

HELLENIC REPUBLIC

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**TRANSGENDER PERSONS AND
LEGAL GENDER RECOGNITION**

RECOMMENDATIONS

September 2015

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Its 32 members are nominated by institutions whose activities cover the field of human rights (NGOs, trade unions, independent authorities, universities, bar associations, political parties, Parliament and the Administration).

TABLE OF CONTENTS

SUMMARY	5
RECOMMENDATIONS	6
I. CHALLENGES AND BARRIERS TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS BY TRANSGENDER PERSONS	7
<i>A. Transphobia and violence against transgender people</i>	8
<i>B. Barriers to the right to health</i>	9
<i>C. Barriers to the right to work</i>	12
II. REMOVING BARRIERS TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS BY TRANSGENDER PEOPLE: LEGAL GENDER RECOGNITION	14
III. OVERVIEW OF RECOMMENDATIONS	18
<i>A. Full legal gender recognition as a fundamental dimension of the personality and the possibility of transgender people to change identification documents based on self-determination of their gender identity, without the requirement of irreversible gender reassignment surgery or other medical procedures.</i>	18
<i>B. Amendment of the anti-discrimination legislation with the explicit inclusion of gender identity among the grounds of discrimination and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.</i>	18
<i>C. Full access to healthcare services and gender reassignment treatment covered by public health insurance on condition that they are freely chosen and declassification of transsexualism.</i>	20
<i>D. Collection of comparable data and information regarding the situation of transgender persons in Greece, as well as effective protection and promotion of their rights.</i>	20
<i>E. Education and sensitisation on the rights of transgender people.</i>	21

SUMMARY

As a mirror reflecting the shortcomings of modern society, the ineffectiveness of human rights protection inevitably affects us all. The Greek National Commission for Human Rights (GNCHR), as the independent advisory body to the Greek State on matters pertaining to human rights protection, expresses its deep concern regarding the increase in recorded assaults against transgender people, while highlighting the lack of effective protection of this vulnerable group from extreme violence incidents.

Taking into consideration the significant developments both at a national level – with the establishment of a Law Drafting Committee for the legal gender recognition – as well as at a European level – with the adoption of Resolution 2048(2015) of the plenary of the Parliamentary Assembly of the Council of Europe on *Discrimination against transgender people in Europe* – and recognising every person's right to self-determination, the GNCHR addresses the following recommendation with regard to the need for effective institutional protection of transgender people and calls on the State to take the necessary measures to protect and promote their rights.

More specifically, the GNCHR deems it necessary to highlight the need for:

- A. Full legal gender recognition of transgender people based on self-determination of their gender identity, without the requirement of irreversible gender reassignment surgery or other medical procedures.
- B. Amendment of the anti-discrimination legislation with the explicit inclusion of gender identity among the grounds of discrimination and the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- C. Full access to healthcare services and gender reassignment treatment covered by public health insurance on condition that they are freely chosen and declassification of transsexualism.
- D. Collection of comparable data and information regarding the situation of transgender persons in Greece, as well as the effective protection and promotion of their rights.
- E. Education and sensitisation of the public opinion on the rights and needs of transgender people and integration of objective information with respect to gender identity issues to all levels and types of education.

RECOMMENDATIONS

Transgender persons and legal gender recognition¹

As a mirror reflecting the shortcomings of modern society, the ineffectiveness of human rights protection inevitably affects us all. The Greek National Commission for Human Rights (hereinafter GNCHR), as the independent advisory body to the Greek State on matters pertaining to human rights protection, expresses its deep concern regarding the increase in recorded assaults against transgender people², while highlighting the lack of effective protection of this vulnerable group from extreme violence incidents³.

Undoubtedly, human rights, as universal and inalienable rights of every person, irrespective of race, color, language, religion, gender, sexual orientation or gender identity, are guaranteed on national, European and international level through numerous legislative and other non-legislative texts. Nevertheless, the unconditional recognition of fundamental rights to human beings seems to be inadequate, when their effectiveness is subject to the diversity of institutional mechanisms and national legislation, especially in times when society, in general, is undergoing a deep social, cultural and financial crisis.

The GNCHR, aiming at addressing the issue and raising awareness of public opinion, wishes to stress that the recognition of the universal and global character of human rights is a fundamental and necessary precondition for the effective promotion and protection of human rights. The question which arguably arises, however, is to what extent such recognition suffices when subjects of human rights are transgender persons. Indeed, the *de jure* establishment of human rights fails to create those conditions which are capable of eliminating the *de facto* obstacles to their full enjoyment by transgender persons (see below under I). In order for these obstacles to be removed, two factors can contribute in a decisive way: on the one hand, the legal gender recognition, which

¹ The present Recommendations were adopted by the GNCHR Plenary at its Session dated 14.9.2015. Rapporteurs: Ms A. Athanasiou, GNCHR member, designated by the Prime Minister and Ms R. Fragkou, GNCHR Legal Officer.

² "Gender identity" is a fundamental criterion in order to identify a person as "transgender". Gender identity is 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 the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. See *The Yogyakarta Principles. Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Introduction*, p. 6. In particular, transgender persons, or trans, are characterised by diversity and have different expression needs. The term "trans" (from transgender) is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures. See ILGA- Europe Glossary, available from: <http://www.ilga-europe.org/home/publications/glossary>.

