European Court of Human Rights Disappoints Trans Families: TGEU & BVT Joint Statement

statement & call to action, youth and families

Today, the European Court of Human Rights (ECtHR) published its decisions on two cases of trans parents from Germany. In both cases, the applicants challenged the fact that the birth certificate of their child does not show their recognised gender identity.

In *O.H. v. Germany*, the applicants are a trans man and his child. They claim that "deadnaming" the man by putting his old female first name on the child's birth certificate and designating him as "mother" violates their right to private and family life, as protected by Article 8 of the European Convention.

Similarly, in *A.H. v Germany*, the applicant is a trans woman, her child and her partner, who claim that the trans woman was wrongfully 'deadnamed' and designated as 'father' in her child's birth certificate.

In both cases, the parents are biologically related to their child and had their gender identity recognised before the child's birth.

What did the ECtHR say?

The Court emphasised in its decision that no human rights violation could be established. According to the judgement, a false entry in the birth certificates is at the discretion of the German state. Additionally, with a view to the truthfulness and accuracy of civil status registers, there is an understandable interest on the part of the state to register trans people with their previously held gender marker and first name, the court said.

According to §5.3 of the German *Transsexuellengesetz*, the official name change of a trans person will not be reflected in the birth certificate of any biological offspring. Instead, the previously recorded name must be entered. The designation as "mother" or "father" follows from that. The legislation claims to protect the child from discrimination due to the trans identity of the parent.

Why does it matter?

In practice, such birth certificates out the parent as transgender. The birth certificate of children is often the only document displaying the parent's previously held name. Whenever in contact with authorities related to the child, these families must explain the discrepancy in documents. Typically, the birth certificate of the child needs to be presented when entering kindergarten or school, but also when showing kinship for travelling abroad etc.

This forced outing jeopardises the safety and security of child and parent. It deprives the child of the right to decide if, when, and with whom to share their family background. This invites discrimination, abusive behaviour, and unnecessary scrutiny. This pushes many families to avoid contact with public authorities and decide to not travel at all. The principle of the best interest of the child is thus undermined.

At the moment, the German government is preparing a draft bill to base legal gender recognition on self-determination. The recognition of trans parents will be part of this draft bill, as it will provide an interim solution before a more comprehensive parentage law reform.

“Even if today the Court could not find a violation, we stand with trans families across Europe. We demand legal certainty from legislators and recognition of these lived realities. Legislators in Germany and in the other 41 European states not recognising trans parenthood nonetheless need to act and end these forced outings quickly.

“It is in the best interest of the child to have their parents’ identity be recognised. Forcefully outing them is not.

“Trans parents must be automatically registered according to their recognised gender identity in their children’s papers. For children born before legal gender recognition, this must be swiftly possible upon application”, comments TGEU Executive Director, Lenny Emson

“‘We are deeply grateful for both applicant families as trailblazers. They encourage other trans people to start a family. Similar to the long battle for same-sex marriage, we will support trans families in their quest for recognition and protection”, adds Emson

“The court decision in Straßbourg has been awaited for years and raises awareness for the situation of trans parents. It is upsetting, however, that the decision fails to recognise the impact of forced outings and deadnaming in the lives of trans parents. We strongly demand: Fundamental rights of trans parents and their children need to be protected. This pressing issue cannot be left to the courts alone. More political initiative is needed now.

“It is long overdue to adapt the German law of parentage so that trans parents are recognised in their gender identity. It is also necessary to abolish the discriminatory *Transsexuellengesetz* and to guarantee legal gender recognition through self-determination in every aspect of life”, adds Kalle Hümpfner, Policy Officer at Bundesverband Trans*.

Read the ECtHR judgements

O.H. v Germany

- Judgement (French | EN machine translation)
- English press release

A.H. v Germany

- Judgement (English)
- English press release

More on the struggles trans people and their families are facing in these ground-breaking TGEU publications:

- Jumping ropes: Experiences of trans parents in Europe & Central Asia.
- Stuck on the swing: experiences of trans parents with freedom of movement in the EU

TGEU, BVT and ILGA-Europe had submitted third party interventions in both cases.

Link to joint third party intervention by TGEU, ILGA-Europe and BVT in:

- O.H. v Germany
- A.H. v Germany

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Bundesverband Trans* (BVT) is the umbrella organisation of trans organisations in Germany.

TGEU is an umbrella organisation striving for the rights and support of trans people in Europe and Central Asia.