is a member of the Platform of European Social NGOs. ILGA-Europe was established as a separate region of the ILGA in 1996. www.ilga-europe.org

² TransGender Europe (TGEU) is a European third sector, umbrella organization, which works towards the full equality and inclusion of all trans people in Europe. TGEU was founded in 2005, during the 1st European Transgender Council in Vienna and is today registered as an NGO under Austrian Law. Currently TGEU has 31 member groups from 18 countries mainly from Europe. www.tgeu.org

³ Internationale Vereinigung intergeschlechtlicher Menschen (IVIM) is the German branch of Organisation Intersex International (OII) an international organisation lobbying for the depathologisation of intersex people www.intersexualite.de

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directive [76/207/EEC] precludes dismissal of a transsexual for a reason related to a gender reassignment.” In this paper, however, we move away from the arbitrary ground of ‘gender reassignment’. Instead we favour the grounds of ‘gender identity’ and ‘gender expression’ as they account for the reasons of discrimination more precisely. These are often not directly linked to the medical process of gender reassignment that some trans people undergo to align their body with their gender. Gender identity and gender expression are instead understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Moreover, we have intentionally included examples of discrimination against intersex people in this paper in spite of the absence of case-law that states that intersex people fall within the scope of sex equality legislation. We did this as we believe that it is not necessary to wait for a judgement by the European Court of Justice to cover intersex people under sex equality legislation precisely because the primary form of discrimination that they suffer from is ‘sex’ discrimination as a result of their incongruence with European society’s strictly binary female/male sexes.

A. EDUCATION

1. Discrimination against Intersex people

There is no statistical evidence or studies about intersex⁵ people and the discrimination that they suffer in accessing education. Sadly, this is not exclusively the case with regard to the field of education, but rather a general trend for intersex people’s realities in all spheres of life. This is due to the fact that many intersex people experience non-consensual, unnecessary, and often experimental medical treatment in order to align their bodies within society’s normative binary gender models based on male or female bodies.

However, in spite of the absence of studies, OII-Germany has reported the following areas of concern that are based on various experiences of intersex people:

- Absence from school due to surgery/ies leading to difficulties regarding the consistency of their studies and their ability to follow their education as regular pupils;

⁵ Intersex is physical difference in anatomical sex., that is, physical differences in reproductive parts and genitalia. Intersex is also physical differences in secondary sexual characteristics such as muscle mass, hair distribution, breast development and stature. Intersex can include things that are invisible to the eye such as chromosomal and hormonal differences. Those kinds of differences usually have a manifestation in primary or secondary sexual anatomy that is visible either externally or internally.

- High levels of stress due to cover-up stories for the time of absence. This is mainly due to the fact that intersex realities are still considered a taboo and many intersex people are not properly informed about medical reasons for or details of the treatment that they are provided with;
- Intersex children and youths sometimes do not fit the standard gender expression of the sex they are aligned with, and hence they are exposed to very high risks of bullying, mobbing and other forms of discrimination;
- Intersex people who cannot (or do not want to) pass as either male or female due to their gender expression and/or sex, experience embarrassing and dangerous situations due to the ignorance of administrative and teaching staff and/or discriminatory school regulations/practices (e.g. in access to gendered toilets, or other sex segregated facilities). This is often coupled with discrimination that is intersexphobic, transphobic and/or homophobic coming from other pupils and/or staff;
- School sex-segregated sport facilities (e.g. sex segregated dressing rooms, sex segregated sports and games, gendered sport attire) can also heighten the experience of discrimination;
- Wrong use of pronouns to address intersex persons can lead to both embarrassment and exposure to bullying and mobbing, and is disrespectful and hurtful.

It needs to be noted that not all intersex people experience the full set of discrimination described above. This is due to the fact that many intersex people do pass both outwardly and in their gender expression as one of the socially defined male or female sexes, with or without medical treatment. However, the deeply embedded binary sex segregation in our societies implicates fundamental problems for intersex people, such as the stress caused by the taboo around intersex experiences, that directly or indirectly create difficulties for all intersex people in various spheres of life, including in education."