³ See in more detail *infra*, pp. 8 et seq.

guarantees every person's right to respect of his/her private life (see below under II) and, on the other hand, a series of additional measures aimed at safeguarding equal enjoyment of human rights and at raising awareness of society in this direction⁴ (see below under III).

The initiative of the Ministry of Justice to set up a Law Drafting Committee for the legal gender recognition⁵ is a first important step of the State towards the effective protection of the rights of lesbian, gay, bisexual and transgender people (hereinafter LGBT). The GNCHR welcomes this initiative and is ready, as the independent advisory body to the Greek State, to assist the Committee in its task to take the necessary and appropriate legislative measures for the legal gender recognition.

I. CHALLENGES AND BARRIERS TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS BY TRANSGENDER PERSONS

The proclamation of a set of universal human rights recognising “*the inherent dignity and [...] the equal and inalienable rights of all members of the human family*”⁶ was a significant milestone in the pursuit of freedom, justice and peace in the world. In this broad context, the rights of transgender persons are established and recognised in numerous legally binding or “soft law” texts, particularly, under the fundamental principles of equality and non-discrimination and the right to recognition before the law⁷.

More than often, however, there is a discrepancy between law and practice, between the rule and its application. In other words, the lack of effective enforcement of many fundamental rights constitutes a significant impediment to their promotion and fulfilment, while specific action is often required in order to ensure the full and equal enjoyment of human rights by transgender people. The risks posed to the health and physical integrity of transgender people, as well as the attitudes of disdain towards them and the marginalisation they suffer are undoubtedly serious and therefore the legislative recognition of their existence becomes an urgent matter. The question which inevitably arises, therefore, and deserves to be debated is what is finally left for a right when it is stripped of its effectiveness?

⁴ Aiming at understanding the issues which hinder in practice the access of transgender persons to their fundamental rights, the GNCHR organised a consultation of stakeholders involved in the field of LGBT rights promotion and combatting transphobia and discrimination based on gender identity. The consultation was held on 13 July 2015 and was attended by representatives of the Ombudsman (Human Rights Section), the Greek Transgendered Support Association, the Colour Youth - LGBTQ Youth Community of Athens, the Rainbow Families, the Racist Violence Recording Network, the Amnesty International (Greek Section), as well as Ms Marina Maropoulou, Research Associate of the Faculty of Law of the University of Athens.

⁵ Ministerial Decision No. 20692/7.4.2015 for the creation of a special law-drafting committee for the revision of the legislation on civil partnership and the legal gender recognition (OGG B 696/24.4.2015).

⁶ Preamble to the UDHR.

⁷ For a more comprehensive analysis see the GNCHR Report on “Transgender Persons and Legal Gender Recognition” [in Greek], 14.9.2015, pp. 11 et seq.

An answer to this question may be provided by studying some of the major challenges transgender persons have to deal with today in Greece, as they are identified by international, European and national monitoring mechanisms. By way of illustration, reference is made to the major issue of transphobia and violence against transgender persons (see below under A), to issues regarding their access to healthcare as well as to social security (see below under B) and, finally, to the obstacles they encounter in accessing employment and occupation (see below under C).

A. Transphobia and violence against transgender people

As it has already been determined by the Council of Europe Commissioner of Human Rights, Thomas Hammarberg, transgender men and women have a high risk of becoming, at some point in their lives, victims of a hate crime or a hate-motivated incident, since, in breach of Articles 2 and 5 of the European Convention on Human Rights (hereinafter ECHR), many transgender people live in fear and face violence on a daily basis, the intensity of which ranges from harassment, bullying, verbal abuse, physical violence, sexual assault and hate crimes⁸.

Over the last years, a significant number of cases of trans people who have been victims of homicide have been recorded. According to the official findings of the 16th International Transgender Day of Remembrance, from 1 January 2008 to 1 October 2014, a total of 1,612 killings of transgender people have been reported in 62 countries worldwide, while only in 2014 the number of reported killings of transgender people reached a total of 226 cases⁹.

The UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan E. Méndez, in his Report dated 1 February 2013, highlighted that "members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment" and recognised that "[i]ndeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanisation of the victim"¹⁰.

The Racist Violence Recording Network¹¹ recorded a total of 16 victims of racist violence on grounds of gender identity in 2013 and 10 in 2014. Most of these cases are related to the arbitrary detention of transgender women in Thessaloniki, where many persons were multiply victimised

⁸ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, Issue Paper by Thomas Hammarberg, 29 July 2009, pp. 33 and 35.

⁹ TGEU – Transgender Europe, *TDOR Press Release: Transgender Europe's Trans Murder Monitoring project reveals 226 killings of trans people in the last 12 months*, 30 October 2014.

¹⁰ UN, General Assembly, HRC, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, par. 79.

¹¹ The Racist Violence Recording Network (RVRN) was set up in 2011 at the initiative of the Greek National Commission for Human Rights (GNCHR) and the Office of the UN High Commissioner for Refugees in Greece (UNHCR), and the participation of NGOs and other stakeholders. For more information see <http://rvrn.org/>.

since they were taken to the precinct under degrading circumstances and were detained for two or three days¹².

