



REPUBLIC OF SLOVENIA
ADVOCATE OF THE PRINCIPLE OF EQUALITY

The Situation of Transgender People in Procedures for Medical Gender Identity Confirmation and Legal Gender Recognition in Slovenia

SPECIAL REPORT – SELECTED CHAPTERS

ACRONYMS AND ABBREVIATIONS

ECRI	European Commission against Racism and Intolerance
EC	European Commission
EU	European Union
FRA	European Union Agency for Fundamental Rights
Interdisciplinary Council	Interdisciplinary Council for Gender Identity Confirmation
MEC	The Medical Ethics Commission
LGBTIQ	People who define themselves as lesbian, gay, bisexual, transgender, intersex and queer
UN	United Nations
WHO	World Health Organisation
Ombudsman	Ombudsman of the Republic of Slovenia
WPATH	The World Professional Association for Transgender Health
Advocate	The Advocate of the Principle of Equality
PADA	Protection against Discrimination Act

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Special Report Summary

In accordance with Article 22 of the Protection against Discrimination Act (hereinafter: PADA),¹ the Advocate of the Principle of Equality (hereinafter: Advocate) shall report to the National Assembly of the Republic of Slovenia about its work and findings on the existence of discrimination involving individual groups of people with certain personal grounds in the framework of Special Reports.

Pursuant to Article 21 of the PADA, the situation of transgender people in procedures for medical gender identity confirmation² and legal gender recognition was considered.³ The central issue, in this case, was how transgender people are treated based on their personal grounds of gender identity and gender expression.

With this Special Report, the Advocate strives to draw the attention of legislators and the general public to the respect for human rights and equal opportunities of people who don't identify with the gender assigned to them at birth, they don't perceive it as their own as it does not reflect their gender identity.

The purpose of the Special Report is to present how procedures for medical gender identity confirmation and legal gender recognition are currently regulated in Slovenia, as well as the practice of the competent authorities.

According to the information obtained by the Advocate, recommendations to improve the situation of transgender people in those proceedings were made. In all this, the Resolution 2048 of the Parliamentary Assembly of the Council of Europe (hereinafter: PACE) from 2015 was used as a guide.⁴

On procedures for medical confirmation of gender identity, the resolution suggests that medical procedures should be made available to all transgender people who wish to receive them. The costs of treatment should be reimbursed by the public health system. Disease classification must also be changed so that transgender people, including children, are not labelled as mentally ill because of their transgender identity.

In terms of legal gender recognition, the resolution recommends that procedures should be transparent, fast, and accessible, based on self-determination, and made available to all. Transgender people, their partners, and their children should retain all of their rights as a result. The states are urged to provide a neutral third gender option in addition to choosing between a male and female.

¹ Protection against Discrimination Act (Official Gazette of the RS, No. 33/16 and 21/18 – Non-Governmental Organisations Act). Available at: <http://pisrs.si/Pis.web/npb/DocPdf?idPredpisa=ZAKO7129&idPredpisaChng=ZAKO7273&type=doc&lang=EN>

² The term medical gender identity confirmation refers to a variety of medical interventions that allow a person to transition from the gender assigned to them at birth to the gender they identify with, or feel as their own. It may include psychological and psychiatric treatment, hormone therapy and surgical procedures (such as mastectomy, hysterectomy, vaginoplasty, phalloplasty, etc.). The terms gender confirmation, gender identity confirmation, gender affirmation, medical transition, and, to a lesser extent, gender change are also used interchangeably.

³ The term legal gender recognition refers to a set of administrative procedures that allow a person to change the gender marker on personal documents (gender designation and the unique master citizen number attributed to them at birth into a gender marker with which the person identifies, i.e. which they feel is their own. In addition, the procedures for changing one's name are also part of the legal gender recognition.

⁴ Council of Europe, Committee on Equality and Non-Discrimination. Resolution. (2015). Discrimination against Transgender People in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

The Advocate also considered some other important international documents in preparing the Special Report, including the Yogyakarta Principles plus 10 (hereinafter: Yogyakarta Principles)⁵, Legal gender recognition in the EU - The journeys of trans people towards full equality⁶ (2020), and the Union of Equality: LGBTIQ Equality Strategy 2020-2025.⁷

Written queries were the primary source of information on the treatment of transgender people in medical and administrative procedures. In March 2021, the Advocate sent them to 127 different institutions, authorities and individuals.

According to the responses to the Advocate's queries and other examined materials, the following challenges appear to have been identified in **procedures of medical gender identity confirmation**:

- ensuring the smooth operation of the Interdisciplinary Council for Gender Identity Confirmation (hereinafter: Interdisciplinary Council) in the event of long-term absences of its members, which would also facilitate the exercise of the right to a second opinion under the Patient's Rights Act;
- absence of specialists for certain interventions;
- public inaccessibility of Slovenian guidelines for procedures for medical confirmation of gender identity;
- adequately informed health care personnel;⁸
- the non-use of complaint procedures by transgender people in patients' rights representatives.

World Health Organisation (hereinafter: WHO) Member States will be able to use the 11th revision of the International Classification of Diseases ICD-11 beginning January 1, 2022. According to it, being transgender is no longer defined as a mental disorder.⁹

By analysing the responses to queries, the Advocate observed the following shortcomings in the **procedures for legal gender recognition**:

- in practice, the existing arrangement allows for different interpretations of legislation regarding the local jurisdiction of administrative units;
- changes in gender and name data are regulated in separate procedures with different local jurisdiction;
- the existing arrangement allows for different interpretations of the legislation regarding the competent doctor or medical institution for issuing a certificate of "gender change", which would represent appropriate evidence in the process of changing the registered gender data;
- the arrangement also allows for various interpretations of the formulation to be included in such a "gender change" certificate;

⁵ The Yogyakarta principles plus 10 (2017).

Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

⁶ Legal recognition of gender in the EU: the trans people's path to full equality (June 2020), pages 203-212; available at https://ec.europa.eu/info/sites/default/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

⁷ LGBTIQ Equality Strategy 2020-2025. Available at [LGBTIQ Equality Strategy 2020-2025 | European Commission \(europa.eu\)](https://lgbtiq-equality-strategy-2020-2025-european-commission.europa.eu)

⁸ Learn more in Perger, N. (2021). Transspolne osebe v obdobju epidemije COVID-19: dostop do zdravstvenih storitev. Available at: https://legebitra.si/wp-content/uploads/2019/08/TransBuddy-POROCILO_slo_splet.pdf.

⁹ World Health Organisation. WHO/Europe brief – transgender health in the context of ICD-11. Available at: <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>.

- there is no consistent practice regarding whether individuals who are in the process of changing their registered gender data are required to pay a fee for the application and issuance of a decision;¹⁰
- only certain administrative units take measures to ensure the confidentiality and discretion of procedures when changing gender information.

The Advocate has made several recommendations based on the findings and other available information.

Procedures for medical gender identity confirmation

The Ministry of Health was advised to:

1. provide funding for the establishment of a national contact point for awareness raising on the rights of transgender patients and consultation with experts from various professional backgrounds in the field of procedures of medical gender identity confirmation, following the example of the National Contact Point for Rare Diseases;
2. establish a working group comprised of medical and legal professionals in this field, human rights experts, and representatives of non-governmental organisations to develop national standards of care for transgender people in procedures for medical gender identity confirmation;
3. provide transgender people in need of medical care with comparable access to specialised endocrinologists, members of the Interdisciplinary Council, as other people have, to endocrinological treatment;
4. provide healthcare professionals with education and training on the appropriate care to be provided to transgender people based on their specific characteristics and needs.

The **National Institute of Public Health** was recommended to implement the 11th revision of the International Classification of Diseases ICD-11¹¹ as soon as possible.

It was also recommended that, at **the enforcement of the 11th revision of the International Classification of Diseases ICD-11, the Health Insurance Institute of Slovenia** should ensure at least the same level of coverage of costs of medical interventions to patients in procedures for medical gender identity confirmation from compulsory health insurance as they had previously received.

Moreover, it was recommended that **the Interdisciplinary Council** should intensify its activities in the field of informing healthcare professionals about issues of transgender people. In doing so, experts from other professions and non-governmental organisations working on transgender rights should be invited to participate, as appropriate.

It was recommended, that the **University Psychiatric Clinic Ljubljana** should appoint alternate specialists – members of the Interdisciplinary Council – to ensure smooth operation in the event of prolonged absences of its members, which would also facilitate the exercise of the right to a second opinion under the Patient Rights Act.

