

**Monitoring Implementation of the Council of Europe
Recommendation to the member states on measures
to combat discrimination on grounds of sexual
orientation or gender identity CM/Rec(2010)5 -
Transgender and intersex issues in Finland**

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EXECUTIVE SUMMARY

This report is based on the gender minority specific areas of the *Council of Europe Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination on grounds of sexual orientation or gender identity*.¹ The report focuses on trans and, to some extent, intersex issues and was prepared by Trasek, a volunteer-based human rights NGO that provides counselling and practical advice to trans and intersex people seeking justice. Appendix I covers LGBTIQ issues more broadly and was compiled by Finnish LGBTIQ organisations Seta, Sateenkaariperheet and Trasek.

The main priority areas explored in this report include legal gender recognition, employment and education, access to transgender-specific health services, intersex issues and issues concerning asylum seekers. The report includes recommendations for policy makers and officials to improve the rights and welfare of gender minorities living in Finland.

After the first cycle of reporting implementation of CM/REC(2010)5 in 2013, a set of changes have taken place. At the level of legislation, the situation has improved for gender minorities in Finland. In 2015, gender identity and gender expression were included in the *Act on Equality between Women and Men*² (sic). The act states that *'the provisions on discrimination based on gender identity or gender expression apply correspondingly to discrimination based on the fact that an individual's physical gender-defining characteristics are not unambiguously female or male'*. The Act obliges public authorities, employers and education providers to take pre-emptive action against all discrimination based on gender identity, gender expression and sex characteristics. However, the legal obligations for preventing discrimination are vague and there is still a lack of information about the practical effects and application of the amendment. The Ombudsman for Equality supervises compliance with the Act, but mostly based on individual complaints.

At the moment, the requirements for legal gender recognition and clinical practices on the treatment of gender incongruence violate the rights of transgender people in Finland. Particularly problematic areas include the lower age limit of 18 and sterilization as a requirement for legal gender recognition. "Male" and "female" are the only legal gender options, thus legal gender recognition is not available to non-binary transgender people or intersex people who wish to have a legal gender marker other than male or female. The access to treatment for gender incongruence is impeded by long waiting times to the diagnostic units. Furthermore, the situation of non-binary people with regards to accessing gender-affirming treatment is unclear. Long periods of suspension in the diagnostic process are common, as the process can be discontinued, for example, due to mental health reasons. There is a lack of adequate treatment for

¹ CM/Rec(2010)5 (2010, March 31). Retrieved from https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a

² Act on Equality between Women and Men. Retrieved from https://www.finlex.fi/en/laki/kaannokset/1986/en19860609_20160915.pdf

transgender youth, as the diagnostic process can only start after age 13, and puberty inhibiting medication is not available. In general health care, the specific knowledge regarding gender minority patients of mental and physical health providers varies. The knowledge of gender minority issues varies also with professionals who work with asylum seekers. Intersex children are subjected to involuntary medical interventions, which are irreversible and medically unnecessary, including genital surgery and hormonal treatments. There is a lack of adequate support for intersex individuals and their families.

In conclusion, there has been some improvements since the last cycle, but changes in legislation alone are not sufficient enough to ensure safe and equitable environments for transgender (including non-binary) and intersex people living in Finland.

RECOMMENDATIONS

Several measures are recommended to improve the situation of transgender and intersex individuals in Finland.

Psychiatric diagnosis or sterilization should not be required for legal gender recognition, which should be based on self-determination. Legal gender recognition should be available to minors. A third option for legal gender should be put in place to ensure legal gender recognition for non-binary transgender people and for intersex people who wish to have a legal gender marker other than female or male.

Measures should be taken to ensure access to treatment for gender incongruence within a reasonable timeframe. The ICD-11 should be implemented, thus psychiatric diagnosis should not be required for gender affirming care. Treatment should be reliably available to all transgender individuals, non-binary as well as binary. The diagnostic process and treatment of gender diverse children and adolescents should be assessed to ensure evidence-based practices with the best interest of the child in mind.

Health care professionals should receive education on gender minorities to ensure equal access to the diagnostics units and to ensure adequate mental and physical health services. “Conversion therapies” should be banned.

Education providers and employers should be made aware of their duty to renew educational and work certificates when requested. Measures should be taken to ensure equality plans in education and employment actually cover discrimination on grounds of gender identity, gender expression and sex characteristics, and for the plans to include explicit guidelines for action. Employers should be forbidden to collect data concerning gender identity and gender history of employees to protect their privacy.

Teachers and other school staff need to be educated on how to tackle bullying towards gender minorities. Young people should be given necessary information, protection and support to enable them to live in accordance with their gender identity.

Asylum seekers belonging to gender minorities should be provided with legal aid from the start of the asylum process. In addition, personnel in reception centres and legal assistants should receive education on gender minorities.

Measures should be taken to protect intersex children from involuntary and unnecessary medical interventions. Health care and educational professionals should receive education on intersex issues to ensure adequate support for intersex individuals and their families.

Research on the wellbeing and discrimination of gender minorities is insufficient at the moment. More research is needed on discrimination in employment and education, and on the situation of asylum seekers who belong to gender minorities.

INTRODUCTION

Background

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity was adopted by the Committee of Ministers on 31 March 2010. It recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to the recommendation;
5. ensure by appropriate means and action that the recommendation, including its appendix, is translated and disseminated as widely as possible.

The purpose of this report is to assess progress made by Finnish authorities in implementing the Recommendation on measures to combat discrimination on grounds of gender identity, gender expression and sex characteristics, and to highlight the areas where further action is needed.

Methodology

The current report is based on gender minority-specific questions in *the Questionnaire*³ on measures to combat discrimination on grounds of sexual orientation or gender identity. The information used for assessment has been obtained from a number of sources including:

- Legislation
- Communication with personnel from Seta – LGBTIQ Rights in Finland, which is a national human rights NGO, under which operates the Transgender Support Centre, and TIKa-project aimed at advancing intersex rights in Finland
- Communication with activists from Trasek
- HeSeta LGBTIQ NGO and their Together-project aimed at LGBTIQ immigrants

³ Online: <https://rm.coe.int/cddh-2018-02-en/16807932ed>

- Public reports in media
- E-mail communication with the Ministry of Justice, under which the Ombudsman for Equality operates
- E-mail communication with the Ministry of Social Affairs and Health
- Recent studies on gender minority issues

KEY FINDINGS

IV. Right to respect for private and family life

“20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.”