Besides the exercise of physical force against transgender people, transphobia is pervasive in Greek society. Hate speech against trans people takes place, among other contexts, in political debates concerning LGBT rights or during counter-demonstrations at public LGBT events such as Pride. Homophobic statements by political and religious figures appear in the media. In such statements, LGBT persons are often depicted as unnatural, diseased, deviant, linked to crime, immoral or socially destabilising¹³.

B. Barriers to the right to health

Transphobia, exclusion and social marginalisation are directly correlated with the degradation of psychological, mental and physical health of transgender persons. The daily fear of discrimination, stigmatisation as well as marginalisation adversely affect their psychological and physical well-being¹⁴. This is further accentuated by the fact that trans persons themselves, having already experienced discrimination and degrading behavior by healthcare providers, avoid health services altogether¹⁵. This observation is confirmed by the findings of surveys conducted in the European Union (hereinafter EU), since a key issue which often arises in Greece is the prejudicial attitude or ignorance about the specific needs of trans persons among health professionals¹⁶.

As the Rapporteur of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, Deborah Schembri, pointed out “transgender people’s access to prevention and early-detection measures is low and they might seek healthcare only in cases of emergency or when a health problem has already progressed. This reduces possibilities of effective intervention and increases costs both for the individual and the healthcare system¹⁷”. It is no coincidence that, precisely because there is lack of prevention, it has been established that transgender women are 49 times more likely to become infected with HIV¹⁸

¹² The Racist Violence Recording Network, *Annual Report 2013*, pp. 6-7, available at: <http://rvrn.org/wp-content/uploads/2014/04/Report2013final.pdf> and *Annual Report 2014*, p. 11, available at: http://rvrn.org/wp-content/uploads/2015/05/Report_2014gr.pdf. It is noted that, in reference to the involvement of police and public officials, the Network recorded also the detainment of the victims’ lawyer during the events mentioned above regarding the arbitrary abductions.

¹³ FRA, *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation*, 2009, p. 11.

¹⁴ *Idem*. pp. 10, 12-13.

¹⁵ CoE, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Report on *Discrimination against transgender people in Europe*, Deborah Schembri (rapporteur), Doc. 13742, 2 April 2015, p. 8.

¹⁶ See *Trans EuroStudy*, 2008; FRA, *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Results at a glance*, May 2013.

¹⁷ CoE, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Report on *Discrimination against transgender people in Europe*, *op.cit.*, p. 8.

¹⁸ J. Griensven et al., “HIV surveillance and prevention in transgender women”, *The Lancet Infectious Diseases*, Vol. 13(3), March 2013, pp. 185-186.

compared to all adults of reproductive age across the 15 countries studied, whereas isolation, risk of alcohol abuse, self-harm or substance abuse are some of the problems which transgender people are often confronted with.

As far as access to gender reassignment treatment and its public health insurance coverage is concerned, the gaps and shortcomings in the access to such treatments create significant inequalities among the users of health services¹⁹. The European Court of Human Rights (hereinafter ECtHR) recognised the positive obligation of every CoE Member State to guarantee their citizens the possibility of undergoing a full gender reassignment surgery, as well as their obligation to provide full medical insurance coverage for every “necessary medical treatment”, which also includes gender reassignment surgery²⁰. What happens, however, in practice, in most European countries and specifically in Greece, does not seem to be consistent with the principles laid down by the case-law of the ECtHR. In Greece, in particular, transgender people, who wish and choose to undergo gender reassignment surgery, have no choice but to seek specialised medical centres abroad. More generally, strong insecurity prevails regarding the competency of Greek surgeons who perform special operations (especially microsurgical procedures)²¹, while those who accept to perform a series of complicated surgical procedures²² on the primary genital organs and secondary sex characteristics are few. The lack of a specific legislative framework and the few available data and information do not allow to draw reliable conclusions as to whether and which healthcare funds cover the cost of such medical procedures.

Finally, a basic issue inextricably linked to the challenges related to the enjoyment of human rights by transgender people is the classification of transsexualism as a mental illness. In particular, *International Classification of Diseases – ICD* refers to transsexualism as a mental and behavioural disorder defining it as “the desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex²³”. The classification of transsexualism as a mental disorder is adopted in Greece as

¹⁹ CoE, Office of the Commissioner for Human Rights, *Discrimination on grounds of sexual orientation and gender identity in Europe*, September 2011, p. 111.

²⁰ ECtHR, *Van Kück v. Germany* (no.35968/97), 12 September 2003, par. 47, 73 and 82; *L.v. Lithuania* (no. 27527/03), 11 September 2007, par. 59 and 74.

²¹ M. Galanou, “*Gender Identity, Transsexualism and Health Issues*”, 10%, *the strong percentage*, 4 November 2012, available at: <http://www.10percent.gr/stiles/h-gnwmh-tou-10/3002-2012-11-04-22-00-04.html>.

²² See *infra*, footnote no. 54.