¹⁰ The Advocate received the responses of the administrative units to the inquiry between 22 March and 26 April 2021. The regulation was later changed, with the Ministry of Public Administration publishing a single Application Form for entering a change in gender data in July 2021. The form is available at: <https://e-uprava.gov.si/podrocja/osebni-dokumenti-potrdila-selitev/osebno-ime/sprememba-podatka-o-spolu.html>.

¹¹ World Health Organisation. ICD-11: International Classification of Diseases 11th Revision – The global standard for diagnostic health information. Available at: <https://icd.who.int/en>.

Procedures for legal gender recognition

It was recommended that the **Ministry of Labour, Family, Social Affairs, and Equal Opportunities** should draft a comprehensive act on legal gender recognition, in which:

- the administrative procedure for changing gender data will be regulated in such a way that a declaration from a medical institution or a doctor is no longer required and that the self-determination of the person seeking to initiate the procedure for legal gender recognition is sufficient;
- the procedure for legal gender recognition should be carried out within administrative proceedings;
- the change of name and the change of gender markers in personal documents should be regulated within a single procedure in administrative units;
- the preservation of all acquired rights, including marriage and parenting rights is ensured;
- it should also allow for the registration of a third, neutral gender labelling option for transgender and intersex people.

The **Ministry of the Interior** was advised to:

- abolish local jurisdiction for legal gender recognition procedures, so that applicants can regulate this in any administrative unit and issue instructions to all administrative units;
- ensure that procedure for the change of the registered gender data is free of charge and uniform across all administrative units, and to issue an instruction to all administrative units.

The **Ministry of Public Administration** was advised to provide training to public officials in administrative units on the appropriate treatment provided to transgender people according to their specific characteristics and needs.

1 INTRODUCTION

1.1 Legal basis and purpose of the Special Report

In accordance with Article 1 PADA, protection against discrimination is provided to individuals regardless of their personal grounds, including gender identity and gender expression.

In accordance with Article 2 of the PADA, protection against discrimination is provided in several areas of social life, including health care and access to goods and services available to the public.

Article 2 of the PADA also provides anti-discrimination protection to everyone in public and private sector, including public authorities.

Article 21 of the PADA grants the Advocate of the Principle of Equality (hereinafter: the Advocate) among other things the authority and responsibility of "**publishing independent reports and making recommendations** to state authorities, local communities, holders of public authority, employers, economic operators and other entities regarding the established situation of persons with a certain personal circumstance, namely relating to the prevention and elimination of discrimination and the adoption of specific and other measures to eliminate discrimination".

According to Article 22 of the PADA, the Advocate submits to the National Assembly of the Republic of Slovenia Special Reports on the equality body's work and findings on the existence of discrimination against specific groups of people based on their personal grounds.

On this legal basis, the Advocate addressed the situation of transgender people in procedures for medical gender identity confirmation within the health system, as well as procedures of legal gender recognition in administrative units. As a result, procedures for medical gender identity confirmation fall within the scope of health care, while administrative unit procedures (gender data changes/legal gender recognition) fall within the scope of goods and services available to the public. The central question was how transgender people are cared for and treated in these proceedings due to their personal grounds of **gender identity** and **gender expression**.

The purpose of the Special Report is to present how procedures for medical gender identity confirmation and legal gender recognition are currently regulated in Slovenia, as well as the practice of the competent authorities.

The Advocate strives to draw the attention of legislators and the general public to the respect for human rights and equal opportunities of transgender people.

The key objective of the Special Report was to make recommendations for the adoption of regulations and measures to improve the situation of transgender people in medical and administrative proceedings. Written queries were the primary source of information on the situation of transgender people in medical and administrative procedures.

1.2 Issues and challenges of transgender people

In deciding on the topic of the Special Report, the Advocate also drew on the 2019 survey of the European Union Agency for Fundamental Rights (FRA),¹² in which nearly 140,000 people from across the European Union, North Macedonia, and Serbia participated. According to the data, every other transgender person in Slovenia, or 51% of respondents, experienced discrimination in various areas of life in the past year. Almost every third transgender person in Slovenia (32%) reported discrimination by health and social care workers. One in every five transgender people in Slovenia (21%) said they were discriminated against when they showed an identification document with gender data.

Transgender people do not identify with the gender assigned to them at birth. This disparity, which can cause discomfort, psychological distress, and mental health issues, can be corrected through medical interventions and by changing the gender data in identity documents.

A transgender man, who was assigned female at birth, described his childhood hardships to the Slovenian media:

"Even as a child, I had the impression that not everything was as it should be. I was a quiet, introverted child. At that time, I had no idea why. I enjoyed playing with two friends. I always changed my name to a boy's name before we started playing. I remember thinking at the time that everything made sense. This sense of inner peace vanished as soon as we parted ways and each of us went to our respective homes. It became increasingly unbearable as I grew older. Every day brought new issues and challenges. The worst of all was the daily battle between the brain and the body, which consumed every last drop of my energy. I didn't want to exist. In fact, in the true sense of the word, I didn't really exist."¹³

In Slovenia transgender people must undergo difficult medical interventions in order to change their identity documents, where the gender assigned to them at birth, which can cause them a variety of personal distresses, is stated.

A transgender man, who was assigned female at birth, explained to Slovenian media how the long-term medical treatment was carried out:

"I came across a story about transgender people at one point. When I read, everything felt familiar, like it belonged to me ... But it took a while before I dialled the number I kept with me at all times. This was the phone number of a psychiatry that dealt with transgender issues. When I finally called, I was told that only one expert deals with transgender people, and he has been out of office for a long time due to health issues. This meant even more waiting. My first psychiatric check-up was about a year after my first call. I visited a psychiatrist for a long time who wanted to make sure that it was really a gender identity disorder. When psychological tests confirmed this over time, I was told that I could get new documents – the only ones that were genuine for me. The following step was hormone therapy, which was followed by a mastectomy."¹⁴

Procedures for medical gender identity confirmation provided to transgender people in Slovenia are followed by procedures for legal gender recognition in administrative units. There transgender people may face additional stigma as a result of a mental disorder diagnosis.

¹² European Union Agency for Fundamental Rights. (2020). A long way to go for LGBTI equality. Available at: <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>.

¹³ Melik, Katja. (2018). Zdaj sem končno srečen. Available at: [Zdaj sem končno srečen - Revija Jana](#).

¹⁴ Ibid.

When attended to in an administrative unit in their home environment, and with the possibility of disclosing their transgender status to the wider community, they may be subjected to prejudice, stereotypes, and intolerance, as well as discomfort while undergoing these procedures.

In a survey on everyday life of transgender people in Slovenia, one of the participants shared their personal experience with the procedure of legal gender recognition: "*Workers in the administrative unit were unsure of what they were doing or what they needed to do. Even though they were trying to help, it was rather unpleasant because they were running around and asking questions out loud, which meant that everyone could hear them.*"¹⁵

Transgender people face additional challenges in the interim, when the process of legal gender recognition has not yet elapsed or is not yet complete, and the individual already has a changed external appearance as a result of medical procedures. Problems can arise in any situation where identity must be proven with an identity document (identity card, passport, driving license) containing a photograph as well as gender and name data.

Because of the inconsistency between the transgender person's external appearance and the data in the identity documents, misunderstandings, unpleasant, uncomfortable, or even conflicting situations may arise between the transgender person as a party on the one hand and the official person on the other.

Even after completing the procedures for legal gender recognition, obtaining an appropriate gender marker, obtaining a unique master citizen number, and changing their name, they may face challenges in the implementation of human rights and protection against discrimination. Several documents, including diplomas, certificates, contracts, and other legal documents, must be corrected and reconciled with new personal data.

1.3 International recommendations to Slovenia on the situation of transgender people

For the purpose of preparing the Special Report, the Advocate also examined a number of documents prepared by international organisations. Some documents specifically mention the difficulties that transgender people in Slovenia face when it comes to the protection of their rights in medical and administrative procedures.

The European Commission against Racism and Intolerance (hereinafter: ECRI) issued a report on Slovenia¹⁶ in June 2019. It noted, among other things, that significant legal gaps exist in Slovenia in the area of transgender people's rights. It further stated, that there is no explicit legislation regulating the change of name and gender for transgender people, and that the medical aspect of the procedure for changing gender is completely unregulated by law and left to the health system.