2. Discrimination against Trans People

In the *Provision of goods, facilities and services to trans people: Guidance to public authorities in meeting your equality duties and human rights obligations*, the UK Equality and Human Rights Commission (EHRC) details how trans people can be discriminated in the provision of education:⁶

“Trans people will have accessed education services at some point in their lives. Many will have been aware as children and young people in school education that their gender identity differed in some way from their birth sex, although few will have felt able to explain this to others until older. In addition, some trans people may decide to return to further or higher education at the time of

⁶ See http://www.equalityhumanrights.com/uploaded_files/PSD/psd_trans_guidance.pdf pg.39-40

beginning gender reassignment in order to retrain for a fresh start in a different career.

Trans people may face problems in a number of areas of education service provision. Particular issues include:

- Single-sex services and facilities, especially those which require people to share living, changing or sleeping spaces, for example:
 - boarding school dormitory facilities
 - single-sex student halls of residence
 - physical education changing and showering facilities, and
 - toilets within schools, colleges and universities.
- School uniforms which are specific for boys and girls, for example:
 - girls must wear skirts
 - Records which may hold personal information regarding a trans person's previous name and gender, for example:
 - learner records
 - student union societies, and
 - alumni organisations.
- Documents which specify the recipient's name and require to be reissued if the recipient undergoes gender reassignment, for example:
 - student matriculation cards, and
 - education qualification certificates and examination results transcripts."

2.1 Trans People's experiences and evidence of discrimination in Primary and Secondary Education

Accounts that have been submitted by trans people as part of the recent Hungarian study: "LGBT Survey 2010" carried out by Háttér Társaság a Melegekért (Hungarian LGBT organisation):⁷

- "At proms girls traditionally have to wear skirts, which of course I refused to do. Since I had no other way to avoid this situation, I went to the doctor and asked for a sick leave. When I returned, my form master was furious: she knew very well why I was not there. She threatened to kick me out of school, even though I had a sick note."
- "I will never forget that my chemistry teacher and a few students were making fun of transsexual people, arguing that only those people have an operation who are so rich they don't know on what to spend their money on"
- "I nearly starved to death in the dormitory as I was too afraid to go to the canteen because they always made fun of me. It was also in the dormitory that

⁷ No statistics are available as of yet, as the questionnaires are still being processed and the results will be published at a later stage

roommates could not handle me being different and had me kicked out of school. After that I had to travel hours every morning to get to school"

- "Bullying was a part of everyday routine in primary school, in high school only extreme right wing students harassed me. I have never been lucky with biology teachers, especially in high school. It got to the point that I requested to do the qualifying exam so that I don't have to go to classes. Finally after hours long discussion between the teacher, my then girlfriend and me we decided not to take the exam"
- "The kids (my own class), started talking about me behind my back, and after that they opposed me in every situation where they could, they hated me massively"
- "My classmates figured it [being trans] out from someone else and also because of my appearance (I look very boyish even in girls clothes, I look like a girlish boy) and they have been gossiping and making comments. Very often in public spaces as well, such as parks, canteen or in front of the teacher. This was all related to politics - I am not part of it, but many of my classmates, especially boys, are open followers of extreme right wing political views, they go to these events, speeches; and they did not like my "silence" they felt like our differences, our opposition should be made even bigger"
- "I was the dog on whom everyone used to release their tension without the risk of being punished"

Additionally, TransInterQueer (German trans, intersex and queer organisation) reported the following case:

"The secretariat of my secondary school was very un-friendly in their general attitude when I requested to have a new university- entrance diploma. They first sent me an "official" copy of the diploma including a reference to the court order by which my name was changed. A rectified diploma would have significantly lowered my chances in an application process for a job and the reference to a court decision would certainly not have been very helpful either. They finally just gave me a new diploma without any references after I cited the German Transsexual law and it's privacy protection clause."