In Finland, legal gender recognition is not based on self-determination and the current regulations fail to reach the standards of *the Recommendation*. Several authorities, including The Ombudsman for Equality, the Ombudsman for Children and the Non-Discrimination Ombudsman, have stated that the requirements for legal gender recognition violate the rights of transgender people.⁴

Transgender individuals (including non-binary individuals) face several barriers when trying to access legal gender recognition.

- 1) At the moment, people who wish to access legal gender recognition are required by law to undergo operation or other treatments, such as hormonal replacement therapy, entailing sterilization. *Act on legal recognition of the gender of transsexuals*⁵ (sic) regulates legal gender recognition in Finland and, at the moment, it requires the individual ‘*to be able to present a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilized or is for some other reason infertile*’.
- 2) Legal gender recognition is dependent on a psychiatric diagnosis; thus it is not accessible to those whose diagnostic process is suspended. Suspensions are common and are often justified on grounds of mental health issues. Not all cases of mental health issues result in suspension and it is often unclear to the patients by which standards the diagnostic process is suspended.⁶
- 3) Legal gender recognition is not available for non-binary genders, thus non-binary individuals have to choose between "male" and "female". These may not represent their identity and the lack of accurate legal gender marker can cause problems in day-to-day life and renders them invisible to society.
- 4) One’s access to legal gender recognition depends on age (not available for individuals under 18), which is highly problematic for transgender youth.

⁴ Tasa-arvovaltuutettu, lapsiasiavaltuutettu ja yhdenvertaisuusvaltuutettu: Translaki uudistettava vastaamaan perus- ja ihmisoikeuksia (2018, May 17). Retrieved from <https://www.tasa-arvo.fi/-/tasa-arvovaltuutettu-lapsiasiavaltuutettu-ja-yhdenvertaisuusvaltuutettu-translaki-uudistettava-vastaamaan-perus-ja-ihmisoikeuksia> Available only in Finnish.

⁵ Act on legal recognition of the gender of transsexuals. Retrieved from https://www.finlex.fi/fi/laki/kaannokset/2002/en20020563_20020563.pdf

⁶ Communications with Trasek activists

- 5) Requirements for legal gender recognition include a demonstration of one year of "life experience" in the self-determined gender.
- 6) There have been cases where legal gender recognition has not been accessible because of one's medical status. Infertility required for legal gender recognition can be acquired through hormonal or surgical interventions, but these treatments can be denied for medical reasons, such as an individual's body mass index being considered too high.⁵
- 7) Many of those with low income or receiving supplementary benefits have trouble covering the costs associated with legal gender recognition. These expenses include costs for treatments, covered only partially by social security. Special reimbursement for hormonal treatment is only available after legal gender recognition has been obtained; before this, the medication must be paid for by the patient. Other expenses include name change, new ID card, driving license and other licenses, many of which must be renewed twice: at the time of the name change; and again when legal gender recognition is obtained. In addition to other expenses, the diagnosis required for legal gender recognition can be acquired only in Helsinki University Hospital or Tampere University Hospital, both located in southern Finland, which results in additional travel expenses, particularly to those living far from these locations. The travel expenses are covered only partially by social security.⁵

“21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates”.

The Ministry of Education and Culture gave a statement in 1997, recommending that transgender people be given the right to acquire educational certificates renewed to match one's current name and gender. The certificate must not disclose information of gender reassignment.⁷ Generally, the timespan between name change and legal gender recognition can extend up to a year, thus the Ministry of Education and Culture and the Ombudsman for Equality have recommended that one should be able to renew their educational certificates after the name change and again after the legal gender recognition.

The Ombudsman for Equality and Occupational Safety and Health Administration in Finland have recommended similar policy for work certificates.⁸ In practice, compliance varies with individual employers

⁷ Sukupuolen korjaaminen ja todistus. Retrieved from https://www.oph.fi/saadokset_ja_ohjeet/koululainsaadannon_soveltaminen/sukupuolen_korjaaminen_ja_todistus. Available only in Finnish.

⁸ Sukupuolta korjaavat tarvitsevat uudet työ- ja opintotodistukset: Tasa-arvoaltuutetun ja työsuojeluviranomaisten suositus (2010, June 15). Retrieved from <https://www.tasa-arvo.fi/tyo-ja-opintotodistukset>. Available only in Finnish.

and education providers. The Ombudsman for Equality offers assistance in cases where the employer or education provider has not been compliant.

“22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed”.

The gender legally recognized in accordance with *the Act on legal recognition of the gender of transsexuals* is considered the person’s gender when applied to other legislation, including legislation on marriage. Same-sex marriage has been legal in Finland since 2017⁹, thus a transgender person has the right to marry a person of any legal gender.

In conclusion, the accessibility of renewing official documents is good, and assistance is offered in cases of discrimination. The right to marry is guaranteed for transgender people. The most prominent issue in the area of *Right to respect for private and family life* is the requirements for legal gender recognition and issues concerning the accessibility of it.

Suggested Measures

- Ensure that legal gender recognition is based on self-determination, therefore abolishing the requirements for mandatory psychiatric diagnosis and sterilization.
- Ensure that legal gender recognition is accessible for minors.
- Put in place a third option for legal gender to ensure legal gender recognition to non-binary transgender people and to intersex people who wish to have a legal gender marker other than female or male.
- Ensure that education providers and employers are aware of their duty to renew educational and work certificates when asked.

V. Employment

“29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation”.

⁹ Avioliittolaki (2017, March 1). Retrieved from <https://www.finlex.fi/fi/laki/ajantasa/1929/19290234>. Available only in Finnish.

Act on Equality between Women and Men forbids discrimination based on gender identity or gender expression in employment.¹⁰ In the case of discrimination, one must be able to present evidence that discrimination has taken place, e.g. the applicant having more expertise than the person who was recruited. If the discrimination can be proved, one has the right to claim compensation from the employer in the district court.¹¹ In practice, discrimination based on gender identity or gender expression can be hard to prove.

Act on Equality between Women and Men obligates employers to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation must be considered in the preparation of the employer's gender equality plans and in decisions regarding measures to promote gender equality. There is still a lack of systematic research about discrimination of gender minorities in employment. In a recent study¹², only 40% (approximately) of those employees who were familiar with the gender equality plan in their place of employment reported the plan to be inclusive of transgender and intersex issues. One third of the employees estimated that transgender or intersex employees would face discrimination in their place of employment. There is no recent research on the experiences of transgender and intersex employees themselves.