The ECRI, therefore, recommended that "the Slovenian authorities adopt, as soon as possible, legislation explicitly regulating the change of name and gender for transgender persons. Authorities should also establish clear guidelines for gender reassignment procedures and their official recognition drawing inspiration from international standards and especially from Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly".

¹⁵ Koletnik, L. J. (2019). Raziskava Vsakdanje življenje transspolnih oseb v Sloveniji: raziskovalno poročilo. Available at: https://transakcija.si/wp-content/uploads/2019/11/Vsakdanje-%C5%BEivljenje-transspolnih-oseb-v-Sloveniji-raziskovalno-poro%C4%8Dilo-2019_compressed.pdf.

¹⁶ European Commission against Racism and Intolerance. (2019). European Commission report on racism and intolerance in Slovenia (fifth phase of monitoring). Available at: <https://rm.coe.int/fifth-report-on-slovenia/168094cb00>.

Slovenia received a recommendation from Malta in 2019 during an interactive dialogue as part of the Universal Periodic Review of Human Rights to adopt legal provisions allowing transgender people to be legally recognised and to take effective measures to sensitise state authorities and the public on their human rights. Slovenia accepted the recommendation.¹⁷

¹⁷ Zagovornik načela enakosti. (2020). Odziv Republike Slovenije na priporočila, prejeta v okviru tretjega kroga Univerzalnega periodičnega pregleda. Available at: <http://www.zagovornik.si/odziv-republike-slovenije-na-priporocila-prejeta-v-okviru-tretjega-kroga-univerzalnega-periodicnega-pregleda/>.

2 INTERPRETATION OF BASIC CONCEPTS AND LEGAL FRAMEWORK

2.1 What is transgender identity

The term **transgender**¹⁸ is used as an umbrella term by the Council of Europe to describe the gender identities of people whose gender identity differs from the prevailing perceptions and expectations of society about the gender attributed to them at birth.

Gender identity, as defined by the Council of Europe, refers to an individual's inner sense of gender, which may or may not correspond to the gender assigned at birth. It includes feeling and experiencing one's own physicality, as well as various ways of expressing one's gender (gender expression).¹⁹ For instance, through the way of speech, facial expression, gesture, use of an appropriate name, grammatical gender (pronouns), dressing, makeup, hairstyle, body hair, etc.

According to the United Nations High Commissioner for Human Rights, we are talking about a person's cisgender identity when their internal sense of gender corresponds to the gender attributed to them at birth (mostly based on the appearance of the genitals).²⁰

However, if a person's internal sense of gender does not match the gender assigned to them at birth, the person has a transgender identity.²¹ The majority of the population is cisgender, with transgender people constituting a minority. According to the 2020 study, between 0.3 and 0.5 percent of the population self-identifies as transgender.²²

If we take into account the data from the study, we could estimate that there are **between six and ten thousand** transgender people living in Slovenia. The exact number of transgender people is difficult to assess.

The so-called hidden social minorities are frequently stigmatised, subjected to unequal treatment, discrimination, and violence. According to some researchers, disclosing the gender identity of transgender people is, therefore, more common in environments with a lower proportion of transphobia and less common in environments with a higher proportion of transphobia.²³

The mismatch of internal gender sensation with the gender assigned at birth causes various forms of stress, distress, discomfort, or gender dysphoria in many transgender people,²⁴ which can vary in strength and last for varying lengths of time.

¹⁸ Summarised by the Council of Europe. Because words matter. Available at: <https://rm.coe.int/glossary-on-sogiesc-because-words-matter-en/1680a1f110>.

¹⁹ Ibid.

²⁰ The Office of the UN High Commissioner for Human Rights defines cissexuality as a term used to describe people whose gender identity matches the gender attributed to them at birth. Available at: <https://www.unfe.org/definitions/>.

²¹ The Office of the United Nations High Commissioner for Human Rights defines transsexuality (sometimes abbreviated as "trans") as an umbrella term used to describe a wide range of identities whose appearance and characteristics are perceived as sexually insignificant. Available at: <https://www.unfe.org/definitions/>.

²² Zhang, Q., Goodman, M., Adams, N., Corneil, T., Hashemi, L., Kreukels, B., ... Coleman, E. (2020). Epidemiological considerations in transgender health: A systematic review with focus on higher quality data. *International Journal of Transgender Health*, 21(2), 125-137. Available at: <https://doi.org/10.1080/26895269.2020.1753136>.

²³ Švab, A. and Kuhar, R. (2005). "Skrite" socialne manjšine - primer raziskovanja vsakdanjega življenja istospolno usmerjenih v Sloveniji. *Teorija in praksa*, 42 (1), 136—158. Available at: <https://repozitorij.uni-lj.si/lzpisGradiva.php?id=22426>.

²⁴ Gender dysphoria generally means discomfort or negative stress due to the difference between a person's gender identity and the gender attributed to them at birth. Read more in The World Professional Association for Transgender Health (2012). *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*. Available at: https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341.

Transgender people alleviate their discomfort in a variety of ways:

- using appropriate names and/or grammatical gender (pronouns);
- with hairstyle, clothes, makeup, jewellery;
- with facial expressions, gestures, and voice;
- an official change of name and/or gender marker;
- with psychotherapy, hormone therapy and/or surgical procedures, etc.

Some transgender people overcome discomfort through appropriate clothing and external appearance, while others do so through a change of name and gender marker, or might require hormone therapy and surgical physical adjustments.

Transgender identity refers to a variety of gender identities.²⁵

The gender identity of transgender people is not directly related to their sexual orientation.²⁶

2.2 Medical gender identity confirmation

In this Special Report, the term medical gender identity confirmation refers to a variety of medical interventions that allow a person to transition from the gender assigned to them at birth to the gender which they identify with, or they perceive as their own. It may include psychological and psychiatric treatment, hormonal therapy, and surgical procedures (such as mastectomy – surgical removal of the breast, hysterectomy – surgical removal of the uterus and/or ovaries and fallopian tubes, vaginoplasty – vaginal contouring surgery, phalloplasty – penile contouring surgery).²⁷

In a 2010 statement highlighting the need to depathologize gender nonconformity around the world, the World Professional Association for Transgender Health (hereinafter: WPATH) wrote:

"The expression of gender characteristics, including identities, that are not stereotypically associated with one's assigned sex at birth is a common and culturally-diverse human phenomenon which should not be judged as inherently pathological or negative."²⁸

According to WPATH's Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People²⁹ (hereinafter: Standards of Care), the phenomenon of non-normative sexuality is stigmatised all over the world.

²⁵ Explanations of these terms can be found in: Council of Europe. Because words matter. Available at: <https://rm.coe.int/glossary-on-sogiesc-because-words-matter-en/1680a1f110>; Legebitra. LGBTIQ Glossary. Available at: <https://legebitra.si/lgbtiq-slovar/>; TransAkcija. Glossary. Available at: <https://transakcija.si/slovar/>; TGEU. (2016). Glossary. Available at: <https://tgeu.org/glossary/>.

²⁶ For example, a transgender woman is a person who is attributed to the male gender at birth due to the appearance of her genitals, but she feels and identifies as a woman. Her gender identity is transgender. So she's a transgender woman. Her sexual orientation can be heterosexual (attracted to men), homosexual (attracted to women), pansexual (attracted to persons, regardless of gender), etc.

²⁷ According to paragraph 10 of Article 2 of the Patients' Rights Act (PRA) (Official Gazette of the Republic of Slovenia, No. 15/08, 55/17, and 177/20), "Medical procedure shall mean any preventive, diagnostic, therapeutic or rehabilitative action provided by a physician, another healthcare or allied professional.." Available at: <http://www.pisrs.si/Pis.web/npbDocPdf?idPredpisa=ZAKO7379&idPredpisaChng=ZAKO4281&type=doc&lang=EN>.

²⁸ The World Professional Association for Transgender Health. (2010). Available at: https://amo_hub_content.s3.amazonaws.com/Association140/files/de-psycho-pathologisation%205-26-10%20on%20letterhead.pdf.

²⁹ The World Professional Association for Transgender Health (2012). Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People. Available at: https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341.

This can result in prejudice and discrimination, which manifests itself as so-called minority stress. It is a unique, socially conditioned, and chronic stress factor that, in addition to the normal stress that everyone faces, can lead to mental health issues such as anxiety and depression. The problems are socially conditioned and are not caused by a person's nonconforming gender.