2.2 Trans People's experiences and evidence of discrimination in Higher Education

a. Experience of a trans male student in an 'intercultural philosophy' seminar at the Humboldt-University (Summer semester 2010)

"Upon outing myself as a transgender person at the seminar and asking for being addressed with a male pronoun, I experienced tremendous problems in getting heard by the professor. My wish for being addressed with a male pronoun was completely ignored by the professor. All I had to say about gender (I have finished my 2nd major in "gender studies") was invalidated. Obviously, the idea that I might be a guy was out of the thinkable. In later sessions, after multiple explanations and with support of other students from the seminar, the professor continued with his expressions and comments. The professor did not even apologize even after I

expressed my strong discomfort with the situation. Other students joined in and expressed their discontent with the situation. The professor continued, pointed at me and stated, "This woman wants to be a man!" and laughed.

Then, I kept on being reduced to being trans and was asked to speak as a representative (for trans people) and was pressed to change the subject of my paper to something related to trans, even though the topic of the seminar was intercultural philosophy and transgender was not planned to be covered – however, this did not change the expressions or usage of the wrong pronoun by the professor."

As a result, the student felt being ignored, not understood, both as a person and a professional. He was very sad and angry, but he felt that it was going to negatively reflect on his marks if he insisted further on clarifying the issue. It provoked insecurity about whether he should complete his studies at all, and significantly reduced his motivation to commit to his studies. Additionally, other students in the seminar expressed that they felt uncomfortable and that the working atmosphere got negatively affected by the professor's behavior.

In another course, this student was discriminated once more when the professor provided a lower mark on the coursework and justified his position by stating:

"You take the gender-question out of the biology and make it a purely cultural custom, something I do not agree with, by the way. Especially I cannot follow the degree to which you claim the character of gender and body is constructed and performative."

b. Refusal to change certificates to reflect the name according to the acquired gender

Justus Einfeld has recently had to take a case to the equality body in the Netherlands in order to change the old female name of his diploma to the name that he acquired after undergoing gender reassignment. While he did win the case, and the Dutch Minister immediately vowed to change the policy for all educational institutions in the country, ILGA-Europe and Transgender Europe have good reason to believe that such discrimination is still commonplace in the rest of Europe. In fact, Háttér Társaság a Melegekért (Hungarian LGBT organisation) sent us the following account of discrimination:

"When I was applying for my new diploma they wanted to put in the documents that I request this because of a change of gender and name. I said I'd rather not have it at all then. At the end we managed to settle the issue, so they only put there 'change of name'"

An excerpt of press release issued by Global Action for Trans* Equality (GATE) and Transgender Network Nederland (TNN) on 1st December 2010 below:

Dutch universities to give new diploma to trans people⁸

Amsterdam - After a case against the Universiteit van Amsterdam, which Justus Eisfeld won yesterday, the Dutch Minister for Education announced a change of policy for all educational institutions in the country. She will write them a letter, explaining that trans people should be allowed a new diploma with their corrected name and gender.

The case against his university was started by Justus Eisfeld, co-director of GATE – Global Action for Trans* Equality, after his university refused him a new diploma with this changed name and gender. The Minister for Education, van Bijsterveldt, announced the policy change in answers to parliamentary questions by social-democrat Members of Parliament Klijnsma en Jadnanansing.

In 2004 Eisfeld changed his legal name and subsequently gender and has tried to get a new diploma since. When the University refused, he started a case through the Equal Opportunities Commission. Today the Commission ruled that the refusal amounted to illegal indirect sex discrimination and advised the University to give out a new diploma.

‘I am very happy not only about my own diploma, but especially about the possibilities for all trans people to change their diplomas in the Netherlands’, said Justus Eisfeld in a statement.

The new diploma is important, because discrimination of trans people is rampant in the workplace, also in the Netherlands. Many employers do not know that the law prohibits discrimination of trans people. Eisfeld comments: ‘hopefully the illegality of trans discrimination in all EU member states will receive more attention. Knowledge is a first step towards a change of practice.’

