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Joint UPR submission

UPR - Federal Republic of Germany

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Bundesarbeitskreis Regenbogen (LSBTTIQ) in ver.di and Federal Trans* Association (BVT*) submit this shadow report in anticipation of upcoming review of the Federal Republic of Germany's ("Germany") compliance with international human rights standards in November 2023. The following submission does not claim to comprehensively address all human rights issues of relevance in Germany. It focuses on those areas and recommendations brought forward in the 3rd cycle, on UPR areas that are particularly important to LGBTIQ+ people living in Germany.

Federal Trans* Association (Bundesverband Trans*, <https://www.bv-trans.de/>) is a nationwide non-profit umbrella organisation and advocacy group committed to the rights of trans and non-binary people in Germany. The BVT* (founded in 2015) made a single NGO submission to the UPR HRC 39th session in 2017. BVT* today represents more than 40 trans-and non-binary groups and organisations in Germany and is an NGO officially accredited at the lobby registry to the German Parliament (Lobbyregister Bundestag R 001715). The main goals of the BVT* currently are: the abolition of the Transsexuellengesetz (TSG) and the introduction of new legislation regulating legal gender recognition on the basis of self-determination; securing and improving trans health care; enhancing protection against hate crime; protecting the human rights of trans asylum seekers and refugees; supporting trans self-help groups, networks and non-profit organizations; elimination of psycho-pathologization and stigmatization of trans and gender non-conforming people; and enhancing anti-discrimination legislation.

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Bundesarbeitskreis Regenbogen (LSBTTI) in ver.di (BAK Rainbow <https://regenbogen.verdi.de>) is, since 2001, a working group of trade union members committed to gender equality and minority rights, especially in respect to sexual orientation, gender identity and expression and sex characteristics (SOGIESC) of lgbtiq+ persons in the workplace and in general. ver.di is a public services trade union in Germany with some 1.8 million members.

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SITUATION OF LGBTIQ+ WITH FOCUS ON TRANS AND NON-BINARY PEOPLE IN GERMANY

Joint Submission of Federal Trans* Association (Bundesverband Trans*) and BAK Rainbow in ver.di

Brief assessment of list of recommendations:

Specific recommendations regarding trans issues made to Germany in the 3rd periodic report were as follows:

155.109 Continue supporting projects to reduce discrimination of lesbian, gay, bisexual, transgender and intersex persons and working for the protection and recognition of sexual diversity (Greece);

155.110 Continue efforts aimed at combating discrimination based on sexual orientation or gender identity, including by ensuring resources for the autonomy of the Federal Anti-Discrimination Agency and by strengthening anti-discrimination laws (Netherlands);

155.111 Further enhance the protection of lesbian, gay, bisexual, transgender and intersex persons from discrimination and violence domestically by introducing a third gender category for people who do not identify as either male or female or who are born with an ambiguous sexual anatomy (Australia);

155.112 Adopt measures for the protection of the fundamental rights of lesbian, gay, bisexual, transgender and intersex persons, and update the care guide in the health sector, ensuring the inclusion of the rights of trans people (Uruguay);

155.113 Consider introducing in legislation a third gender option for intersex and non-binary trans people based on self-determination (Israel);

155.114 Set up a national compensation fund for transsexual persons who were coerced into sterilization or unwanted gender reassignment treatment in the years 1981–2011 (Sweden)

155.233 Extend access to health care for asylum seekers and refugees, in particular with disabilities (Republic of Korea);

155.242 Step up efforts to combat discrimination against refugees (Lebanon);

This part of the submission will focus on these recommendations and provide information what progress has been achieved since the last report. Additionally, it will inform about human rights violations in the context of trans parenthood.