"Gender nonconformity refers to the extent to which a person's gender identity, role, or expression differs from the cultural norms prescribed for people of a particular sex. Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth."³⁰

According to WPATH, only a small percentage of gender nonconforming people experience gender dysphoria at some point in their lives. Treatment is possible that helps people with such distress in exploring their gender identity and finding the gender role that is best for them.³¹

Treatment is tailored to the individual: what works for one person to alleviate gender dysphoria may not work for another. "This process may or may not involve a change in gender expression or body modifications. Medical treatment options include, for example, feminization or masculinization of the body through hormone therapy and/or surgery, which are effective in alleviating gender dysphoria and are medically necessary for many people."³²

Gender identities and expressions vary, and hormone therapy and surgery are just two of the options available to help people feel at ease with themselves and their gender identity.

In the Standards of Care, WPATH also stated that some people experience such intense gender dysphoria that their distress meets the criteria for a formal diagnosis that could be defined as a mental disorder. However, such a diagnosis does not justify stigmatisation or deprivation of civil and human rights.

2.2.1 Procedures for medical gender identity confirmation in Slovenia

From the 1990s to 2020, the Interdisciplinary Council operated informally in Slovenia to assist people with gender dysphoria. However, it has been formally operating on the basis of a founding act since 2020.

It includes specialists from the fields of psychiatry and pedopsychiatry, endocrinology, gynaecology and obstetrics, urology, plastic, aesthetic, and reconstructive surgery, and otorhinolaryngology.

The Interdisciplinary Council, as stated in the official position of The Medical Ethics Commission (hereinafter: MEC)³³, operates in compliance with the guidelines of the WPATH, taking into account the Standards of Care for Gender Identity Disorders.³⁴

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ministrstvo za zdravje. (2019). Stališče Komisije Republike Slovenije za medicinsko etiko o vzpostavitvi formalne ureditve postopkov za potrditev spolne identitete za osebe s spolno disforijo.. Available at: <https://www.gov.si/assets/ministrstva/MZ/DOKUMENTI/staro/KME/Uradna-stalisca/Stalisce-KME-o-spolni-disforiji.pdf> .

³⁴ The World Professional Association for Transgender Health. (2012). Available at: https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20v7_English2012.pdf

The Interdisciplinary Council liaises with the Slovenian Sexological Association, the Slovenian Association of Sexual Medicine, the European Society for Sexual Medicine and the International Society for Sexual Medicine. According to MEC, the Interdisciplinary Council also collaborates with non-governmental organisations working in the field of rights of transgender people, namely the Transfeminist Initiative TransAkcija Institute and the Association Information Centre Legebitra, both of which are dissatisfied with the scope and manner of cooperation thus far.

The MEC concluded in its position that "intermittent /.../ problems in the functioning of the Interdisciplinary Council arise due to the absence of individual specialists, which consequently impedes appropriate treatment."³⁵ It also stated that the Interdisciplinary Council operates on a voluntary basis and does not have formal opportunities to influence the field's development, such as additional professional education required for the acquisition of special skills, improvement of treatment procedures, education of health professionals and society, etc. "Despite its long-standing existence, the Council, which is the only one in the country, does not have a clear legal basis."³⁶

To address these shortcomings, MEC proposed a systematic approach that included the establishment of a "Professional College/Council for the Treatment of Gender Dysphoria" at the level of the Ministry of Health, "which will be the body with competence for regulating the procedures for the health treatment of persons with gender issues, for the further development of the field, and will be the consultative body for the ministry."³⁷

In 2020, The Interdisciplinary Council at the University Psychiatric Clinic Ljubljana was officially established. This does not imply that all of the aforementioned shortcomings in transgender people's treatment procedures have been eliminated.

The PACE emphasised the importance of non-discriminatory procedures for medical confirmation of gender identity in its Resolution 2048 (2015) Discrimination Against Transgender People in Europe.³⁸ It stated, among other things, that it is critical to provide access to medical procedures for all transgender people who desire them. Member States should ensure that they have access to hormonal treatment, surgery, and psychological support, and that treatment costs are reimbursed by the public health system.

2.3 Legal gender recognition

In this Special Report, the term legal gender recognition refers to a set of administrative procedures that allow a person to change the gender marker on personal documents (gender designation and the unique master citizen number). It is the change of gender data that was assigned to a person at birth into a gender marker which the person identifies with, i.e. which they feel is their own. The procedures for changing one's name are also part of the legal gender recognition.

³⁵ Ministrstvo za zdravje. (2019). Stališče Komisije Republike Slovenije za medicinsko etiko o vzpostavitvi formalne ureditve postopkov za potrditev spolne identitete za osebe s spolno disforijo. Available at: <https://www.gov.si/assets/ministrstva/MZ/DOKUMENTI/staro/KME/Uradna-stalisca/Stalisce-KME-o-spolni-disforiji.pdf>

³⁶ Ibid.

³⁷ Ibid.

³⁸ Council of Europe, Committee on Equality and Non-Discrimination. (2015). Discrimination against Transgender People in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

A doctor assigns a male or female gender to each child³⁹ at birth based on medical indicators, such as the appearance of the genitals. It is then entered into the birth certificate and any other documents that the person uses to prove their identity or conduct legal transactions.⁴⁰ Parents choose a name for their child based on gender data, and the state assigns a unique master citizen number.

Gender is a personal ground that has a significant impact on people's legal situations and the exercise of their rights.

Some experts draw attention, for example, to the State's legal obligation, arising also from certain international documents, to regulate the procedure by which "transgender persons can achieve, for example, that official documents proving their identity /.../ adequately reflect their gender identity."⁴¹

2.3.1 Legal gender recognition in regulations and practice

Legal gender recognition is not systematically regulated by law in Slovenia. The administrative procedure for changing or correcting the gender marker and consequently the unique master citizen number is regulated in an executive act.⁴² The Slovenian legal order does not yet recognise the term legal gender recognition, but it does use the term gender change (also gender information change) to name the procedure of change of the official gender data.

According to Article 37 of the Rules on the Implementation of the Civil Register Act,⁴³ a change of gender shall be entered "on the basis of the competent authority's decision on the change of the data entered. The decision shall be based on a certificate issued by a competent medical institution or doctor demonstrating that the person has changed gender".

The Rules do not specify, which health institution or doctor is responsible for issuing the certificate, or what must be stated on the certificate to show that the person has changed gender. It also does not specify the local jurisdiction of administrative units in the procedures for legal gender recognition.

According to the academic literature, administrative units have over the years established the practice of taking into account the statement of the psychiatrist of the Interdisciplinary Council as an appropriate certificate in accordance with the Ministry of the Interior's instructions⁴⁴. In the certificate it must be written that the person has changed gender. The method of gender change is not important. The Ministry of the Interior also determined the local jurisdiction of administrative units by place of residence in the instruction.⁴⁵

³⁹ The exception are intersex children. See the Advocate's Special Report The Situation of Intersex People in Medical Procedures (2020). Available at: <https://www.zagovornik.si/en/whatwedo/>

⁴⁰ Štajnpihler Božič, T., Zadravec, M., Mišič, L. (eds.) (2017, p. 4). Uveljavljanje pravice do pravnega priznanja spola v Sloveniji. Available at: <https://www.pf.uni-lj.si/media/uppps.-koncno.besedilo.pdf>.

⁴¹ Štajnpihler Božič, T., Zadravec, M., Mišič, L. (eds.) (2017, p. 4). Uveljavljanje pravice do pravnega priznanja spola v Sloveniji. Available at: <https://www.pf.uni-lj.si/media/uppps.-koncno.besedilo.pdf>.

⁴² Pravilnik o izvrševanju zakona o matičnem registru (Uradni list RS, št. 40/05, 69/09, 77/16 in 102/20). Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5572>.

⁴³ Ibid.

⁴⁴ Read more: Štajnpihler Božič, T., Zadravec, M., Mišič, L. (eds.) (2017, p. 33). Uveljavljanje pravice do pravnega priznanja spola v Sloveniji. Available at: <https://www.pf.uni-lj.si/media/uppps.-koncno.besedilo.pdf>.

⁴⁵ Štajnpihler Božič, T., Zadravec, M., Mišič, L. (eds.) (2017, p. 30—31). Uveljavljanje pravice do pravnega priznanja spola v Sloveniji. Available at: <https://www.pf.uni-lj.si/media/uppps.-koncno.besedilo.pdf>.

The administrative procedure depends on medical procedures. To obtain a certificate that is required in the administrative procedure of changing the registered gender data, psychiatric treatment at the Interdisciplinary Council⁴⁶ and a diagnosis of transsexualism are required.⁴⁷ This diagnosis is in accordance with the current valid Australian modification of the 10th revision of the International Classification of Diseases and Related Health Problems (ICD-10-AM, version 6)⁴⁸ defined as a mental disorder.