The Ombudsman for Equality has limited resources for supervising compliance with the Act. Inspections are carried out mostly in places of employment where suspected discrimination has been reported. In addition, small-scale monitoring targeting certain industries is carried out from time to time. In 2016, equality plans of 60 municipalities were assessed and only 10 of these addressed gender identity or gender expression.¹³

“30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees”.

According to the *Act on the Protection of Privacy in Working Life*¹⁴ the employer may only deal directly with personal data necessary for the employment. *The Personal Data Act*¹⁵ states that the collection and processing of sensitive personal data is prohibited, but even though sexual orientation and health are

¹⁰ Act on Equality between Women and Men. Retrieved from

https://www.finlex.fi/en/laki/kaannokset/1986/en19860609_20160915.pdf

¹¹ Todistustaakka ja syrjintäoletta. Retrieved from <https://www.tasa-arvo.fi/syrjintaolettama-ja-todistustaakka>
Available only in Finnish.

¹² Tasa-arvobarometri 2017 (2018, June 15). Retrieved from <http://julkaisut.valtioneuvosto.fi/handle/10024/160920>.
Available only in Finnish.

¹³ Response from the Ombudsman for Equality to e-mail inquiry about gender minorities and employment.

¹⁴ Act on the Protection of Privacy in Working Life. Retrieved from

<https://www.finlex.fi/en/laki/kaannokset/2004/en20040759.pdf>

¹⁵ The Personal Data Act. Retrieved from <https://www.finlex.fi/fi/laki/kaannokset/1999/en19990523.pdf>

considered to be sensitive personal data, gender identity and gender history are not specifically covered. In practice, employers can preserve information e.g. on previous names of employees.

While the non-discrimination and equality legislation prohibit discrimination in employment on grounds of gender identity, gender expression or sex characteristics, there is a lack of proactive and systematic measures to counter it and lack of research into the actual discrimination occurring.

Suggested Measures

- Measures should be taken to ensure equality plans in employment actually cover discrimination on grounds of gender identity, gender expression and sex characteristics, and for the plans to include explicit guidelines for action, e.g. concerning gendered facilities and name policies.
- Information on discriminatory practices in employment towards gender minorities is insufficient at the moment. More research is needed.
- Measures should be taken to forbid the collection of data concerning gender identity and gender history of employees.

VI. Education

“31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity”.

According to the Act on Equality between Women and Men, ‘authorities, education providers and other bodies providing education and training ... are obliged to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression’.¹⁶ This obligation ‘must be taken into account in the preparation of the educational institution’s gender equality plans and in decisions regarding measures to promote gender equality’.

In practice, the legislation does not define sufficient policies to ensure safe and supportive environments for students belonging to gender minorities. Educational institutions are obliged to create equality plans, but their content and application depends on the expertise of individual personnel. There is no guarantee that these plans will address the situation and needs of gender minorities. There are no guidelines to enforce respect for the self-determined name and gender marker or protection from discrimination when using

¹⁶ Act on Equality between Women and Men. Retrieved from https://www.finlex.fi/en/laki/kaannokset/1986/en19860609_20160915.pdf

gendered facilities in educational settings. In addition, the information systems in some educational facilities have fixed gender markers based on social security numbers or do not allow the use of unofficial names.

Little research has been conducted on gender minorities in education after the change in *Act on Equality between Women and Men*. In a study conducted in 2017¹⁷, the students with non-binary gender identities in Finnish vocational schools were more likely than binary-identified students to have experienced bullying, both from other students and from teachers. The study did not separately address transgender students of binary genders. Further research is needed on the discrimination against gender minorities in education. In 2018, the Ombudsman for Equality will inspect the measures taken in comprehensive education to promote gender equality.

As with employment, while legislation prohibits discrimination in employment on grounds of gender identity, gender expression or sex characteristics, there is lack of proactive and systematic measures to counter it and lack of research in such discrimination.

Suggested Measures

- Measures should be taken to ensure equality plans in education actually cover discrimination on grounds of gender identity, gender expression and sex characteristics, and for the plans to include explicit guidelines for action, e.g. concerning gendered facilities and name policies.
- Information on discriminatory practices in employment and education towards gender minorities is insufficient at the moment. More research is needed.
- Teachers and other school staff need to be provided with education regarding the tackling of bullying towards gender minorities.
- Young people who belong to gender minorities should receive necessary information, protection and support to enable them to live in accordance with their gender identity.

VII. Health

“35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements”.

The treatment of gender incongruence is part of the public health care system. In Finland, two hospital units are responsible for the diagnosis and treatment of transgender people. The law stipulates that the composition of the unit must enable correct handling of the diagnosis, treatment and follow-up of transgender patients, including engaging specialists in psychiatry and endocrinology. In addition, Helsinki

¹⁷ The VET Student Survey 2017 (2017, December 13). Retrieved from <http://amisbarometri.fi/en/front-page/>

University Hospital must have a specialist in plastic surgery who has expertise in genital reconstruction.¹⁸ Other treatments are also covered, such as chest reconstruction surgery, breast augmentation, hysterectomy, chondrolaryngoplasty (tracheal shave), vocal surgery, voice therapy, and facial hair removal. Facial surgery is not covered. Even though the treatment of gender incongruence is part of public health care, low income individuals can still struggle with the expenses that include user fees and those medicinal expenses that are not covered by reimbursements.

At the moment, the two units are oversubscribed and waiting lists are extensive. The diagnostic process itself takes a long time and suspensions in the process are common, often justified by mental health issues. The diagnostic process has been criticized for the lack of transparency, as it is not clear to the patients how the suspensions and their duration are determined.

The treatment situation of non-binary transgender people is unclear and varies depending on individual clinicians. A different diagnosis is offered to non-binary transgender individuals (F64.8) as opposed to binary-identified transgender individuals (F64.0), and the diagnostic code can affect availability of treatment, e.g. in some locations, mastectomy is not offered to those with F64.8 diagnosis.

Many patients seek some treatments from private service providers, such as chest reconstruction surgeries, due to the long waiting times or suspensions in the diagnostic process. Hormonal treatment or genital reconstructive surgery is not available in private clinics. Because of the difficulties accessing necessary treatments, some individuals acquire hormonal treatment via unofficial channels or go abroad for surgery. This results in increased costs for the patient and, in case of unsupervised hormonal treatment, health risks.