1. Enhancing protection and support against discrimination and violence against LGBTIQ+ (recommendations no. 155.109, 155.110, 155.111, 155.112)

Several recommendations have pointed to the need to enhance protection and support against discrimination and violence:

(a) Supporting projects to reduce discrimination (155.109) has improved since the last report. Nevertheless projects are limited in number and need financing in the long run to provide sustainable support, especially as there seems to be an alarming increase in hate speech on social media against LGBTIQ+ in Germany and also bodily attacks including the death of a trans man in connection with a Pride March in Münster (North-Rhine Westphalia) in 2022.ⁱ

(b) Ensuring resources for the autonomy of the Federal Anti-Discrimination Agency is still needed. Additionally, anti-discrimination laws have to be strengthened by implementing recommendations made by the joint initiatives „AGG Reform – Jetzt!“.ⁱⁱ Anti-discrimination laws still have gaps in protection, as the very short deadlines remain and there is no right of collective enforcement. Particularly problematic is that there is no protection against discrimination by public bodies or in the health sector.

(c) LGBTIQ* are the only group that suffered persecution during the Nazi era that are not mentioned under Article 3 (3) GG. In order to increase the visibility of LGBTIQ* and to strengthen social acceptance, we recommend adapting the Basic Law at this point. (155.112)

2. Improving the inclusion of trans people in health care (recommendation no. 155.112)

Access to trans related health care is firstly regulated through the medical guidelines "Gender Incongruence, Gender Dysphoria, and Trans Health" that were published by medical associations in 2018.ⁱⁱⁱ Secondly, „Standards for Treatment and Examination” issued by a joint committee representing national public health insurance companies and published in 2020 are controlling access to the health care system. These standards maintain old requirements, overhauled by the medical guidelines of 2018, of for instance enforced psychotherapy in order to qualify for cost reimbursement based on the diagnosis “gender identity disorder.”^{iv} Access to trans related health care is still dependent on a pathologising diagnosis which is in stark contrast to the depathologising perspective on trans and non-binary identities expressed in ICD-11. Access is even more limited for minors than for adults as it additionally depends on the explicit consent of both parents or legal guardians. This dependency on parental consent is problematic as parents can easily block the child’s or teenager’s options to transition. If parents don’t support their trans children’s identity, it leads to high levels of gender dysphoria, anxiety, depression, and suicidality amongst trans minors, whereas trans children who are supported in their identities are just as healthy as their non-trans peers.^v The current situation violates children’s right to health as well as their right to express views affecting them and be heard according to their age and maturity.

3. Introduction of a third gender marker (recommendation no. 155.111, 155.113)

In 2018, Germany introduced a third gender marker “diverse” and thus, another procedure for legal gender recognition, §45b Personal Statute Law (Personenstandsgesetz/PStG), was established. The introduction of the third gender marker was demanded by the Federal Constitutional Court (BVerfG) in order to recognize the rights of intersex persons who identify outside the gender binary.^{vi} Unfortunately access to legal gender recognition was linked to pathologization as a medical certificate stating a “variance of gender development” is needed. Since the introduction of this law, it has been an ongoing debate who can access legal gender recognition through §45b PStG. To clarify the situation for non-binary individuals, a complaint has been handed in at the Federal Constitutional Court (BVerfG) in June 2020.

4. Introduction of legal gender recognition on the basis of self-determination (recommendation no. 155.113)

Trans, non-binary and intersex persons have the right to be recognized in their identities. But none of these groups can access legal gender recognition on the basis of self-determination. The "Transsexual Law" (TSG) is outdated and discriminatory. Although the Federal Constitutional Court (BVerfG) has deemed various aspects of the TSG as incompatible with human rights over past decades, the law has not been replaced nor has it been reformed. Up to the present day a court procedure, two "expert opinions" and a personal meeting with a judge are required to access legal gender recognition. The procedure involves unnecessary pathologization as a diagnosis of “gender identity disorder” is considered a prerequisite. Furthermore, the procedure is time-consuming (Ø 9 months),^{vii} expensive (Ø 1.800€),^{viii} and has often been described as humiliating. Two reports for the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) came to the conclusion that the TSG in its current form infringes basic rights and international human rights treaties.^{ix} Both reports include a draft for new gender recognition legislation based on human rights.^x The coalition agreement of the current government (2021) clearly states that the current laws must be replaced by new legislation that offers accessible legal gender recognition on the basis of self-determination. We welcome the announcement of the government to implement such legislation. Unfortunately, so far no official draft has been presented to civil society to address this reform.