The procedure for changing one's name is governed by the Personal Name Act and has nothing to do with changing one's gender. An application for a change of personal name is not subject to local jurisdiction and is decided by the competent authority to which the application is submitted. In the vast majority of cases, transgender people apply for a change of gender and a change of name at the same time.

According to non-governmental organisations in Slovenia that work in the field of anti-discrimination and transgender human rights, "the current regulation of gender change in Slovenia violates at least three human rights: the right to inviolability of human physical and mental integrity, to personal dignity and security, the right to health, and the right to privacy (Article 8 of the European Convention on Human Rights)".⁴⁹

In 2020 the European Commission (hereinafter: EC) published a study *Legal gender recognition in the EU: the journeys of trans people towards full equality*.⁵⁰ In the chapter *Recommendations to advance the inclusion of transgender people across the EU* it called upon Member States, among other things, to ensure legal access to clear, transparent, swift, and respectful procedures for legal gender recognition. Gender recognition procedures should be based on self-determination and should respect human rights. Recognition of the new name and gender should be ensured through a single procedure. Requirements of court proceedings as a condition for legal gender recognition and requirements of separation or annulment of marriage should be eliminated.

In 2015, the PACE raised the issue of gender recognition procedures in Resolution 2048 on *Discrimination against Transgender People in Europe*⁵¹. It urged Member States to develop quick, transparent, and accessible procedures for changing transgender people's names and registered gender in birth certificates, identity cards, passports, educational certificates, and other similar documents based on self-determination. It also recommended that Member States make these procedures available to all people who seek to use them, irrespective of age, medical status, financial situation or police record, and that they allow people to stay in existing marriages after legal gender recognition, and that they ensure that spouses or children do not lose certain rights.

⁴⁶ The Interdisciplinary Council for Gender Identity Confirmation was established at the University Psychiatric Clinic Ljubljana on 11 March 2020 to assist people with gender dysphoria. It includes specialists in various fields: psychiatry, pedopsychiatry, clinical psychology, dermatology, gynaecology with reproduction, endocrinology, speech therapy, otorhinolaryngology, plastic surgery and urology.

⁴⁷ In the Special Report, the Advocate uses "transsexualism" exclusively for the purpose of naming the diagnosis, and transgender identity as an umbrella term for non-cissexual gender identity.

⁴⁸ Slovenia is currently coding diseases using the Australian modification of the tenth revision of the International Classification of Diseases and Related Health Problems for Statistical Purposes (ICD-10-AM, version 6). Available at: <https://www.nijz.si/sl/podatki/mkb-10-am-verzija-6>.

⁴⁹ Find out more in Koletnik, A., Grm, E. A. and Gračanin E. (2016). *Pravno priznanje spola v Sloveniji: Smernice za uresničevanje spoštovanja človekovih pravic transspolnih in cispolno nenormativnih oseb*. Available at: <https://transakcija.si/wp-content/uploads/2016/05/Pravno-priznanje-spola-v-Sloveniji.pdf>.

⁵⁰ European Commission. (2020, p. 203—212). *Legal gender recognition in the EU: The journeys of trans people towards full equality*. Available at: https://ec.europa.eu/info/sites/default/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf

⁵¹ Council of Europe, Committee on Equality and Non-Discrimination Resolution. (2015). *Discrimination against Transgender People in Europe*. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

2.4 Legal issues before and after legal gender recognition

Transgender people face additional challenges in the interim, when the process of legal gender recognition has not yet elapsed or is not yet complete, and the individual already has a changed external appearance due to procedures for medical gender identity confirmation. Their appearance is markedly different from the photographs in personal documents that they use to establish their identity. Problems can arise in all situations where an identity document is required. For example, in routine and other police procedures, in the collection of registered consignments or state authority consignments, in the regulation of banking transactions, in the extension of the validity of a traffic permit, in the crossing of state borders, in the use of tourist accommodation, in some cases in credit card payments, in the entry into premises where the so called recovered/vaccinated/tested rule during COVID-19 pandemic was required.

Even after completing the procedures for legal gender recognition, obtaining an appropriate gender marker, obtaining a unique master citizen number, and changing their name, they may face challenges in the implementation of human rights and protection against discrimination. Several documents, including diplomas, certificates, contracts, and other legal documents, must be corrected and reconciled with new personal data.

Questions have also been raised about how medical gender identity confirmation affects:

- marriage or cohabitation,
- civil unions and non-formal civil unions,
- relationships with children,
- the possibility of receiving social transfers,
- loan agreements and bank accounts,
- calculation of pension qualifying period,
- inheritance and wills,
- membership in organisations,
- the validity of insurance policies,
- records of violations and criminal offences,
- placement in an appropriate department while serving a prison sentence,
- data in the medical file and further medical treatment of the person.

The EC stated in its recommendations in the study *Legal gender recognition in the EU: the journeys of trans people towards full equality*⁵² that national social and pension insurance schemes should be clear, respectful, and allow people who have completed legal recognition procedures to legally change their name and gender in other official records within a reasonable period of time without losing access to benefits or services to which they are entitled.

2.4.1 Situation and protection of transgender people against discrimination

According to the Eurobarometer survey: *Discrimination in the European Union from 2019*,⁵³ 40% of respondents in Slovenia believe that discrimination against transgender people is widespread.

⁵² European Commission. (2020, p. 203—212). *Legal gender recognition in the EU: The journeys of trans people towards full equality*. Available at https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

⁵³ European Commission. (2019). *Discrimination in the European Union*. Available at: <https://europa.eu/eurobarometer/surveys/detail/2251>.

According to the research of Everyday life of transgender persons in Slovenia,⁵⁴ which measured the perception of discrimination in this group, 41% of transgender people reported experiences of discrimination, violence, or unequal treatment based on their gender identity and/or gender expression.

In 2018, a United Nations Independent Expert on sexual orientation and gender identity prepared a report on the Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity.⁵⁵ He emphasised that the individual's gender is the foundation of personal identity. As a result, States must ensure non-discriminatory gender recognition, equal protection of rights, privacy, identity, and freedom of expression. When the WHO published the new ICD-11 classification,⁵⁶ which depathologizes transsexualism, it stated that transgender people face a higher risk of mental health problems due to discrimination and violence.

The WHO also stated that prejudices and stereotypes about transgender people, as well as discrimination, are major barriers to access to health care and may increase the risk of dealing with health problems unrelated to gender identity or sexuality.⁵⁷

The PACE recommended in its Resolution 2048 of 2015⁵⁸ that transgender people's human rights and discrimination based on gender identity should be addressed through human rights education and training programs, as well as public awareness campaigns.

Education professionals, law enforcement officials, and health professionals, including psychologists, psychiatrists, and general practitioners, should be given information and training on transgender people's rights and specific needs, with a focus on the need to respect their privacy and dignity.

2.5 Ombudsman on transgender people

Over the last three years, the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: Ombudsman) has responded in the following cases, in accordance with his competencies regarding transgender people's human rights:

- In 2019, he intervened with the Ministry of the Health at the request⁵⁹ of two non-governmental organisations to obtain responses to their call for the establishment of a formal regulation of procedures for medical gender identity confirmation.

⁵⁴ Koletnik, L. J. (2019). Raziskava vsakdanje življenje transspolnih oseb v Sloveniji : Raziskovalno poročilo. Available at: https://transakcija.si/wp-content/uploads/2019/11/Vsakdanje-%C5%BEivljenje-transspolnih-oseb-v-Sloveniji-raziskovalno-poro%C4%8Dilo-2019_compressed.pdf.

⁵⁵ United Nations, General Assembly. (2018). Protection against violence and discrimination based on sexual orientation and gender identity. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a76152-protection-against-violence-and-discrimination-based-sexual>.

⁵⁶ The classification is not yet in use. The Member States may apply it since January 1, 2022. Learn more at the World Health Organization. ICD-11: International Classification of Diseases 11th Revision – The global standard for diagnostic health information. Available at: <https://icd.who.int/en>.

⁵⁷ World Health Organisation. WHO/Europe brief – transgender health in the context of ICD-11. Available at: <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>.

⁵⁸ Council of Europe, Committee on Equality and Non-Discrimination. (2015). Discrimination against Transgender People in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

⁵⁹ The full contribution on the general findings and assessment of the situation in the field of LGBTI+ is published in the Ombudsman's Annual Report 2019, p. 124. Available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Letno_porocilo_Varuh19.pdf.