In some municipalities, getting a referral to one of the diagnostic units can be challenging, especially for young people – even though there are no legal or medical justifications for this. Often doctors are not aware of the legislation on the diagnostic process and sometimes individuals seeking treatment for gender incongruence are sent to local psychiatric clinics, where the diagnosis is not accepted from, nor treatment offered.

At the moment, only individuals over 13 can begin the diagnostic process. Puberty inhibiting medication is not available.

The treatment of gender incongruence does not cover psychological services and support related to gender identity-specific issues. The general public health care provides mental health services, but most service providers lack expertise on gender identity. This is also a problem in the area of physical health.

¹⁸ Sosiaali- ja terveysministeriön asetus sukupuolen muuttamiseen tähtävään tutkimuksen ja hoidon järjestämisestä sekä lääketieteellisestä selvityksestä transseksuaalin sukupuolen vahvistamista varten (2002, December 3). Retrieved from <https://www.finlex.fi/fi/laki/alkup/2002/20021053>. Available only in Finnish.

So-called “conversion therapies” aimed at manipulating a person’s gender identity are prohibited within medical practice/health care providers by The National Supervisory Authority for Welfare and Health.¹⁹ However, no legislation forbids such practices outside of the health care system; thus they are offered by e.g. religious groups. Even health care professionals can offer “conversion therapies”, as long as they do not claim to offer the treatment as a health care professional. LGBTIQ NGOs have been advocating for a total ban on all provision of “conversion therapies”.²⁰

“35. -- no person should be subjected to gender reassignment procedures without his or her consent.”

The Act on Equality between Women and Men states that ‘the provisions on discrimination based on gender identity or gender expression apply correspondingly to discrimination based on the fact that an individual’s physical gender-defining characteristics are not unambiguously female or male’. It has not been clearly stated whether this refers to intersex individuals per se.

Even though discrimination based on one’s physical characteristics is illegal, intersex children are not protected from involuntary and medically unnecessary interventions, such as genital reconstructive surgery (*intersex genital mutilation*²¹) and hormonal treatments. Only one health care district in Finland refuses to perform such interventions. The National Advisory Board on Social Welfare and Health Care Ethics ETENE²² and The Ministry of Social Affairs and Health²³ have recommended a change in these practices so that the timing of potential medical interventions would enable informed consent from the individual.

Traumatization is common for intersex individuals and many require support to overcome obstacles of living in a society in which their bodily integrity is not respected and in which male and female are seen as the only possible physical sexes. In both education and health care, the needs of intersex individuals and their families are not understood sufficiently. As the result, sufficient support is not available.

In conclusion, the availability of treatment for transgender individuals is guaranteed by legislation, but in practice, access to treatment is not effective and accessible to all transgender individuals regardless of age or gender identity. The interventions performed on intersex children are serious human rights violations. Both intersex and transgender issues are poorly understood in the realm of public health care.

¹⁹ Vaihtoehtohoidot (2012 July 25). Retrieved from <http://www.valvira.fi/terveydenhuolto/hyva-ammatinharjoittaminen/vaihtoehtohoidot>. Available only in Finnish.

²⁰ Seta vaatii eheytystoiminnan kieltä – asiantuntevaa tukea on tarjolla identiteettiään pohtiville (2018, June 6). Retrieved from <https://seta.fi/seta-vaatii-eheytystoiminnan-kieltoa-asiantuntevaa-tukea-on-tarjolla-identiteetistaan-karsiville/>. Available only in Finnish.

²¹ Intersex Genital Mutilation – IGM: The Fourteen Days of Intersex (2012, February 25). Retrieved from <http://oiiinternational.com/2574/intersex-genital-mutilation-igm-fourteen-days-intersex/>

²² Intersukupuolisten lasten hoito (2016, March 22). Retrieved from https://etene.fi/documents/1429646/2056382/KANNANOTTO_intersukupuolisuus_pdf.pdf/. Available only in Finnish.

²³ Response from The Ministry of Social Affairs and Health to e-mail inquiry on intersex issues.

Suggested Measures

- Measures should be taken to ensure access to treatment for gender incongruence within a reasonable time frame.
- Finland needs to implement the ICD-11, which clarifies that trans identities are not a mental disorder. Finland must not require trans people to present a psychiatric diagnosis as a requirement for gender affirming health care or legal gender recognition. Any diagnostic process needs to be reassessed to ensure appropriate evidence-based practices are implemented in the best interest of the patient.
- Treatment should be reliably available to all transgender individuals, non-binary as well as binary.
- Health care professionals should receive training on gender minorities to ensure access to the diagnostics units and to ensure adequate mental and physical health services.
- The diagnostic process and treatment of gender diverse children and adolescents should be assessed to ensure evidence-based practices with the best interests of the child in mind.
- “Conversion therapies” should be banned completely, including private and religious providers.
- Measures should be taken to protect intersex children from involuntary and unnecessary medical interventions.
- Health care and educational professionals should receive education on intersex issues to ensure adequate support for intersex individuals and their families.

X. Right to seek asylum

“42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law”.

“43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity”.

“44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation”.

There is a lack of systematic information on the situation of transgender asylum seekers. There have been several cases where the Finnish Immigration Service or court did not believe that the asylum seeker belonged

to a sexual or gender minority.²⁴ Asylum seekers have expressed concern about whether officials understand the impact of belonging to a gender minority in their country of origin.²⁵

The reception centres have taken into consideration the special needs of individuals belonging to gender minorities, such as the need for a private room, although sometimes only after contact with LGBTIQ-NGO worker. There have been reports of discrimination and harassment by other asylum seekers, to which the reception centre staff has not been able to intervene. Transgender asylum seekers have reported feeling unsafe in reception centres.²⁶

The legislation concerning asylum has weakened the rights of persons to apply for an asylum in Finland. For example, access to legal aid has been restricted. These changes seem to have also weakened the right to apply for asylum on SOGIESC grounds. NGOs have been concerned about inadequate assessment of asylum applications by officials, unsafe living conditions in asylum centres, and lack of LGBTIQ-specific support while in Finland.

Suggested Measures

- Asylum seekers belonging to gender minorities are an especially vulnerable group and should be provided with legal aid at the start of the asylum process.
- Personnel in reception centres and legal assistants should receive education on gender minorities.
- More information is needed on the situation of asylum seekers belonging to gender minorities.