5. Compensations for 30 years of enforced sterilization (recommendation no. 155.114)

From 1981 to 2011, the "Transsexual Law" required trans persons to undergo sterilization and gender reassignment surgery as a prerequisite to apply for LGR. Many trans people therefore decided to undergo sterilization and gender reassignment surgery, giving up their physical integrity and reproductive rights, although they would not have done so, given the choice. Others decided against gender recognition, facing discrimination but unwilling to give up one human right for the other. The Council of Europe Human Rights Commissioner critically remarked in 2009 that "transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilization."^{xi} This prerequisite was an unspeakable violation of human rights and should therefore be compensated for. We welcome that the present government intends to set up a compensation fund that is also to include trans people who had to get divorced as a prerequisite for LGR and also inter persons who underwent IGM. Unfortunately, it is not clear when this is going to happen.

6. Legal gender recognition for trans parents

After a TSG procedure, trans people are legally recognized in every aspect of life except one: parenthood. Trans parents who are biological parents are either misgendered in their child's birth certificate or risk that legal gender recognition is revoked altogether. Shortly after the sterilization requirement for LGR was dropped in 2011, a trans man gave birth to a child and has been struggling to be recognized as a father ever since. The Federal Supreme Court (BGH) ruled that, although his legal name and status are male, he is to be registered as "mother" with his former female name in the birth register and his child's birth certificate,^{xii} thus effectively listing a person as parent that does not legally exist. The subsequent problems are numerous, making it impossible for him to register his child in school, go for a vacation abroad or even prove that he is the child's parent without disclosing his trans status, subjecting himself and his child to various forms of discrimination. The Federal Constitutional Court (BVerfG) rejected the appeal of the complainant without explanation in May 2018.^{xiii} Unfortunately the European Court of Human Rights (ECHR) saw no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Right in its judgement^{xiv}. The complaint of a trans woman advocating for her right to get recognized as mother of her biological child was rejected on the same day.^{xv} We recommend to adapt legislation (law of parentage and LGR) to allow trans, inter and non-binary parents to be registered as parents on the birth certificates of their children under their legal names and genders.

7. Supporting trans refugees & asylum seekers (recommendation no. 155.233, 155.242)

Trans refugees and asylum seekers are among the most vulnerable people in Germany, often fleeing transphobia in their home countries just to experience transphobia from other refugees in German shelters, as well as racism and transphobia by some members of the German population, administration, and legislation. Trans refugees or asylum seekers often decide against disclosing their trans identity for fear of violence within their refugee shelter. Consequently, the City of Berlin decided to regard trans refugees as "vulnerable persons" in the sense of the EU Directive 2013/33/EU which allows for special protection. The federal government has followed this initiative in 2019 and established that regional governments have the duty to particularly address the needs of trans refugees and asylum seekers.^{xvi} However, local governments are often still failing to provide safe accommodation to trans refugees and asylum seekers and support them against discrimination (recommendation no. 155.242). Last but not least, trans refugees are not entitled to LGR or trans related health care until the asylum procedure is completed, which often takes more than a year (recommendation no. 155.233). Trans health care isn't included in basic health care für asylum seekers and refugees. There even was a case where hormones (testosterone-products) were confiscated under the anti-doping law at Frankfurt airport, in spite of the persons carrying medical certificates that they were trans and hormones had been prescribed to them by an MD in their home country.^{xvii}

8. Gender Equality

In view of recommendations 155.42, 155.168, 155.169 which were noted by the German government it can be stated that, according to a WSI-Survey, the gender wage gap in Germany in 2022 averaged 18% less income per hour for women compared to men's wages.^{xviii} This also means that women in lesbian relationships face an even higher risk of old age poverty. Therefore it seems necessary that the German government steps up their efforts to narrow and eventually close the gender pay gap within the next UPR-cycle. We further would recommend to conduct research on the situation of lgbtiq persons in employment and also unemployment, as some appear to be highly qualified but under-paid and discriminated against.^{xix}