Thus, in 2019 and 2020, the Ombudsman drew attention to the unresolved recommendation from 2018. In 2019, he additionally recommended that the interdepartmental working group examining the regulation of legal gender recognition complete its work in 2020 and that the competent ministry prepares a draft law regulating legal gender recognition in the same year.⁶⁰

- In 2018, he received a letter from the President of the Slovene Association of Administrative Staff⁶¹ stating that Slovenia lags behind the majority of European countries in terms of simplifying the process of changing gender, introducing the third gender, or allowing the gender to be left undetermined in official records. The Ombudsman proposed that Article 37 of the Rules on the Implementation of the Civil Register Act should be repealed because it contradicts the calls of the PACE. However, he advised the Prime Minister of the Republic of Slovenia to decide whether it was a project of the Government of the Republic of Slovenia for which one of the ministers could be authorised to prepare a draft law that would properly regulate legal gender recognition.

⁶⁰ The recommendation is published in the Ombudsman's Annual Report 2019, p. 126. Available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Letno_porocilo_Varuh19.pdf.

⁶¹ The full article on the change or legal recognition of gender is published in the Ombudsman's Annual Report 2018, p. 73—76. Available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/VARUH_LP2018.pdf.

3 KEY FINDINGS AND RECOMMENDATIONS OF THE ADVOCATE

3.1 Key findings based on the Advocate's queries

3.1.1 Findings regarding medical confirmation of gender identity

The Advocate reached the following conclusions after conducting a final analysis of the queries regarding the procedures for medical gender identity confirmation and legal gender recognition for transgender people in Slovenia.

Depathologization of transsexualism

In Slovenia, the Australian modification of the 10th revision of the International Classification of Diseases and Related Health Problems is used in medical gender identity confirmation procedures (ICD-10-AM, version 6).⁶² The World Health Organization (WHO) adopted the 11th revision of the International Classification of Diseases (ICD-11) in May 2019 which was implemented in January 2022 and introduces the depathologization of transsexualism. Being transgender will no longer be defined as a mental disorder, according to this version.⁶³ As the WHO points out, this could affect the way health services are paid for medical gender identity confirmation procedures in terms of potentially limiting rights.

The PACE called upon Member states in its 2015 Resolution on Discrimination against Transgender People in Europe no. 2048,⁶⁴ concerning gender reassignment procedures and health care to, among other things, amend classifications of diseases used at national level and advocate the modification of international classifications, making sure that transgender people, including children, are not labelled as mentally ill, while ensuring stigma-free access to necessary health care.

Providing transgender people with seamless medical care

According to the responses to the Advocate's queries and other examined materials, the following challenges appear to have been identified in the provision of procedures for medical gender identity confirmation:

- ensuring the smooth operation of the Interdisciplinary Council in the event of long-term absences of its members, which would also facilitate the exercise of the right to a second opinion under the Patient's Rights Act;
- absence of specialists for certain interventions;
- public inaccessibility of Slovenian guidelines for procedures of medical gender identity confirmation;
- adequately informed healthcare personnel;⁶⁵
- the non-use of complaint procedures by transgender people in patients' rights representatives.

⁶² Nacionalni inštitut za javno zdravje. (2020). MKB-10-AM, verzija 6. Available at: <https://www.nijz.si/sl/podatki/mkb-10-am-verzija-6>.

⁶³ Learn more at the World Health Organisation. WHO/Europe brief – transgender health in the context of ICD-11. Available at: <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>.

⁶⁴ Council of Europe, Committee on Equality and Non-Discrimination Resolution. (2015). Discrimination against Transgender People in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

⁶⁵ Learn more in Perger, N. (2021). Transspolne osebe v obdobju epidemije COVID-19: Dostop do zdravstvenih storitev. Available at: https://legebitra.si/wp-content/uploads/2019/08/TransBuddy-POROCILO_slo_splet.pdf.

Regarding the lack of specialists for some surgical procedures of medical gender identity confirmation, the Advocate believes that the established treatment option abroad, the costs of which are fully covered by the mandatory health insurance, provides transgender people with a satisfactory level of respect for rights.

3.1.2 Findings regarding legal gender recognition

The Advocate focused on the following aspects in the final analysis of responses to queries from all administrative units in Slovenia regarding the procedures of legal gender recognition for transgender people in Slovenia, in light of the protection against discrimination:

- the local jurisdiction of the administrative units;
- a uniform procedure for changing one's name and gender;
- a gender change certificate;
- the amount of the administrative fee;
- additional measures to ensure discretion.

Local jurisdiction

A transgender person who wants to change their gender information in the civil registry must submit an application to the administrative unit, along with a statement from a competent medical institution or doctor that they have changed their gender. As evidenced by the responses to the Advocate's queries, the existing regulation in practice allows for various interpretations of the legislation regarding the issue of **local jurisdiction** of administrative units in proceedings for legal gender recognition. Transgender people must now apply for a change of gender data at administrative units where they have their permanent residence, according to Ministry of the Interior instructions.

Practice shows that transgender people, together with the application for a gender change, simultaneously submit an application for a name change at the same administrative unit.⁶⁶ Both applications are dealt with simultaneously by the official person. A transgender person who receives a favourable outcome receives a new gender marker, a new unique master citizen number, and a new name at the same time, allowing them to change documents all at once.

As a result, non-governmental organisations working in the field of rights of transgender people have stated: "If a person submits both applications to the administrative unit where they do not have registered permanent residence at the same time, the administrative unit transfers the application for legal gender recognition to the administrative unit where the person has registered permanent residence. This means that the applications will not be dealt with simultaneously. Consequently, there is a high likelihood that the person will receive the decision with a delay, which means that the person will have to change the documents at least twice."⁶⁷

According to the 2019 Research of Everyday Life of Transgender People in Slovenia, 45% of transgender people do not disclose their transgender identity in front of extended relatives, 41% in public spaces, and 35% in front of teachers.⁶⁸

⁶⁶ Find out more in v Legebitra. (2017, 8. junij). Pravno priznanje spola in krajevna pristojnost upravnih enot. Available at: <https://legebitra.si/2017/06/08/pravno-priznanje-spola-krajevna-pristojnost-upravnih-enot/>.

⁶⁷ Ibid

⁶⁸ Find out more Koletnik, L. J. (2019). Raziskava vsakdanje življenje transspolnih oseb v Sloveniji: Raziskovalno poročilo. Available at: https://transakcija.si/wp-content/uploads/2019/11/Vsakdanje-%C5%BEivljenje-transspolnih-oseb-v-Sloveniji-raziskovalno-poro%C4%8Dilo-2019_compressed.pdf.

"Disclosure in public spaces can be extremely dangerous for all transgender people, as this is precisely where transgender people face the most discrimination."⁶⁹

The consequences of transgender people disclosing their transgender identity can also be very negative. According to the survey, one in every three transgender people experienced a friendship breakup (36%) or rejection from their parents (33%), as a result of disclosing their gender identity.

"This is followed by rejection and expulsion by extended family (16%), rejection and expulsion at school/college (12%), a transgender person no longer receives financial support from parent(s)/guardian(s) (12%), a breakup of partnership (11%), rejection and expulsion at work (10%), rejection and expulsion during leisure activities (sports clubs, choirs, creative circles, etc.) (10%), or loss of custody of children (2%)."

In Slovenia, administrative units are also located in small towns where people know each other, and personal data protection principles are ineffective in preventing the inadvertent disclosure of transgender people during official proceedings.

Gender and name change in legal procedure

As previously stated, individuals who apply for a change of gender usually also apply for a change of name at the administrative unit. Transgender people manually wrote the gender change application on the back of the name change form prior to the introduction of the official form to initiate this procedure in July 2021.⁷⁰

Following approval of the change in the registered gender data, the applicant is issued a new unique master citizen number that is gender-related. The applicant also changes identity documents. Therefore, changing the name at the same time makes sense.

The EC in its recommendations to advance the inclusion of transgender people across the EU⁷¹ (2020) calls on Member States to establish the possibility of changing transgender people's name and gender through a single, uniform procedure in order to allow for a swift and transparent process of legal gender recognition.

Medical gender identity confirmation certificate

The current regime allows for various interpretations of the legislation regarding the **competence** of a doctor or a medical institution to issue a certificate on a change of gender, which would be appropriate evidence in the process of legal gender recognition. Various interpretative options are also left open to the question of what **formulation** the doctor or medical institution should use to demonstrate that the person has indeed changed gender.