²⁴ HeSeta vaatii Maahanmuuttoviraston ja eri oikeusasteiden lisäävän kulttuurisensitiivistä osaamista seksuaalisen suuntautumisen ja sukupuolen moninaisuudesta (2018, April 18). Retrieved from <https://www.heseta.fi/kielteisia-turvapaikkapaatoksia-tehdaan-seksuaalisen-suuntautumisen-ja-sukupuolen-moninaisuutta-koskevissa-hakemuksissa-vahaisella-osaamisella-heseta-vaatii-maahanmuuttoviraston-viranomaiset-ja-eri>. Available only in Finnish.

²⁵ E-mail communication with Senior Social Worker Maarit Huuska from Transgender Support Center

²⁶ E-mail communication with Senior Community Worker from HeSeta

APPENDIX I: Compliance Report

Replies concerning Finland, submitted by Seta LGBTIQ Rights in Finland, Sateenkaariperheet (Rainbow Families) and Trasek to the Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

Finnish LGBTIQ organisations Seta and Trasek authored a report (<http://seta.fi/setan-ja-trasekin-lausunto-euroopan-neuvostolle-suomen-hlbtig-politiikasta-eng/>) on the implementation of CM/Rec (2010)5 already in the first review cycle (2013) as an attachment to the reply submitted by the Finnish government. The present questionnaire is an update of the 2013 report and highlights some of the challenges regarding implementation.

Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity

Section I – Implementation of the Recommendation

Question 1

Has a review been carried out of existing legislative and other measures which could result directly or indirectly in discrimination on grounds of

- a) sexual orientation? Yes/No/Partially**
- b) gender identity? Yes/No/Partially**
- c) and are there measures in place to redress any such discrimination? Yes/No/Partially**

In 2014, the Ministry of Justice published a report on fundamental and human rights of sexual and gender minorities in Finland. The report charts human rights challenges faced by LGBTIQ people in Finland and makes recommendations for action.

The legal situation has improved primarily through the reform of the non-discrimination and equality legislation (2014). In the *Non-discrimination Act*, protection from discrimination on ground of sexual orientation has been extended to all areas of life. In the *Act on Equality*, gender identity, gender expression and sex characteristics are explicitly mentioned as non-discrimination grounds. The Non-Discrimination and Equality Ombudsman mandates cover explicitly sexual orientation (Non-Discrimination Ombudsman), gender identity, gender expression and sex characteristics (Equality Ombudsman).

Question 2

Have legislative and other measures been adopted and/or implemented to collect and analyse relevant data on discrimination on grounds of

- a) sexual orientation? Yes/No/Partially**
- b) gender identity? Yes/No/Partially**

The Ministry of Justice has collected data about hate speech in Finland and the data has also considered hate speech directed at LGTBIQ people. The Ministry has indicated that hate speech would be monitored regularly. The School Health Promotion (SHP) study monitors the well-being, health and school work of Finnish children and adolescents. The aim of the SHP study is to strengthen the planning and evaluation of health promotion activities at school, municipal and national level. For the first time, the study in 2017 included questions about sexual orientation and gender identity. The questionnaire produced data on how pupils in secondary education identify their gender and how non-heterosexual pupils experience their health.

Within a project called Rainbow Rights, funded by the European Commission, the Ministry of Justice has commissioned a report dealing with multiple discrimination of LGTBIQ people which is to be published in 2018.

Despite these positive developments, there is a lack of systematic data collection of discrimination on SOGIESC (sexual orientation, gender identity, gender expression, sex characteristics) grounds in different areas of life e.g. regarding health, social welfare, employment, sports.

Question 3

Have legislative and other policy measures been adopted and/or implemented to combat discrimination on grounds of

- **sexual orientation? Yes/No/Partially**
- **gender identity? Yes/No/Partially**

and in particular

- a) by way of legislative measures? Yes/No**
- b) by way of a national action plan? Yes/No**
- c) by the inclusion of the Recommendation in existing plans? Yes/No**
- d) by the creation of cross-sectoral working groups for its implementation? Yes/No**
- e) by way of a comprehensive strategy aimed at combating discrimination and/or biased attitudes and behaviour against LGBT persons within the general public, and at correcting prejudices and stereotypes? Yes/No/Partially**

a) Reform of non-discrimination and equality legislation (see question 1).

b) There is no specific LGTBIQ action plan but the existing National Action Plan on Fundamental and Human Rights for 2017–2019 includes few specific LGTBIQ actions.

c) -

d) *Currently there is no cross-sectoral working group regarding LGBTIQ issues.*

e) –

There is a lack of comprehensive policy on LGBTIQ people’s human rights in Finland. Legislation and protection are improved sporadically and usually through civil society pressure or initiative. Despite the fact that the government’s human rights report from 2014 promotes a national strategy or action plan in its policy guidelines, there has been no implementation.

The Ministry of Justice is currently coordinating a project called Rainbow Rights, in which the aim is to improve non-discrimination planning with a focus on LGBTIQ equality, its promotion, awareness raising and training. This is a welcome initiative but there are concerns about the sustainability of this work after the project financing ends.

Question 4

Have effective legal remedies for victims of sexual orientation or gender identity discrimination been adopted and/or implemented including sanctions for infringements? Yes/No/Partially

- a) **Do the remedies include adequate reparation for victims? Yes/No/Partially**
- b) **Are the remedies effective, proportionate and dissuasive? Yes/No/Partially**
- c) **Are there measures in place to raise awareness and facilitate access of victims to such remedies, even when the violation is committed by a person acting in an official capacity? Yes/No/Partially**

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

Question 5

Have legislative and other measures been adopted and/or implemented to ensure an effective, prompt and impartial investigation into alleged cases of crimes and/or other incidents, where there is reasonable ground to suspect that the victim was targeted due to their:

- **sexual orientation? Yes/No/Partially**
- **gender identity? Yes/No/Partially**

There is a lack of specific measures to ensure that the police, prosecutors, judges and lawyers have the necessary knowledge and skills to address hate crimes against LGBTIQ people. Provision of mandatory LGBTIQ training and guidelines to law enforcement authorities is needed.