The Dutch Equal Opportunities Commission ruled that the refusal by the university amounted to indirect sex discrimination and cited the Council of Europe’s Human Rights Commissioner’s Issue Paper on Human Rights and Gender Identity.

2.3 UK research and statistics about the extent of discrimination⁹

“The Equality and Human Rights Commission Trans Research Review published in Autumn 2009 reported that:

- A higher percentage of trans people experience bullying at school (75%) than lesbian, gay and bisexual (LGB) people (25%).

⁸ Coverage of the case in the media: Washington Post: <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113002544.html> ; Huffington Post: <http://huffingtonpostnews.blogspot.com/2010/11/justus-eisfeld-transsexual-graduate-to.html>

⁹ See *Provision of goods, facilities and services to trans people: Guidance to public authorities in meeting your equality duties and human rights obligations* http://www.equalityhumanrights.com/uploaded_files/PSD/psd_trans_guidance.pdf pg.40-41

- 64% of trans men (born female) and 44% of trans women (born male) had experienced bullying at school from fellow pupils as well as staff.
- There may be links between homophobic and transphobic bullying in schools since often the bullying is sparked by expressing behaviours that are seen as breaking gender norms rather than sexual orientation. As such, addressing homophobic bullying in schools may also help challenge transphobic bullying.

Research conducted by the Equality Challenge Unit (ECU)¹⁰ in 2009 suggests that trans students encountered higher levels of negative treatment than LGB students, and disturbingly high levels of threatening behaviour, physical abuse and sexual abuse – particularly from other students. In particular the ECU survey reported that of the trans student respondents:

- 22.6% have been bullied or discriminated against since starting university.
- 17.2% have been made to feel uncomfortable in class by lecturers and other students in group work.
- The ECU also suggested that such accounts perhaps contribute to explaining why 28.5% of trans students have taken time out of their course which is higher than the national average, and suggest a need for the sector to provide more formal support for LGBT students, and training for higher education institution staff about the need to be sensitive to the types of issue that may affect LGBT students' academic performance."

B. FINANCIAL SERVICES

1. Discrimination against Intersex people

Intersex people are still considered to suffer from a medical disorder, the 'disorder of sex development' (DSD). Intersex people are therefore considered "chronically ill" and are as such treated unfavourably by insurance companies with regard to life insurance, health insurance and other policies.

2. Discrimination against Trans people

Trans people who do not intend to undergo a 'full' gender reassignment, or are in the process of undergoing gender reassignment experience several difficulties in access to financial services, irrespective of the service that they require. The reason for this is that they will always need to come out to the people/companies from whom they are accessing the service as their accounts or bank cards will state a different gendered name that does not match their own gender.

¹⁰ Equality Challenge Unit 2009 'The experience of lesbian, gay, bisexual and trans staff and students in higher education' http://www.ecu.ac.uk/publications/files/lgbt-staff-and-students-in-he-report.pdf/at_download/file

a. Information provided by Transgender Netwerk Netherlands (TNN)

Dutch law requires that persons undergo ‘complete gender reassignment’ prior to their change of gender on their birth registry. As a result, many trans people do not have access to identification documents in line with their gender. This is particularly true for those trans people who are still undergoing gender reassignment, and those trans people who do not need or cannot access gender reassignment.

TNN receives various complaints from the Dutch trans community that claims that they cannot convince their bank or their insurance company to address them in their preferred gender role, both during gender reassignment and after it is ‘completed’. To put things in perspective, while banks and insurance companies have to screen their clients’ information at least once a year, and compare their files with the birth registry of the Netherlands, these companies claim that it is impossible for them to change the gender data of their clients so as to align it with the sex recorded on the birth registry. Banks and insurance companies hence state that they need to maintain the old gender marker on their records.

2.1 Discrimination in the provision of Insurance Policies

a. Information provided by Háttér Társaság a Melegekért (Hungary)

Several insurance companies openly declare in the terms and conditions that apply to private health insurance that they do not cover any medical costs related to gender reassignment. For example, Aviva¹¹ and Generali¹² have such provisions. Some other companies, such as QBE, used to have such an explicit exemption in their terms and conditions, but they removed them. Nevertheless, based on information provided over the phone they still maintain the policy that such costs are not covered.