Following the Ministry of the Interior's instructions, the Interdisciplinary Council or a psychiatrist who is its a member is responsible for issuing such a certificate. It is sufficient to state that the person has changed gender in the certificate, the method of changing gender is unimportant.

⁶⁹ Ibid.

⁷⁰ Learn more at eUprava. Osebno ime, sprememba podatka o spolu. Available at: <https://e-uprava.gov.si/podrocja/osebni-dokumenti-potrdila-selitev/osebno-ime.html>.

⁷¹ European Commission. (2020, p. 203—212). Legal gender recognition in the EU: The journeys of trans people towards full equality. Available at https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

The EC recommended in its Recommendations to advance the inclusion of transgender people across the EU from⁷² 2020 that Member States work towards the adoption of gender recognition procedures based on self-determination that adheres to the human rights principles outlined in the Yogyakarta Principles.⁷³

The PACE recommended in its Resolution 2048 on discrimination against transgender people that Member States develop swift, transparent, and accessible procedures based on self-determination in order to change the name and registered gender of transgender people on birth certificates, identity cards, passports, educational certificates, and other similar documents. The resolution urged states to eliminate sterilisation and other forms of compulsory treatment, as well as mental health diagnosis, as a mandatory legal requirement in laws governing the procedure for changing a person's name and legally recognised gender.

The amount of the administrative fee in legal gender recognition procedure

According to the administrative units' and the Ministry of the Interior's responses to the Advocate's query, there is no common understanding as to whether people undergoing gender transition are required to pay a fee for the application and issuance of a decision regarding legal gender recognition.

There is no consensus on whether the procedure outlined in Article 28 of the Administrative Fees Act⁷⁴ is one of the exceptions. The act allows for exceptions to applications for registration in the civil registry and applications for entry of data into official records or deletion of data from them.⁷⁵

Additional measures to ensure discreteness in legal gender recognition procedure

According to the administrative units' responses to the Advocate's query, the majority of them follow personal data protection principles, with only a few taking additional measures to ensure the discreteness and confidentiality of legal gender recognition procedures.

Non-governmental organizations working in the field of rights of transgender people emphasised the importance of educational activities for medical staff and public officials in administrative units in their responses to the Advocate's query. According to them, transgender people frequently face misinterpretation of transgender issues as well as inappropriate or disrespectful attitudes in procedures.

The EC recommended additional measures to Member States in two places in its Recommendations to advance the inclusion of transgender people across the EU⁷⁶ to promote respectful treatment of transgender people by public officials.

⁷² Ibid.

⁷³ The Yogyakarta principles plus 10. (2017). Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

⁷⁴ Zakon o upravnih taksah (Uradni list RS, št. 106/10 – uradno prečiščeno besedilo, 14/15 – ZUUJFO, 84/15 – ZZelP-J, 32/16, 30/18 – ZKZaš in 189/20 – ZFRO). Available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2146>.

⁷⁵ The Advocate received the responses of the administrative units to the inquiry between 22 March and 26 April 2021. The regulation was later changed, with the Ministry of Public Administration publishing a single Application Form for entering a change in gender data in July 2021. A uniform fee amount of EUR 22.60 is also set. The form is available at: <https://e-uprava.gov.si/podrocja/osebni-dokumenti-potrdila-selitev/osebno-ime/sprememba-podatka-o-spolu.html>.

⁷⁶ European Commission. (2020, p. 203–212). Legal gender recognition in the EU: The journeys of trans people towards full equality. Available at https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

In Recommendation 1 on promoting respect for transgender people, education and awareness about trans-identities and rights at all levels of education and in the wider society the EC recommended that Member States implement regular training for public officials on how to promote tolerance and respect for diversity, as well as respect and fulfilment of transgender people's rights.

In Recommendation 3, which calls on Member States to ensure access to transparent, swift, and respectful procedures for legal gender recognition in practice, the EC recommended that Member States provide appropriate guidelines and training to public officials to ensure appropriate and respectful responses to requests to change names and gender markers.

3.2 Recommendations by the Advocate

Taking into account the Resolution 2048 of the PACE (2015)⁷⁷, the Yogyakarta Principles⁷⁸ (2017), the EC's Recommendations to advance the inclusion of transgender people across the EU (2020),⁷⁹ and its Union of Equality: LGBTIQ Equality Strategy 2020–2025 (2020),⁸⁰ the Advocate has made recommendations as follows.

The Advocate also considered the information provided in the responses to the queries, as well as the information obtained through a review of the academic literature.

3.2.1 Recommendations regarding medical confirmation of gender identity

The Advocate advises the Ministry of Health to:

1. provide funding for the establishment of a national contact point for awareness raising on the rights of transgender patients and consultation with experts from various professional backgrounds in the field of procedures of medical gender identity confirmation, following the example of the National Contact Point for Rare Diseases;
2. establish a working group comprised of medical and legal professionals in this field, human rights experts, and representatives of non-governmental organisations to develop national standards of care for transgender people in procedures for medical gender identity confirmation;
3. provide transgender people in need of medical care with comparable access to specialised endocrinologists, members of the Interdisciplinary Council, as other people have to endocrinological treatment;
4. provide healthcare professionals with education and training on the appropriate care to be provided to transgender people based on their specific characteristics and needs.

⁷⁷ Council of Europe, Committee on Equality and Non-Discrimination Resolution. (2015). Discrimination against Transgender People in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>.

⁷⁸ The Yogyakarta principles plus 10. (2017). Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

⁷⁹ European Commission. (2020, p. 203—212). Legal gender recognition in the EU: The journeys of trans people towards full equality. Available at https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

⁸⁰ Evropska komisija. (2020). Sporočilo Komisije Evropskemu parlamentu, Svetu, Evropskemu Ekonomskosocialnemu odboru in Odboru regij. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2020:0698:FIN:SL:PDF>.

The Advocate suggests that the National Institute of Public Health should:

5. implement the 11th revision of the International Classification of Diseases ICD-11 as soon as possible.⁸¹

The Advocate recommends that the Health Insurance Institute of Slovenia should:

6. at the time of the 11th revision of the International Classification of Diseases ICD-11, ensure at least the same level of coverage of the costs of medical interventions to patients in procedures of medical gender identity confirmation from compulsory health insurance as previously received.

The Advocate suggests that the Interdisciplinary Council for Gender Identity Confirmation should:

7. intensify its activities to inform healthcare professionals about issues of transgender people. In doing so, experts from other professions and non-governmental organisations working on transgender rights should be invited to participate, as appropriate.

The Advocate suggests that the University Psychiatric Clinic should:

8. appoint alternate specialists – members of the Interdisciplinary Council – to ensure the smooth operation in the event of prolonged absences of its members, which would also facilitate the exercise of the right to a second opinion under the Patients' Rights Act.

3.2.2 Recommendations on legal gender recognition

The Advocate recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities should:

9. prepare a comprehensive act on legal gender recognition, within which:
 - the administrative procedure for changing gender data will be regulated in such a way that it no longer requires a declaration from a medical institution or a doctor and that the self-determination of the person seeking to initiate the procedure for legal gender recognition is sufficient;
 - the procedure for legal gender recognition should be carried out within administrative proceedings;
 - the change of name and the change of gender in personal documents should be regulated within a single procedure in administrative units;
 - the preservation of all acquired rights, including marriage and parenting rights is ensured;
 - it should also allow for the registration of a third, neutral gender labelling option for transgender and intersex people.

⁸¹ World Health Organisation. ICD-11: International Classification of Diseases 11th Revision – The global standard for diagnostic health information. Available at: <https://icd.who.int/en>

The Advocate recommends that the Ministry of the Interior should:

10. abolish local jurisdiction for legal gender recognition procedures, so that applicants can regulate this in any administrative unit, and issue instructions to all administrative units;
11. ensure that procedure for the change of the registered gender data is free of charge and uniform across all administrative units, and issue instructions to all administrative units.

The Advocate recommends that the Ministry of Public Administration should:

12. provide training to public officials in administrative units on the appropriate treatment of transgender people according to their specific characteristics and needs.

3.2.3 Explanation of the recommendations

1.

The Advocate recommends that the Ministry of Health should provide funding for the establishment of a national contact point for awareness raising on the rights of transgender patients and consultation with experts from various professional backgrounds in the field of procedures of medical gender identity confirmation, following the example of the National Contact Point for Rare Diseases.