²³ Under classification of ICD-10, *F64 Gender Identity Disorders* include *F64.0 Transsexualism*, *F64.1 Dual-role transvestism*, *F64.2 Gender identity disorder of childhood*, *F64.8 Other gender identity disorders* and *F64.9 Unspecified gender identity disorders*, available at: <http://apps.who.int/classifications/icd10/browse/2015/en#/F60-F69>.

well²⁴ and is “justified” by the need to safeguard the right of transgender persons to access the necessary medical care within the national health system²⁵.

The voices, however, to remove the term “Gender Identity Disorder” from the lists of mental disorders multiply, while stressing that the introduction of another definition or diagnostic term²⁶ is not necessary. There are many people who claim that defining *a priori* as a disorder, and even worse as a mental disorder, the way a person wishes to define himself/herself is overly restrictive. The UN High Commissioner for Human Rights contributed much to this discussion by stating that “such classifications are problematic” not only because they “may become an obstacle to the full enjoyment of human rights by transgender people”, but mainly because such classifications “stigmatise individuals in society and makes them objects of medicine, rather than subjects who are responsible for expressing their own health needs”²⁷. As rightly has been pointed out, “trans people are not sick. They are a minority who face a high degree of discrimination, intolerance and in many cases violence or threat against their life”²⁸. In other words, “gender dysphoria” in reality is nothing more than internalised oppression and lack of freedom suffered by transgender people²⁹. Moreover, history has shown that it is the lack of understanding of what is different which creates stigmatisation and labels “different” as a disorder³⁰.

In response to those who argue that the declassification of transsexualism would inevitably result in incapacity to establish a right to state funded gender reassignment surgery, it is rightly argued that the right to access such medical procedures is founded on the principle of the welfare state rule of law. Especially given its mission to safeguard and protect fundamental rights (Article 25(1) Const. of Greece), the State should conduct social policy aimed at ensuring social autonomy³¹.

²⁴ According to the Common ministerial decision no. Φ 11321/οικ. 10219/688 (OGG 1506/14.5.2012), the “psychosocial gender disorders” fall within a special category entitled *Disorders of Adult Personality and Behavior* and are identified as paranoid (with disability rates of 35-50%) or schizoid (with disability rates of 35-50%).

²⁵ American Psychiatric Association, *Gender Dysphoria*, American Psychiatric Publishing, 2013, available at <http://www.dsm5.org/Documents/Gender%20Dysphoria%20Fact%20Sheet.pdf>.

²⁶ P.T. Cohen-Kettenis, F. Pfäfflin, “The DSM Diagnostic Criteria for Gender Identity Disorder in Adolescents and Adults”, *Archives of Sexual Behavior*, April 2010, 39(2), pp. 499-513.

²⁷ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, *op.cit.*, pp. 24-25.

²⁸ M. Galanou, *Identity and Gender Expression. Terminology, discrimination, stereotypes and myths*, Greek Transgendered Support Association, 2014, p. 91.

²⁹ *Ibidem*.

³⁰ K. Midence, I. Hargreaves, “Psychosocial adjustment in male-to-female transsexuals: an overview of the research evidence”, *J Psychol.*, November 1997, 131(6), pp. 602-614.

³¹ T. Vidalis, *Biolaw: The Person*, Vol.1, Publications of Medical Law and Bioethics 6, Sakkoulas Publ., 2007, p. 251.

C. Barriers to the right to work

Access to healthcare³² is also related to the right of access to work, not only because its effective enjoyment is fundamental to the personal development and fulfillment of human beings as well as their social and economic independence³³, but also because it is indispensable to finance gender reassignment treatment³⁴. Undoubtedly, especially under the current political, economic and social challenges the Country faces, the most important barrier to the enjoyment of the fundamental right to work is unemployment, which is an escalating problem of the utmost importance for transgender people³⁵.

However, there is a tendency to exclude transgender people from the labour market, mainly due to lack of legislation regulating the legal gender recognition. In particular, as it is pertinently argued³⁶, the absence of legal gender recognition has as a consequence the discrepancy between gender presentation and documentation of transgender people, and leads too often to non-recruitment and ultimately exclusion from work. When employed, many trans people face problems at the workplace when their identity is revealed. They are often dismissed or pushed to resign after being put under pressure, teasing and insults³⁷. According to the UN High Commissioner for Human Rights, quite a few jobless transgender persons, particularly transgender women, are unable to find employment and see no other option but to work in the sex industry³⁸.

The same inequality towards transgender people is observed in receiving pensions. In most EU countries, including Greece, the age for state pension entitlement for men and for women is

³² The interdependence of the two rights, access to health and access to work, is where the CoE Commissioner for Human Rights, Thomas Hammarberg, places a great deal of emphasis. See CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, *op.cit.*, pp. 29-30.

³³ For this reason the right to work is enshrined in various international and European texts, indicatively in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 8 of the International Covenant on Civil and Political Rights (ICCPR), the Social Rights Charter as well as the revised Social Rights Charter, etc.

³⁴ CoE, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Report on *Discrimination against transgender people in Europe*, *op.cit.*, p. 7.