Moreover, nearly all insurance companies declare in the terms and conditions that apply to private health insurance that they do not cover any medical costs related to psychiatric or mental illnesses, which might be used to refuse coverage for treatments related to gender reassignment.

b. Information provided by Transgender Netwerk Netherlands (TNN)

In the provision of financial services many problems are caused by lack of awareness on gender identity and gender expression on the part of insurance companies. For example, trans identities are often seen as risk factors (on similar lines as an HIV+ status) in the provision of life insurance schemes etc. Cases of refusal of insurance policies have also been recorded. These cases are then usually resolved after the

¹¹ See http://www.biztositasifeltetelek.hu/Aviva/aviva_0017.pdf (Document is in Hungarian. Search for ‘nemi jelleg’)

¹² See

https://www.generali.hu/Szolgalatasok/Elet_es_nyugdij/~/_media/szolgalatasok/elet_es_nyugdij/klasszikus/altalanos_szerzodeses_feltetelek_easzf10%20pdf.ashx (Document is in Hungarian. Search for ‘nemi jelleg’)

gender clinic exert its authority to make sure that the trans person concerned does not remain vulnerable.

c. Information provided by Çavaria (Belgium)

A male nurse becomes HIV-positive after a needle accident on the job. The insurance company refuses to pay for the accident specifically because he is gay. They said that there was no causal connection between his HIV-infection and the accident. This is indeed a case of multiple discrimination on the grounds of sex and sexual orientation he was placed in the 'high risk' category on the basis of both grounds.

d. Information provided by TransInterQueer (Germany)

A trans-man applied for a life-insurance that should be paid out at his niece's 18 birthday. He was requested information about his health status. As he did not want to reveal his transgender identity to the bank consultant, who was also his interlocutor in all other financial matter with his bank, he concealed his transgender related health status (hormonal treatment, mastectomy, mental GID diagnosis in order to have the mastectomy's costs covered and official change of name). After having signed the application he learnt that this stated "false" information and that the insurance company had the right to decline to pay in case of incident, even if unrelated to his trans identity. Finally, he cancelled the insurance and did not pursue another financial product as he was ashamed on how to explain his motive to the bank clerk.

e. Information provided by the Dutch Equal Treatment Commission (CGB)

The Dutch Equal Treatment Commission dealt with two cases of refusal of reimbursement of costs by insurance companies to transsexual women covering the costs of the operation for the placement of artificial breast implants. One of the insurance companies proposed to the trans woman to pay for the costs of the implants herself on the basis that:

"Secondary sex characteristics in transsexualism must comply with the rules for treatments of a plastic-surgical nature. These rules provide that the costs of placing artificial breast implants may only be reimbursed if the breast was removed. All other reasons for placing artificial breast implants are excluded. Please refer to [...] the policy conditions."

2.2. Discrimination in Banking

An individual from Belgium reported the following case:

As a customer of a credit card company claiming an unjustified booking on her credit card she faced great difficulty in proving her identity to the credit card company's call-centre worker. Her interlocutor would not believe that she was the lawful owner of the credit card as her voice was that of a man.

a. Information provided by the Berlin Anti-Discrimination Department (Germany)

Another trans-man (without name change) is constantly forced to come out to others by the female name on the bank account as without an ID card corresponding to his male appearance nobody would believe that he was the 'female' owner of the account.

Input received from:

Dutch Equal Treatment Commission www.cgb.nl
Equality and Human Rights Commission www.equalityhumanrights.com
Transgender Europe www.tgeu.org
Global Action for Trans* Equality www.globaltransadvocates.org
Internationale Vereinigung intergeschlechtlicher Menschen www.intersexualite.de
Çavaria www.cavaria.be
Transgender Network Netherlands www.transgendernetwerk.org/over-tnn/english
Háttér Társaság a Melegekért www.hatter.hu
TransInterQueer www.transinterqueer.org