Question 6

Is there an independent and effective procedure to receive and investigate reports of hate crimes and/or hate motivated incidents allegedly committed by law enforcement staff, particularly where sexual orientation and gender identity constitutes one of the motives? Yes/No/Partially

Question 7

Have legislative and other measures been adopted or implemented to ensure that

- a) a bias motive may be taken into account as an aggravating circumstance when related to**
 - **sexual orientation? Yes/No/Partially**
 - **gender identity? Yes/No/Partially**
- b) “hate crimes” and other hate motivated incidents recognise as a possible motive**
 - **sexual orientation? Yes/No/Partially**
 - **gender identity? Yes/No/Partially**

The Criminal Code incorporates bias against sexual orientation as a ground for increasing the punishment for common crimes. Incitement of hatred, defamation or insulting sexual minorities is also specifically criminalized. Gender identity is not explicitly mentioned as a bias ground, even though the government bill which introduced the changes specifically mentions gender identity as a relevant ‘other ground’ for applying the provisions.

Question 8

Have appropriate measures been taken or implemented to

- a) ensure that victims and witnesses of hate crimes and incidents against LGBTI persons are encouraged to report them ? Yes/No/Partially**
- b) identify specific LGBTI groups with heightened vulnerability and adopt targeted measures to protect, in particular :**
 - **lesbian, bisexual and trans women? Yes/No**
 - **LGBTI persons of colour? Yes/No**
 - **LGBTI persons of ethnic minority backgrounds, including Roma persons? Yes/No**
 - **LGBTI persons from religious minorities? Yes/No**
 - **LGBTI sex workers? Yes/No**
 - **LGBTI persons with disabilities? Yes/No**
- c) ensure that law-enforcement possess the knowledge and skills (and are able to apply them) to:**
 - **identify hate crimes and other hate-motivated incidents? Yes/No/Partially**
 - **provide victim and witnesses with adequate assistance and support? Yes/No/Partially**
- d) ensure that the judiciary possess the knowledge and skills (and are able to apply them) to:**

- identify hate crimes and other hate-motivated incidents? Yes/No/Partially
- provide victim and witnesses with adequate assistance and support? Yes/No/Partially
- e) ensure that prison officials possess the knowledge and skills (and are able to apply them) to:
 - identify hate crimes and other hate-motivated incidents? Yes/No/Partially
 - provide victim and witnesses with adequate assistance and support? Yes/No/Partially

Question 9

When a hate crime or other hate-motivated incident against LGBTI persons has occurred, are there, within the police

- a) units tasked specifically with investigating these incidents? Yes/No
- b) liaison officers tasked with maintaining contact with LGBT communities in order to establish a relationship of trust? Yes/No
- c) systems of anonymous complaints or online complaints to allow reporting by third parties of the occurrence of such incidents? Yes/No

There are very few, if any, LGBTIQ specific measures related to countering hate crimes against LGBTIQ people in Finland. Finnish authorities report hate crime against LGBTIQ people to the OSCE annually, but the numbers are very low and do not seem to portray reality. Often police are not trusted to deal appropriately with crimes against LGBTIQ people. There is also significant unwillingness among the police to gain knowledge and training on homophobic and transphobic hate crimes.

Specific measures, including training, provision of guidelines and toolkits, LGBTIQ liaison officers and targeted information towards the LGBTIQ communities about reporting hate crime would be highly recommended. These initiatives should also address specific challenges faced by marginalised groups.

Question 10

Have specific measures been adopted or implemented to ensure the safety and dignity of lesbian, gay, bisexual and transgender people deprived of their liberty? Yes/No/Partially

In particular:

- a) Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse? Yes/No/Partially
- b) Have the authorities adopted and implemented anti-bullying strategies to prevent violence against LGBT detainees? Yes/No/Partially
- c) Are trans prisoners given the possibility to be allocated to either a male or female facility based on their self-determined gender identity? Yes/No/Partially
- d) Do protective measures avoid placing LGBT detainees in solitary confinement? Yes/No/Partially

e) **Are there training programmes and/or codes of conduct for prison staff to ensure that prisoners are treated with respect and without discrimination with regard to their**

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Question 11

Is there an effective system to register complaints and collect data on hate crime and hate-motivated incidents related to

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

and are there official statistics publicly available with regard to hate crime and hate-motivated incidents related to

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Please indicate methodologies in place to record hate crime and issue statistics, and, if appropriate, provide examples of good practices in this area, including in particular with respect to groups affected by multiple discrimination:

The Police University College annually compiles basic information on the nature and prevalence of racially-motivated and other forms of hate crime on the basis of hate crimes reported in the police's information system. This reporting takes stock of crimes which have been committed due to a bias on sexual orientation, gender identity and gender expression. However, it does not provide much information on the victims.

Question 12

Have measures been adopted or implemented to regularly gather data on the levels of social acceptance towards

- **Lesbians, gay, and bisexual persons?** Yes/No/Partially
- **Transgender persons?** Yes/No/Partially

B. "Hate speech"

Question 13

Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation? Yes/No/Partially

In particular, are legislative measures adopted or implemented to criminalise “hate speech” against LGBTI persons on the internet? Yes/No/Partially

Question 14

Have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons? Yes/No/Partially

Question 15

Are trainings, awareness raising activities, or any other form of guidance provided to public officials and state representatives to promote tolerance towards LGBTI persons whenever they engage with civil society, media and sports organisations, political organisations and religious communities? Yes/No

II. Freedom of association

Question 16

Is the freedom of association of LGBTI human right organisations ensured by

- a) the possibility to obtain official registration? Yes/No
- b) the removal of discriminatory administrative procedures and/or restrictions based on public health, morality and public order? Yes/No
- c) the involvement or consultation of such organisations when policies that concern or affect LGBTI persons are being adopted or implemented? Yes/No

Question 17

Is public funding available for non-governmental organisations the purpose of which is, or includes, the protection of the rights of LGBTI persons? Yes/No

Core funding to LGBTIQ organisations is provided by the Funding Centre for Social Welfare and Health Organisations and specifically for youth work by the Ministry of Education. Project funding has been channelled through Ministry of Justice. Smaller funding has been made available by some municipalities and Ministry for Foreign Affairs. This public funding has enabled systematic LGBTIQ human rights work and LGBTIQ specific service provision (by the NGOs).

However, the trans human rights organisation Trasek has not yet been able to access core funding.

Question 18

What measures are in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression?

Question 19

Are LGBTI human rights organisations able to

- d) work with national human rights institutions? Yes/No**
- a) work with the media? Yes/No**
- b) work with other human rights organisations? Yes/No**
- c) take part in training sessions or conferences ? Yes/No**

Question 20

Have measures been taken to ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

Yes/No/Partially

In most legislative processes which concern directly or exclusively LGBTIQ people, the relevant NGOs are heard by the legislator and given possibilities to comment by the government. But in many cases, this only allows for limited impact. Consultation of the relevant NGOs earlier on, prior to any drafts being drawn up, would result in more comprehensive improvements.