³⁵ Regarding the research findings reported by the EU Agency of Fundamental Rights (FRA) see the GNCHR Report on "Transgender Persons and Legal Gender Recognition" 14.9.2015, pp. 43 et seq. See also Whittle S. et al., *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*, 2007; Motmans J. et al., *Etre transgenre en Belgique – Un aperçu de la situation sociale et juridique des personnes transgenres*, 2010. These data are presented by the rapporteur of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, Ms. Deborah Schembri, in CoE, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Report on *Discrimination against transgender people in Europe*, *op.cit.*, p. 7.

³⁶ See M. Galanou, *Identity and Gender Expression. Terminology, discrimination, stereotypes and myths*, *op.cit.*, p. 43.

³⁷ In this regard, it is also worth mentioning the case of a trans woman working at the post office who was obliged to work in a warehouse in order to be "invisible". See M. Galanou, *Identity and Gender Expression. Terminology, discrimination, stereotypes and myths*, *op.cit.*, p. 43.

³⁸ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, *op.cit.*, p. 30. See also CoE, Office of the Commissioner for Human Rights, *Discrimination on grounds of sexual orientation and gender identity in Europe*, *op.cit.*, p. 120.

different. The same certainly applies to having access to other social services as well, such as disability benefits which are often based on the official retirement age. Trans women, however, whose gender has not been legally recognised, do not qualify for pension if they do not reach the state pension age for men, in clear breach of both EU law and the principles established by the case-law of the ECtHR³⁹. This results in activating a vicious circle of discrimination against women because of their gender identity, as not only can they not receive their pensions, but also they have to leave their jobs, in order to prevent disclosure of their identity by virtue of the fact that they do not qualify for a pension. As it is pointed out by the CoE Commissioner for Human Rights, these women even after legal gender recognition are refused backdated pensions for the period in which they had to rely on their own income and savings, despite rulings of the European Court of Justice (hereinafter CJEU) to this effect⁴⁰.

³⁹ ECtHR, *Christine Goodwin v. United Kingdom op.cit.*, par. 91 and 116 et seq., as well as CJEU, Case C-423/04, *Sarah Margaret Richards v. Secretary of State for Work and Pensions*, decision of 27 April 2006, par. 30-31. For more details regarding the case of *Christine Goodwin* and *Sarah Margaret Richards* see the GNCHR Report on “Transgender Persons and Legal Gender Recognition”, 14.9.2015, pp. 19, 45, 52 et seq.

⁴⁰ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity, op.cit.*, p. 30.

II. REMOVING BARRIERS TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS BY TRANSGENDER PEOPLE: LEGAL GENDER RECOGNITION

It is maintained that discrimination, social exclusion and violence suffered by transgender persons in Greece are mainly due to the arduous access to gender reassignment surgery for those who wish to undergo one and the absence of legal gender recognition, which, admittedly, is a guarantee safeguarding the right of each individual to private life.

But what do we mean by "legal gender recognition"? It is, in fact, the process of changing name, surname and gender information on official key documents and in registries, in order to legally recognise a person's gender identity and constitutes, according to the ECtHR, the necessary corollary of the right to private life, as guaranteed by Article 8 of the ECHR⁴¹. States may of course set requirements as to who is eligible to proceed to the aforementioned changes. However, these requirements should not violate fundamental human rights⁴². Moreover, under the standards set by the CoE Committee of Ministers, "prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements", while "Member States should take appropriate measures to guarantee the full legal recognition of a person's reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way"⁴³.

Greece is, therefore, listed among those European countries which, in order to legally recognise the new gender⁴⁴, require painstaking and time-consuming surgical procedure leading to sterilisation. A procedure which does not always end well⁴⁵. In fact, transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation⁴⁶. From an ethical point of view, it could be described as "a kind of blackmail organised by the State in order to grant to transsexuals the right to integrate society"⁴⁷, since

⁴¹ ECtHR, *Christine Goodwin v. United Kingdom*, *op.cit.*

⁴² Such abusive conditions are for example forced sterilisation, divorce, compulsory diagnosis of mental health or age limit. See also the newsletter: *Legal Gender Recognition*, available at: http://www.tgeu.org/sites/default/files/LGR_factsheet-web.pdf.

⁴³ CoE, Committee of Ministers, *Recommendation CM/Rec (2010)5 to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity*, 31 March 2010, par. 20-21.

⁴⁴ CoE, Office of the Commissioner for Human Rights, *Discrimination on grounds of sexual orientation and gender identity in Europe*, *op.cit.*, pp. 86-87.

⁴⁵ P. Sutcliffe, S. Dixon, Rl. Akehurst, A. Wilkinson, A. Shippam, S. White, R. Richards, C. Caddy, "Evaluation of surgical procedures for gender reassignment: a systematic review", *J Plast Reconstr Aesthet Surg*, March 2009, 62(3), pp. 294-306.

⁴⁶ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, *op.cit.*, p. 19.

⁴⁷ M. Iacub, «Transsexualisme et société», in Haute Autorité de Santé-HAS (dir.), *Service évaluation des actes professionnels, Situation actuelle et perspective d'évolution de la prise en charge médicale du transsexualisme en France (Rapport)*, 2009, p. 36.

those who do not wish to undergo gender reassignment surgery do not enjoy the right to legal gender recognition⁴⁸.

