

The Norwegian gender recognition act - and policies on gender identity, gender expression and intersex.

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I) A new, comprehensive Equality and Anti-Discrimination Act

- A new Equality and Anti-Discrimination Act will enter into force in January 2018, that will cover all discrimination grounds and all sectors of society except the family.
- The new law will replace the four existing gender equality and anti-discrimination acts, including the Discrimination Act on Sexual Orientation, Gender Identity and Gender Expression (of 2014).
- According to the new law teaching and learning materials shall be based on the principle of equality and non-discrimination, covering all discrimination grounds. Today, such regulations are included only in the Gender Equality Act.
- From now on the employers' duty to work actively for equality and to prevent discrimination in the workplace will cover all grounds, as will employers' duty to report on their efforts and results according to this duty.

II) The Gender Change Act

- A new Gender Recognition Act entered into force 1 June 2016.
- The law was drafted by a cross ministerial expert committee, representing The Ministry of Justice, The Ministry of Health, The Ministry of Finance and The Ministry of Children and Equality.
- The new act gives all individuals the right to have their gender marker changed in public registers and passports, through a simple and transparent procedure.
- Persons who are 16 or older will be able to require their gender marker to be changed through a simple "self-declaration" procedure.
- Children/youngsters between the ages 6 and 16 will be able to follow a similar procedure, provided they have the consent of their parents. If one parent disagrees, the person can appeal to the County Governor of Oslo, who will make a final decision based upon an assessment of "what is in the best interest of the individual child".
- Parents will be able to apply for children who are 6 years old or younger, only if the child has an "uncertain somatic sex development".
- By October 2017 (during 15 months) approximately 650 persons have changed their legal gender.

III) The Norwegian National LGBTI Action Plan Efforts relevant for trans- and intersex-persons

- In June 2016 The Norwegian Government launched the cross-ministerial LGBTI action plan: "*Safety, diversity, openness. The Government's action plan against discrimination*

on the grounds of sexual orientation, gender identity and gender expression (2017-2020)."

- 'Gender identity' and 'gender expression' have been mainstreamed throughout the new action plan. Some important measures in this regard:
 - Strengthening of LGBTI-competence across sectors (schools, child welfare, police, health care, immigration services...)
 - Measures to support the implementation of the SOGIGE¹-anti-discrimination law (mentioned above) among public service providers, at both national and local level.
 - Similar efforts will target both private and public employers
 - Regulations for the Government's LGBTI-grants, providing funds to lgbti-organizations and lgbti-related projects, have been updated. They now cover trans/intersex-related NGOs and –activities.
 - In order to address health related challenges among transgender- and intersex-persons the Ministry of Health will further develop the specialist framework for the treatment of gender dysphoria and gender incongruence.
- Intersex is included in national anti-discrimination policies for the first time. Some measures of particular relevance for intersex-persons:
 - There is very little knowledge available about the life situation among intersex-persons in Norway. To gain more solid knowledge, data-collection- and research-projects are integral parts of the plan.
 - Relevant authorities will cooperate with NGOs in order to facilitate a low threshold social meeting place for intersex persons.
 - Major challenges and needs for future efforts will be identified on the basis of updated research, and dialogue with representatives of the group.

IV) Some important/rethorical questions that came up during the process of drafting the gender recognition law...

- Who is the one most competent to decide about a person`s legal gender?
- At what age do we become mature enough to consider our legal gender?
- HR-conventions are crucial..especially the provision stating that "Every child has the right to express freely their opinion on all questions which concern his/her life..."
- So - what is in the best interest of children of different ages....?
- Our conclusion: The youngest children (← , 6years) are a relatively small group. Legal gender status has few practical implications for the youngest children. "Unclear somatic sex-development" is required until the child is 6 years old.
- Similar age limits for name change and change of legal gender
- There were different views on topics like "reflection period"/a maximum number of changes/"quarantine period" among sivil society actors. In the end no such restrictions were included in the law. Instead the implementation of the law will be monitored in order

¹ SOGIGE refers to 'sexual orientation, gender identity and gender expression'

to identify any incidents that might indicate a need for further provisions that can prevent potential fraud/criminal actions.

- On the design of practical procedures: A paper based procedure causes some lag/friction – which provides some time for reflection for the applicant and thus might prevent some false applications.

V) How to convince ministries?

a) The most important argument:

The Council of Europe 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:

§20. 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.

§21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender 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; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

§35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent

b) Two rethorical points:

To the Ministry of Justice:

Why should a state have the privilege to overrule a person's gender identity?

To the Ministry of Finance, (who owns The Norwegian National Registry):

The implementation of this law is (almost) free.