Explanation

Following the footsteps of the National Contact Point for Rare Diseases, it is appropriate to establish a national contact point on procedures for medical gender identity confirmation.⁸² It should bring institutions, experts, transgender people, and their close relatives together to provide them with quality information on the procedures for medical gender identity confirmation in Slovenia, including information on all patients' rights. The national contact point should provide users with information and advice in the most accessible way possible.

2.

The Advocate recommends that the Ministry of Health should establish a working group comprised of medical and legal professionals in this field, human rights experts, and representatives from non-governmental organisations to develop national standards of care for transgender people in procedures for medical gender identity confirmation.

Explanation

The European Commission against Racism and Intolerance issued⁸³ a report on the situation in Slovenia in June 2019. It was recommended, among other, that: "Authorities should also establish clear guidelines for gender change procedures and formal recognition, taking into account international standards, particularly the Resolution 2048 (2015) of the Parliamentary Assembly of the Council of Europe".

At its 18th session⁸⁴ on 29 May 2019, the issue was discussed by the Extended Professional College of Psychiatry as a working body of the Ministry of Health who, at the its request, took into consideration the initiative of two non-governmental organisations. They proposed the formal regulation of the procedures for medical gender identity confirmation as well as their public accessibility. Similar to the Advocate's recommendation, the Expanded Professional College of Psychiatry made a proposal to the Ministry. It also stated that the guidelines must be approved by the Ministry of Health and the Slovenian Health Insurance Institute.

⁸² Learn more at: <https://www.gov.si/teme/nov-tema-200204153240/>

⁸³ Evropska komisija za boj proti rasizmu in nestrpnosti. (2019). Poročilo Evropske komisije proti rasizmu in nestrpnosti o Sloveniji (peta faza spremljanja). Dostopno na: <http://www.zagovornik.si/wp-content/uploads/2019/06/ECRI-Prilogo%20-%20Dilo-2019.pdf>.

⁸⁴ The report is available at: <https://www.gov.si/zbirke/delovna-telesa/rsk-za-psihatrijo/>

3.

The Advocate recommends that the Ministry of Health should provide transgender people in need of medical care with comparable access to specialised endocrinologists, members of the Interdisciplinary Council, as other people have, to endocrinological treatment.

Explanation

When choosing endocrinologist specialists in medical gender identity confirmation procedures, transgender patients are in less favourable position compared to other patients requiring specialist endocrinological treatment. Transgender patients have only three specialist endocrinologists to choose from, two for adult patients and one for children. They are all members of the Interdisciplinary Council. Other endocrinologists do not have the subspecialist knowledge needed to treat gender dysphoria. All three specialists, in addition to transgender patients, treat other patients as well. In order to remedy the disadvantaged situation of transgender people, the Advocate recommends that their needs be addressed in a way that will provide them with equal rights and opportunities compared to others.

4.

The Advocate recommends that the Ministry of Health provides healthcare professionals with education and training on the appropriate treatment of transgender people based on their specific characteristics and needs.

Explanation

The PACE recommended in its Resolution 2048⁸⁵ of 2015 that transgender people's human rights and discrimination based on gender identity shall be addressed through human rights education and training programs, as well as public awareness campaigns. Education professionals, law enforcement officials, and healthcare professionals, including psychologists, psychiatrists, and general practitioners, should be given information and training on transgender people's rights and specific needs, with a focus on the need to respect their privacy and dignity.

5.

The Advocate advises the National Institute of Public Health to implement the 11th revision of the International Classification of Diseases ICD-11 as soon as possible.

Explanation

WHO Member States are able to use the 11th revision of the International Classification of Diseases ICD-11 beginning January 1, 2022.⁸⁶ It no longer considers being transgender a mental disorder⁸⁷, resulting in the depathologization of transsexualism.

Concerning the new International Classification of Diseases ICD-11, the Interdisciplinary Council informed the Advocate that the 10th revision of the ICD is still in effect in Slovenia and that the Interdisciplinary Council adheres to this classification.

⁸⁵ Available in English at: <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21736>

⁸⁶ World Health Organisation. ICD-11: International Classification of Diseases 11th Revision – The global standard for diagnostic health information. Available at: <https://icd.who.int/en>

⁸⁷ Learn more at: [Gender incongruence and transgender health in the ICD \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/gender-incongruence-and-transgender-health).

6.

The Advocate recommends that, at the time of the 11th revision of the International Classification of Diseases ICD-11, the Health Insurance Institute of Slovenia should ensure at least the same level of coverage of costs of medical interventions to patients in procedures for medical gender identity confirmation from compulsory health insurance as previously received.

Explanation

When the WHO adopted the new International Classification of Diseases ICD-11, it stated that transgender people should have access to procedures for medical gender identity confirmation, as well as health insurance coverage.⁸⁸

7.

The Advocate recommends that the Interdisciplinary Council for Gender Identity Confirmation should intensify its activities to inform health care professionals about issues of transgender people. In doing so, experts from other professions and non-governmental organisations working on transgender rights should be invited to participate, as appropriate.

Explanation

At the end of 2019, the Ministry of Health invited members of the Interdisciplinary Council in writing to increase their participation in the field of informing healthcare professionals about issues of transgender people.

8.

The Advocate recommends that the University Psychiatric Clinic Ljubljana should appoint alternate specialists – members of the Interdisciplinary Council – to ensure the smooth operation in the event of prolonged absences of its members, which would also facilitate the exercise of the right to a second opinion under the Patients' Rights Act.

Explanation

In response to the Advocate's query, the Ministry of Health stated that problems arise from time to time in the work of the Interdisciplinary Council "due to the absence of individual specialists, which consequently hinders appropriate treatment," but that they "try to solve these problems optimally."

⁸⁸ [Gender incongruence and transgender health in the ICD \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/transsexuals-and-transgender-people).

9.

The Advocate recommends that the Ministry of Labour, Family, Social Affairs, and Equal Opportunities should draft a comprehensive act on legal gender recognition, in which:

- **the administrative procedure for changing gender data will be regulated in such a way that it no longer requires a declaration from a medical institution or a doctor and that the self-determination of the person seeking to initiate the procedure for legal gender recognition is sufficient;**
- **the procedure for gender legal recognition should be carried out within administrative proceedings;**
- **the change of name and the change of gender in personal documents should be regulated within a single procedure in administrative units;**
- **the preservation of all acquired rights, including marriage and parenting rights is ensured;**
- **it should also allow for the registration of a third, neutral gender labelling option for transgender and intersex people.**

Explanation

In the conclusions of its report on the subject in March 2021, the Interdepartmental Working Group for the Study of the Legal Regulation of the Change of Gender or the Legal Recognition of Gender at the Ministry of Labour, Family, Social Affairs, and Equal Opportunities stated that the most optimal solution for the systemic regulation of the field is to adopt a special act regulating the legal gender recognition.

A number of international documents, including the Parliamentary Assembly of the Council of Europe's Resolution 2048 (2015), support this.

10.

The Advocate recommends that the Ministry of the Interior should abolish local jurisdiction for legal gender recognition procedures, so that applicants can arrange this in any administrative unit and issue instructions to all administrative units.

Explanation

Because of the confined area of the local environment, change of gender data procedures on administrative units of permanent residence may expose transgender people to the possibility of disclosing their transgender identity and, as a result, to stigmatisation and discrimination. To avoid this, they should be able to regulate procedures in administrative units located outside their place of residence.

11.

The Advocate recommends that the Ministry of the Interior should ensure that the change of the registered gender data is free of charge and uniform across all administrative units, and to issue appropriate instructions to all administrative units.

Explanation

According to the administrative units' responses to the Advocate's query, some administrative units interpret the Administrative Fees Act in such a way that persons in the process of gender change are exempt from paying the fee for the application and decision.

12.

The Advocate recommends that the Ministry of Public Administration should provide training to public officials in administrative units on the appropriate treatment provided to transgender people according to their specific characteristics and needs.

Explanation

The European Commission recommended additional measures to Member States in its Recommendations to advance the inclusion of transgender people across the EU, such as the development of guidelines and the provision of education, to promote respectful attitudes of public officials toward transgender people.⁸⁹

⁸⁹ European Commission. (2020, p. 203—212). Legal gender recognition in the EU: The journeys of trans people towards full equality. Available at https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf.

Special Report – Situation of Transgender People in Procedures for Medical Gender Identity Confirmation and Legal Gender Recognition in Slovenia

Issued by

The Advocate of the Principle of Equality of the Republic of Slovenia

On behalf of the Advocate

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