III. Freedom of expression and peaceful assembly

Question 21

Are there measures in place to ensure the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, including

- Organising activities that support the human rights of LGBTI persons? Yes/No/Partially**
- Publishing material that raises awareness on the human rights of LGBTI persons? Yes/No/Partially**
- Securing visibility via media coverage? Yes/No/Partially**
- Disseminating or accessing information on safe sexual practices? Yes/No/Partially**

Question 22

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity? Yes/No/Partially

Question 23

Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

Yes/No/Partially

And are law enforcement officers sensitized and trained to protect specific social groups, including LGBT persons, during public demonstrations? Yes/No/Partially

Question 24

What measures are in place to prevent the abuse of legal or administrative provisions on grounds of public health, public morality or public order resulting in restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons?

Question 25

Have public authorities publicly condemned any unlawful interferences with the exercise of freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons? Yes/No

IV. Right to respect for private and family life

Question 26

Have measures been taken to repeal, amend or apply in a manner which is compatible with the principle of non-discrimination, any criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to

- sexual orientation? Yes/No/Partially
- gender identity? Yes/No/Partially

Question 27

Are there measures in place to ensure that personal data are not collected, stored or otherwise used when referring to

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

And are existing records that do not comply with this principle destroyed? Yes/No/Partially

Question 28

Are legal gender recognition procedures available that are quick, transparent, accessible and based on self-determination? Yes/**No**/Partially

In particular, is legal gender recognition of transgender persons

- a) **conditional on undergoing an operation or treatment entailing irreversible sterilisation against their wishes?** **Yes**/No
- b) **conditional on undergoing hormonal treatment or any other form of medical treatment or surgical procedure?** **Yes**/No/Partially
- c) **conditional on a psychological diagnosis or expert statement?** **Yes**/No/Partially
- d) **conditional on the capacity to demonstrate a period of “life experience” in the self-determined gender?** **Yes**/No/Partially
- e) **accessible irrespective of**
 - a. **age?** Yes/**No**/Partially
 - b. **medical status?** Yes/**No**/Partially
 - c. **financial situation?** Yes/No/**Partially**
 - d. **police record?** **Yes**/No/Partially

Act on Legal Recognition of the Gender of Transsexuals (sic) regulates legal gender recognition in Finland. Legal gender recognition requires the individual ‘to be able to present a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilized or is for some other reason infertile.’. Legal gender recognition is not available for non-binary genders and for those under the age of 18.

Several authorities, including The Ombudsman for Equality, the Ombudsman for Children and the Non-Discrimination Ombudsman, have stated that the requirements for legal gender recognition violate the rights of transgender people.

There have been cases where legal gender recognition has not been accessible due to one’s medical status. Infertility is required for legal gender recognition and it can be acquired through hormonal or surgical interventions, but these treatments can be denied for medical reasons, such as body mass index being considered to be too high. As legal gender recognition is dependent also on a psychiatric diagnosis, it is not accessible to those whose diagnostic process is suspended. Suspensions are common and are often justified by mental health issues.

Many of those with low income or receiving supplementary benefits have troubles covering the costs associated with legal gender recognition. These expenses include costs for treatments, covered only partially by social security. Special reimbursement for hormonal treatment is available only after legal gender recognition has been obtained. Other expenses include name change, new ID card, driving license and other licenses, many of which must be renewed both at the time of name change and again when legal gender recognition takes place. In addition to other expenses, the diagnosis required for gender recognition can be obtained only in Helsinki University Hospital or Tampere University Hospital, both located in southern Finland, which results in additional travel expenses, particularly for those living far from these locations. The travel expenses are covered only partially by social security.

Question 29

Have appropriate measures been adopted and/or implemented to guarantee full legal gender recognition of a person in all areas of life, including adapting official documents, and educational or work certificates issued by non-state actors? Yes/No/Partially

Ministry of Education and Culture has recommended that past students, who have changed their name and/or legal gender, have the right to acquire new educational certificates with their present name and social security number. The certificate must not disclose information of gender reassignment. Generally, the timespan between name change and legal gender recognition can extend up to a year, thus the Ministry of Education and Culture and the Ombudsman for Equality have recommended that one should be able to renew their educational certificates after name change and again after legal gender recognition.

The Ombudsman for Equality and Occupational Safety and Health Administration in Finland have recommended similar policy for work certificates. In practice, compliance varies with individual employers and education providers. The Ombudsman for Equality offers assistance in cases where the employer or education provider has not been compliant.

Question 30

Are there legal and other measures in place to protect the right of transgender persons to marry? Yes/No/Partially

- a) **In particular, are transgender persons allowed to marry a person of the sex opposite to their reassigned sex? Yes/No/Partially**

The gender legally recognized in accordance with the *Act on legal recognition of the gender of transsexuals* is considered the person's gender when applying other legislation, including legislation on marriage. Same-sex marriage has been legal in Finland since 2017, thus a transgender person has the right to marry a person of any legal gender.

Question 31

Does national legislation confer rights and obligation on unmarried couples? Yes/No/Partially

If so, have measures been adopted and/or implemented so that the same rights and obligations apply to same-sex couples and different-sex couples? Yes/No/Partially

The Equal Marriage Act of 2017 clarified the situation of same-sex unmarried couples. Before the reform, the situation was chaotic, especially in reference to social benefits. At the moment, the marriage act states that unmarried couples should be treated the same as married couples, regardless of the gender of the spouses. Also, the legislation on cohabiting unmarried couples is gender neutral. There might still be some issues with some of the agreements between the unmarried partners.