ⁱ WDR (04.10.2022). Trauerfeier für Malte nach Angriff bei CSD. Retrieved from <https://www1.wdr.de/nachrichten/westfalen-lippe/trauerfeier-malte-transmann-muenster-100.html>

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https://static1.squarespace.com/static/57ea5d2920099e3d1d3c150b/t/63da51014b07a74f05382d6a/1675251978514/2023-02-01_Stellungnahme_RZ.+NR.pdf (155.110)

ⁱⁱⁱ Arbeitsgemeinschaft der Wissenschaftlichen Medizinischen Fachgesellschaften (AWMF, 2019): Geschlechtsinkongruenz, Geschlechtsdysphorie und Trans-Gesundheit: S3-Leitlinie zur Diagnostik, Beratung und Behandlung. AWMF-Register-Nr. 138/001

^{iv} Medizinischer Dienst des Spitzenverbandes Bund der Krankenkassen & GKV-Spitzenverband (MDS & GKV, 2020): Begutachtungsanleitung Richtlinie des GKV-Spitzenverbandes nach §282 SGB V Geschlechtsangleichende Maßnahmen bei Transsexualismus (ICD-10, F64.0).

^v Olson et al. (2016): Mental Health of Transgender Children Who Are Supported in Their Identities. *Pediatrics*; 137(3):e20153223

^{vi} Federal Constitutional Court (BVerfG) Case: 1 BvR 2019/16, decision of 10 October 2017

^{vii} Adamietz & Bager (2017): Regelungs- und Reformbedarf für transgeschlechtliche Menschen. Gutachten im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität – Band 7, p. 11

^{viii} Adamietz & Bager, p. 12

^{ix} Adamietz & Bager (2017); Deutsches Institut für Menschenrechte/DIMR (2017): Geschlechtervielfalt im Recht. Status quo und Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtervielfalt. Begleitmaterial zur Interministeriellen Arbeitsgruppe Inter- & Transsexualität – Band 8

^x Adamietz & Bager, p. 26-32 and DIMR (2017), p. 68-86

^{xi} Thomas Hammarberg (2009): Human Rights and Gender Identity. CommDH/IssuePaper

^{xii} Federal Supreme Court (BGH), Case Nr. XII ZB 660/14

^{xiii} Federal Constitutional Court (BVerfG), Case I BvR 2831/17

^{xiv} ECHR (4th April 2023). O.H. and G.H. v Germany, [53568/18](https://hudoc.echr.coe.int/eng?i=001-223924) & [54741/18](https://hudoc.echr.coe.int/eng?i=001-223924), retrieved from <https://hudoc.echr.coe.int/eng?i=001-223924>

^{xv} ECHR (4th April 2023). A.H. and others against Germany, [7246/20](https://hudoc.echr.coe.int/eng?i=001-223932), retrieved from <https://hudoc.echr.coe.int/eng?i=001-223932>

^{xvi} Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ, 2019). Schutz geflüchteter Menschen in Flüchtlingsunterkünften. Retrieved from <https://www.bmfsfj.de/bmfsfj/themen/engagement-und-gesellschaft/fluechtlingspolitik-und-integration/schutzkonzepte-fluechtlingsunterkuenfte>

^{xvii} <https://www.bundesverband-trans.de/bundesverband-trans-stellt-fest-deutsches-antidopinggesetz-kriminalisiert-transmaenner/>

^{xviii} <https://www.boeckler.de/de/boeckler-impuls-luft-nach-oben-bei-der-entgeltgleichheit-47278.htm>

^{xix} www.diw.de/de/diw_01.c.798165.de/publikationen/wochenberichte/2020_36_1/lgbtqi_-menschen_am_arbeitsmarkt_hoch_gebildet_und_oftmals_diskriminiert.html