The Greek lawmaker, in order for a person to obtain legal gender recognition, requires compulsory medical intervention, such as gender reassignment surgery. This offers trans people the possibility to match their biological sex with their gender identity as long as they undergo a series of time consuming and painful medical procedures. More specifically, it is Law 4144/2013 on *Combating criminal activity in social security and the labour market and other provisions of the Ministry of Labour, Social Security and Welfare*” (OGG A 88/18.4.2013)⁴⁹, which makes explicit reference to gender reassignment, by providing for the “correction” of the birth certificate in case of gender reassignment.

The “correction” occurs only by court order⁵⁰, provided that the person in question has previously submitted an application to the County Court of the area where the person was registered and is tried under voluntary jurisdiction procedure. The application form contains cumulatively a request for “correcting the birth certificate due to the change of gender from male to female” or vice versa, as well as a request for amending the first name and the ending of the last name (in order to express the social gender). More specifically, the application form must also state all the necessary information, such as the fact that the person has been monitored by a psychiatrist who diagnosed the trans person with “undisputed transsexualism”, as well as that the person has undergone surgical procedure with the full and final predominance of a gender opposite to that of the biological sex⁵¹. In practice, the procedure is initiated the moment the person is diagnosed with “gender dysphoria” in accordance with the International Statistical Classification of Diseases and Related Health Problems (ICD-10)⁵² criteria, which are also used in Greece. The person is actually characterised as “mentally suffering from transsexualism⁵³”. At a later stage, a hormone-therapy takes place and, finally,

⁴⁸ And this despite the explicit prohibition of the *Yogyakarta Principles [Principle Three: The right to legal recognition]*, according to which “no one should be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a prerequisite for legal recognition of their gender identity”.

⁴⁹ See Law 344/1976 *On civil status acts*, as amended by Article 14(6) of Law 2503/1997 and replaced by Article 4(5) of Law 4144/2013, according to which “changes occurring to the status of an individual after the editing of the civil status acts due to [...] changes in name, surname, sex are registered in the field of the information system of Article 8A, marked as “changes”, within a month since receiving the relative administrative act or certificate on the finality of the relevant judicial ruling”.

⁵⁰ With regard to the relevant case-law see the GNCHR Report on “Transgender Persons and Legal Gender Recognition” 14.9.2015.

⁵¹ One can derive from the relevant case-law that none of the surgical procedures have taken place within the Greek borders.

⁵² Transsexualism is grouped under F64 *Gender identity disorders*, in the section of *Disorders of adult personality and behavior* (F60-F69). See ICD-10 Version 2010, available at: <http://apps.who.int/classifications/icd10/browse/2010/en#/F60-F69>.

⁵³ It is, therefore, clearly implied that even if surgical procedures are not carried out, the person continues to be characterised as “transsexual”.

sterilisation through the genital organs and restoration of the new external ones. This procedure is time consuming and particularly painful⁵⁴ and unfortunately "the requirement of sterilisation or other surgery as a prerequisite to enjoy legal recognition of one's preferred gender ignores the fact that these operations are [not always desired], medically possible, available or affordable", especially when they are not covered financially by health insurance funding⁵⁵.

Besides, this procedure, which sets as a prerequisite for legal gender recognition the sterilisation of transgender persons, has been explicitly condemned by the World Health Organisation, which, in an interagency statement co-signed by OHCHR, UN Women, UNAIDS, UNDP, UNFPA and UNICEF, calls upon States to "ensure that sterilisation, or procedures resulting in infertility, is not a prerequisite for legal recognition of preferred sex/gender"⁵⁶. At the same time, according to a Motion for a European Parliament Resolution, "the Member States should introduce or review legal gender recognition procedures so they fully respect transgender persons' right to dignity and bodily integrity"⁵⁷, whereas the UN and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, in his Report dated 1st February 2013, states that sterilisation as a requirement for legal gender recognition is torture⁵⁸.

Yet, even for transsexual persons who have undergone gender reassignment surgery and succeeded in obtaining a court order for "gender reassignment", the process is lengthy and bureaucratic, requiring a period of eight to nine months. In practice, as it has been pointed out by the CoE Commissioner for Human Rights, this means that trans people are automatically excluded from the enjoyment of fundamental rights, such as traveling with valid documents, participating in the labour market, participating in education or even conducting everyday life, such as for instance when using a health insurance card or a driving licence⁵⁹.

⁵⁴ It includes a series of complicated surgical procedures on the primary (genital organs and their related hormones) and secondary (genetically transmitted physical or behavioural characteristics) sex characteristics. Gender reassignment surgery from female to male (FtM) involves subcutaneous mastectomy, hysterectomy, vaginectomy, reconstruction of the fixed part of the urethra (if isolated, metoidioplasty), scrotoplasty, insertion of testicular prostheses and/or erection prosthesis. For gender reassignment from male to female (MtF), the necessary procedure involves, respectively, penectomy, orchiectomy, vaginoplasty, clitoroplasty, as well as breast enlargement and facial feminisation surgery. See G. Selvaggi, J. Bellringer, "Gender reassignment surgery: an overview", *Nat Rev Urol*, May 2011, 8(5), pp. 274-282.

