

Declaration of the Trans Rights Conference

28th October 2009, Malta

We, the participants of the European Trans Rights Conference, yearn for a Europe free from all discrimination¹, where all people are valued equally irrespective of their gender identity and gender expression. We envision a Europe where people of all gender identities and gender expressions are fully respected and can live freely without any violations to their human rights and institutions' interferences in their private lives, in accordance with the Yogyakarta Principles². We want a Europe where health insurance funded adequate hormonal and surgical medical assistance is available in a non-pathologizing manner to all those trans people³ who seek it, and where no trans person is required to undergo any compulsory medical treatment (*such as sterilization or gender reassignment surgeries*) or a mental disorder diagnosis in order to change legal gender and/or name.

Commissioner for Human Rights' 'Gender Identity and Human Rights' Issue Paper

We unanimously welcome the 'Gender Identity and Human Rights' Issue Paper⁴ published by the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, in July 2009. Commissioner Hammarberg's Issue Paper is a significant step forward in articulating the human rights and equality that national governments should provide to trans people. We endorse all of Commissioner Hammarberg's twelve recommendations and urge all 47 Council of Europe Member States to implement these recommendations at their national levels, including the implementation of legislation/procedures that allows to change name and gender without compulsory medical treatments, or any form of diagnosis, and including strong anti-discrimination legislation inclusive of gender identity and gender expression.

- We call upon the Commissioner to exercise his influence with the Council of Europe's Member States to ensure that they tackle any gaps in their legislation and policies with regard to the twelve recommendations in the Issue Paper.

European Institutions

We note the importance of European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and European Union gender equality directives and various

judgements of the European Court of Human Rights and European Court of Justice, in reducing discrimination against trans people.

We call upon the institutions of the Council of Europe and the European Union to:

- Monitor the implementation of case-law and gender equality legislation vis-à-vis trans people
- Make sure that future gender equality legislation expressly includes gender identity and gender expression
- Outlaws any form of discrimination against all trans people explicitly.
- Clearly include measures addressing trans equality issues within gender mainstreaming measures; funding programmes; and including the multi-dimensional gender identity and gender expression in internal and external policy
- Fund detailed research and data collection on trans equality and human rights issues
- Consult and involve trans equality and rights organisations in European gender equality and human rights policy development

Organisation for the Security and Cooperation in Europe (OSCE)

We note with particular concern the high murder rate and violence against trans people across Europe. Often the police fails to investigate cases of hate crime and killings of trans people and no adequate prosecution of the perpetrators takes place. In addition trans related hate crimes are hardly documented and monitored.

Additionally, trans people with migration background and trans sex workers are especially vulnerable and face multiple forms of discrimination as well as social exclusion and economic hardship.

- We call on participating States of the OSCE to enact hate crime legislation fully inclusive of trans people.
- We call on participating States of the OSCE to ensure safe detainment and contact with their communities for trans prisoners.
- We call upon the OSCE to monitor and urge for investigation of murders of trans people as hate crimes.

Social Partners: *Trade Unions and Employers' Organisations*

We are concerned with the high level of discrimination that many trans people face in access to, and retention of employment. This frequently leads to poverty and severe negative repercussions on their lives and health. A disproportionately high number of trans people get fired when their transgender status becomes known to their employers (e.g. when starting a process of gender transition, when being visibly gender-non-conforming, etc.).

- We call upon the social partners to proactively undertake joint initiatives with trans and LGBT organisations to reduce trans discrimination and harassment at the workplace, and to implement workplace policies which uphold trans workers' dignity.
- We call upon the European Trade Union Confederation (ETUC) and its members to implement the eleven actions and activities that the ETUC outlined in its Executive Committee's Resolution on LGBT rights of 2008⁵.
- We call upon employers' organisations to tackle the issue of discrimination against trans people in promoting diversity with their members, and to highlight how current equality legislation applies to trans people.

National equality bodies

We note the importance of national equality bodies in tackling discrimination against trans people through enforcement of gender equality and anti-discrimination legislation at national level. The Fundamental Rights Agency's social situation report⁶ shows that national equality bodies are currently not sufficiently including trans issues in their work. We therefore call upon national equality bodies to:

- Be pro-active in enforcing anti-discrimination legislation to improve trans equality and human rights.
- Monitor the implementation of case-law and gender equality legislation vis-à-vis trans people.
- Include trans people in gender mainstreaming measures
- Produce guidance on trans-rights and equality.
- Support trans people in taking forward cases of discrimination to courts and/or respective entities.
- Make sure that future gender equality legislation expressly includes gender identity and gender expression.
- Research, collect and publish data on trans equality and human rights issues
- Consult and involve trans equality and rights organisations in national gender equality and human rights policy development.

World Health Organisation (WHO)

We observe with great concern that trans identities are still pathologized and considered a mental health condition. Given its strong implications on the living of trans people in Europe we therefore demand the removal of gender identity disorder from the International Classification of Diseases (ICD) and the Diagnostic and Statistical Manual of Mental Disorders (DSM).

- We call upon the World Health Organisation to safeguard the human rights of trans people in the current revisions of the ICD 10 and DSM IV.
- We call for an alternative non-pathologizing category in the ICD 11, which establishes quality standards for medical treatments ample to support the gender expression of trans people. No national or international health institution shall render transgender identities as mental health disorders. They should nonetheless enable access to hormonal, surgical and or psychological medical assistance to be provided to those trans-people who seek such assistance.

Finally, we ask Transgender Europe (TGEU) and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) to continue lobbying for full trans equality and rights on a European level and call upon TGEU, ILGA-Europe and national trans organizations to work together for the implementation of Commissioner Hammarberg's recommendations throughout Europe. We call strongly all Member States of the Council of Europe to take active steps safeguard the human rights of all people explicitly including trans people.

¹ Discrimination against trans people in Europe has been widely documented in both *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part I – Legal Analysis* (2008) http://fra.europa.eu/fraWebsite/material/pub/comparativestudy/FRA_hdgso_part1_en.pdf and *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II – The Social Situation* (2009) http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_Part%202_en.pdf

² Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007) <http://www.yogyakartaprinciples.org/>

³ Trans people (as used above) includes those people who have a gender identity which is different to the gender assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth. It includes those people who feel they have to, or prefer or choose to, whether by clothing, accessories, cosmetics or body modification, present themselves differently to the expectations of the gender role assigned to them at birth. This includes, among many others, transsexual and transgender people, transvestites, cross dressers, no gender, multigender, genderqueer people.

⁴ Human Rights and Gender Identity Issue Paper (2009) <https://wcd.coe.int/ViewDoc.jsp?id=1476365>

⁵ ETUC actions and activities on promoting equal rights, respect and dignity for workers regardless of their sexual orientation or gender identity (2008) <http://www.etuc.org/a/5808>

⁶ See 1.