⁵⁵ CoE, Office of the Commissioner for Human Rights, *Discrimination on grounds of sexual orientation and gender identity in Europe*, *op.cit.*, p. 111 καὶ *Human Rights and Gender Identity*, *op.cit.*, p. 19

⁵⁶ WHO, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, *Eliminating forced, coercive and otherwise involuntary sterilization. An interagency statement*, 2014, p. 13.

⁵⁷ European Parliament, *Motion for a Resolution on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity*, (2013/2183(INI)), 8 January 2014.

⁵⁸ UN, General Assembly, HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, *op.cit.*, par. 88.

⁵⁹ CoE, Office of the Commissioner for Human Rights, *Human Rights and Gender Identity*, *op.cit.*, p. 17.

Therefore, the “full legal recognition of a person’s gender reassignment in all areas of life [...] in a quick, transparent and accessible way⁶⁰” is still far from being a reality in Greece. Despite the major importance of the issue, legislative initiatives introducing legal gender recognition were minimal and – judging from the result – incomplete and inefficient⁶¹.

⁶⁰ CoE, Committee of Ministers, *Recommendation CM/Rec (2010)5 to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity*, *op.cit.*, par. 21.

⁶¹ One of these initiatives lies in the draft law put to public consultation by the Ministry of Interior until 6 June 2014, entitled *Adapting the provisions of Law 344/1976 regarding the new way of drafting civil status acts and other provisions*, with a view *inter alia* of upgrading, simplifying and automating the maintenance process of civil status acts, which however was never introduced for discussion in Parliament. See Ministry of Interior and Administrative Reconstruction, Open Government, Public consultation of draft law entitled *Adapting the provisions of Law 344/1976 regarding the new way of drafting civil status acts and other provisions*, available at: <http://www.opengov.gr/ypes/?p=2394>.

III. OVERVIEW OF RECOMMENDATIONS

Taking into consideration the significant developments both at a national level – with the establishment of a Law Drafting Committee for the legal gender recognition – as well as at a European level – with the adoption of Resolution 2048(2015) of the plenary of the Parliamentary Assembly of the Council of Europe on *Discrimination against transgender people in Europe*⁶² – and recognising every person’s right to self-determination, the GNCHR addresses the following recommendations with regard to the need for effective institutional protection of transgender people and calls on the State to take the necessary measures to protect and promote their rights.

More specifically, the GNCHR deems it necessary to highlight the need for:

A. Full legal gender recognition as a fundamental dimension of the personality and the possibility of transgender people to change identification documents based on self-determination of their gender identity, without the requirement of irreversible gender reassignment surgery or other medical procedures⁶³.

The legislative introduction of a “quick, transparent and accessible procedure”⁶⁴ for legal gender recognition seems increasingly necessary not only to ensure respect for fundamental human rights, but also in order to create legal certainty and eliminate possible abuses. Increased lengths, and thus costs, of a painstaking and time-consuming procedure not only exclude transgender persons from enjoying their fundamental rights, but can also be a strain for public authorities. Replacing the current legal gender recognition procedure in Greece by a simple administrative procedure without medical requirements renders human rights guaranteed by the ECHR “practical and effective [and therefore] not theoretical and illusory”⁶⁵.

B. Amendment of the anti-discrimination legislation with the explicit inclusion of gender identity among the grounds of discrimination and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

⁶² CoE, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Resolution 2048(2015), *Discrimination against transgender people in Europe*, 22 April 2015.

⁶³ See Greek Transgendered Support Association, Letter to the Minister of Interior on *Legal Gender Recognition and Sex Characteristics*, 20 April 2015, as well as *International Transgender Day of Remembrance/Resolution*, 21 November 2012.

⁶⁴ CoE, Committee of Ministers, *Recommendation CM/Rec (2010)5 to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity*, *op.cit.*, par. 21.

⁶⁵ ECtHR, *Christine Goodwin v. United Kingdom*, *op.cit.*.

More specifically, although Law 3896/2010 on the *Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006* clearly includes among grounds of discrimination “any less favourable treatment arising from the gender reassignment of a person”, it ignores a very important parameter: that of “social gender”. Consequently, the protection provided by the above-mentioned disposition covers persons who have undergone gender reassignment surgery, thus excluding the majority of trans persons who have not. For this reason, an amendment of this law is recommended, adding gender identity among the grounds on which discrimination in employment is prohibited⁶⁶.

Towards this direction and aiming at effectively combating discrimination on grounds of gender identity, the GNCHR recommends to include gender identity in Law 3304/2005 on the *Application of the Principle of Equal Treatment Regardless of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation*, as well as in Law 3769/2009 *Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services*, with a view to providing protection against discrimination on grounds of gender identity both in the field of employment, as well as in the field of access and supply of goods and services⁶⁷.

Finally, it is crucial to stress that although Greece is listed among the first thirteen States (since May 2011) to have signed the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)⁶⁸, its ratification is still pending. The GNCHR is convinced that the ratification of the Istanbul Convention will contribute significantly to combating violence against women – and, therefore, against trans women – in all areas of private and public life⁶⁹. This Convention is not limited to a mere reference to gender identity⁷⁰. On the contrary, providing a broader definition of gender and defining it as the “*socially constructed roles, behaviours, activities and attributes that a given*

⁶⁶ See Greek Transgendered Support Association, *International Transgender Day of Remembrance/Resolution*, 21 November 2012.

⁶⁷ *Ibidem*.

⁶⁸ CoE, *Convention on preventing and combating violence against women and domestic violence*, Istanbul, 11.V.2011.

⁶⁹ See Greek Transgendered Support Association, *Letter to the Minister of Interior regarding the Incorporation into domestic law of the Istanbul Convention combating violence against women*, 20 April 2005.

⁷⁰ Under the provisions of Article 4(3), “[t]he implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status”.

*society considers appropriate for women and men*⁷¹, this convention is taking important steps towards the legislative and institutional protection of transgender people.

C. Full access to healthcare services and gender reassignment treatment covered by public health insurance on condition that they are freely chosen and declassification of transsexualism.

The inclusion of transgender people's health concerns within relevant wider strategic national health policies, including access to healthcare and equality in health, not only will it contribute to the improvement of the mental and physical health of transgender people, but also, in terms of cost-benefit analysis, it will create the right conditions for effective preventive intervention, ultimately reducing the overall cost of health expenditure for both the users of the healthcare system and the health system itself. To this end, the GNCHR, in alignment with the European Parliament⁷², attaches great importance to the inclusion of transgender people in national action plans and health policies in order to ensure that health issues specific to transgender people are taken into account in training programs, in policies concerning the health sector and in health research. Adequate and sufficient training as well as sensitisation of healthcare professionals with respect for diversity and the right of every person to self-determination is deemed equally important.

Recognising that the classification of transsexualism as mental disorder is inextricably linked to the challenges regarding the enjoyment of human rights by transgender people, the GNCHR deems indispensable the removal of the term "gender identity disorder" from the lists of mental and behavioral disorders, while stressing that the introduction of another definition or diagnostic term is not necessary⁷³.

D. Collection of comparable data and information regarding the situation of transgender persons in Greece, as well as effective protection and promotion of their rights.

The GNCHR encourages the State in cooperation with organisations working in the field of promoting LGBT rights and fighting against transphobia and discrimination on grounds of gender identity, to collect relevant and comparable data with regard not only to the challenges faced by transgender people in Greece, but also to the most progressive legislation introduced in various European countries. On the one hand, this is expected to raise awareness

⁷¹ See Article 3(c).

⁷² European Parliament, Committee on Civil Liberties, Justice and Home Affairs, *EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI))*, A7-0009/2014, Ulrike Lunacek (rapporteur), 7 January 2014, p. 8.

⁷³ See Greek Transgendered Support Association, *International Transgender Day of Remembrance/Resolution*, 21 November 2012.

of public authorities and, on the other hand, it will assist in the development of policy recommendations with respect to the rights of transgender people and, in particular, to the adoption of a legislative framework for the legal gender recognition.

The GNCHR believes that the collection of these data will contribute effectively to the progress of the work of the Law Drafting Committee for the legal gender recognition set up by the Ministry of Justice⁷⁴.

E. Education and sensitisation on the rights of transgender people.

While transgender people are among the most vulnerable social groups and have suffered and continue to suffer social exclusion and marginalisation, the severity of their condition appears to have been underestimated in the past. This requires taking immediate measures to overcome the challenges they face in their daily lives. Therefore, it becomes clear that for the "activation" of the rights of transgender people, as universal and inalienable human rights, the mere adoption of relevant and effective measures is not enough. The legal gender recognition is a fundamental and necessary precondition for the effective promotion and protection of human rights, but such recognition is not an adequate precondition for the effective protection of transgender persons' rights. "Beyond legal considerations, our representations of gender and gender identity must be rethought and renewed"⁷⁵. In other words, an identity is never enough. An effort must be made to free society from deep-rooted prejudices and stereotypes, which help to perpetuate inequalities and abusive attitudes and behaviours⁷⁶. The role of education to this effort is crucial. From the very early age, every person should get used to the idea of diversity and of being different. Such a change requires time, mobilisation and sensitisation of every relevant stakeholder and, above all, political will in order to integrate the relevant information to all levels and types of education.

Towards this direction, the GNCHR deems necessary to raise public awareness with regard to the rights and specific needs of transgender people, with a special focus on respect for diversity and equal access to human rights.

⁷⁴ Ministerial Decision No. 20692/7.4.2015 for the creation of a special law-drafting committee for the revision of the legislation on civil partnership and the legal gender recognition (OGG B 696/24.4.2015).

⁷⁵ See C. Fortier, L. Brunet, «Changement d'état civil des personnes "trans" en France: du transsexualisme à la transidentité », in N. Gallus (dir.), *Droit des familles: Genre et sexualité*, Éd. Anthémis, p. 112. As is correctly pointed out by Laurence Brunet, the "much-anticipated (r)evolution" is not – and cannot be – only legal. It must constitute a key component of an overall "cultural revolution", which will promote mutual tolerance and respect, regardless of sexual orientation or gender identity.

⁷⁶ See M. Galanou, *Identity and Gender Expression. Terminology, discrimination, stereotypes and myths*, *op.cit.*, pp. 37-38.