Question 32

Do same-sex couples have access to registered partnerships under national law? Yes (access to marriage)/No (the registered partnership is not anymore available for anyone, because of the equal marriage)

- a) **If so, are the legal status, rights and obligations of same-sex couples equivalent to those of different-sex couples in a comparable situation? Yes (regarding the rights and obligations outlined by the marriage act) / No (regarding the rights related to parenthood outlined by other legislation) / Partially (the registered partnership, that still exist but is not open for new couples, has limited scope of rights compared to the marriage act)**
- b) **And have legal measures been adopted and/or implemented to ensure that the same-sex partner of a national may obtain a residence permit for family reasons? Yes/No/Partially** (the same-sex married couples should now have the same possibility to obtain a residence permit. Evidence of how well this will be implemented is still very limited. There is special concern on how the unmarried same-sex couples will be treated in cases where the couple doesn't have a chance to get married because of the discriminatory marriage law in the country of residence of the other partner. Most of the countries where asylum seekers are from doesn't allow for equal marriage, therefore almost all asylum-seeking same-sex couples are unmarried. In this respect, it's a significant issue that unmarried couples are therefore not granted a residence permit on the grounds of family reasons, but on the grounds of "other reasons" which entail higher requirements for economic sustenance. With the low level of knowledge about SOGIESC situations in the immigration office, there are reasons to be concerned that same-sex couples won't be able to enjoy similar rights as different-sex couples with regards to immigration.
- c) **If same-sex couples do not have access to registered partnerships, are there measures in place to provide them with the possibility to address the practical problems related to the social reality in which they live? Yes/No/Partially (not applicable)**

The rights and obligations of (married) same-sex couples are only equal in the matters regulated by the marriage act. Marriage act clarified the status of same-sex unmarried couples in reference to social benefits. However, some of the legislation concerning the social benefits still disadvantages married and unmarried same-sex couples, particularly the benefits related to parenthood. The status of gender minorities is unclear in the family benefits. Not all de facto parents are entitled to the benefits. Sharing of the family benefits between the parents in diverse families is often not possible. The gendered terms relating to the benefits don't recognize same-sex parents or gender diversity.

Question 33

Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on

- **sexual orientation?** Yes/No/**Partially**
- **gender identity?** Yes/No/**Partially**

There are widespread problems related to parental responsibility, custody, right of access and SOGIESC. Access to second-parent adoption in 2019 helped only certain types of families, and even in these cases, the parental responsibility is confirmed quite late in the child's life. Maternity law was legislated for in 2018 and will be enacted in 2019. It will also help only very particular types of families, namely lesbian couples who conceive through official ART. In all other cases, the parental responsibility cannot be confirmed or agreed upon in advance; thus the legal status of the child will remain unprotected until the possible second-parent adoption is obtained. Second-parent adoption decisions cannot always be made in the child's best interest, because adoption is limited to married couples and to two parents maximum. At the moment, there is no way of safeguarding the status of a child that has more than two de facto parents. Neither adoption law nor paternity/maternity acts enable the courts to decide on the child's best interest in a case of a co-parenting family, or other family type with more than two de facto parents. At the moment, courts can't even grant a child right of access to their de facto parent. The right of access is limited to legal parents only. The present government is likely to propose an amendment to this. Furthermore, the decisions regarding custody arrangements haven't always been made taking into account an understanding of the best interests of the child in co-parenting families. Courts have sometimes been negligent to grant guardianship to all parents in a co-parenting family, regardless of the parents' mutual wishes. All of the legislation on parenthood (paternity/maternity acts, adoption act, act on custody and right of access) is gendered in very binary way. This creates specific problems for transgender people. Their parental status in the national registry is often contrary to their legal gender or their requests regarding record of their gender. Parental status unnecessarily reveals their transgender identity and put them and their children in danger of being discriminated against. The gendered parenthood markings are not allowed to be changed. The equal marriage act of 2017 made it possible for same-sex couples to be assessed to adopt jointly. So far, there haven't been any adoptions by

same-sex couples, and concern remains if the child welfare professionals will be able to make adoption placement decisions on the grounds of the child's best interest only. Surrogacy has been partly-illegal in Finland since 2007. This limits the possibilities of e.g. gay men, trans and intersex people. The unofficial arrangements in Finland and commercial arrangements in other countries haven't been criminalised but engaging in them often places the legal status of the child in danger. Both unofficial and international surrogacy also places the carrier and the intended parents in a precarious situation.

Question 34

When national legislation permits unmarried different-sex couples to adopt each other's children (a second-parent or step-parent adoption), does it also apply to unmarried same-sex couples?

Yes/No/Partially

The adoption act only allows married couples to adopt jointly.

Question 35

Does national law permit assisted reproductive treatment for single women? Yes/No/Partially

If so, are there measures in place to ensure that access by single women to assisted reproductive treatment is without discrimination based on sexual orientation? Yes/No/Partially

Question 36

Where national law permits assisted reproductive treatment for unmarried different-sex couples, does it also permit such treatment for unmarried lesbian couples? Yes/No/Partially

The assisted reproductive treatments at private clinics have always been open to single women. The act of 2007 didn't change that. Lesbian couples have been treated as single women. With the introduction of the *Maternity Act*, lesbian couples will be treated as couples from 2019 onwards. This will, unfortunately, limit the possibilities of some co-parenting families to access the services at the clinics. The issue with assisted reproductive treatments in Finland is that public clinics have refused to give service to lesbian couples, and also to transgender people. Their interpretation and implementation of the law was deemed illegal and contrary to equality laws, by the National Non-Discrimination and Equality Tribunal of Finland in late 2016. The clinics challenged the decision and continued their discriminatory practices. In the process, the public clinics refined their implementation to look non-discriminatory by stating that they don't provide service to anyone who would need donated cells. This resulted in refusal to provide services to single women and different-sex couples that required donated cells, in their attempt to avoid providing services to lesbian couples and transgender people. The Tribunal stated that the practise is still discriminatory, because it excludes particular groups.

V. Employment

Question 37

Does legislation prohibit discrimination in employment in the public sector on grounds of

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

b) in the private sector on grounds of

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Question 38

Are there measures in place to provide effective protection against discrimination in

a) Access to employment on grounds of

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

b) Promotion, dismissals, pay and other working conditions employment on grounds of

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

c) Prevention and punishment of harassment employment on grounds of

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Do those measures take into consideration the heightened vulnerability of specific LGBTI groups, such as:

- **lesbian, bisexual and trans women?** Yes/No
- **LGBTI persons of colour?** Yes/No
- **LGBTI persons of ethnic minority backgrounds, including Roma persons?** Yes/No
- **LGBTI persons from religious minorities?** Yes/No
- **LGBTI sex workers?** Yes/No
- **LGBTI persons with disabilities?** Yes/No

In particular, is the privacy of transgender persons protected so as to prevent the disclosure of persons' gender history and former name in the context of employment? Yes/No/Partially

Act on Equality between Women and Men forbids discrimination based on gender identity or gender expression, but one must be able to present evidence that discrimination has taken place, e.g. the applicant having more expertise than the person who was recruited. In the case of discrimination, one has the right to claim compensation from the employer in the district court. In practice, discrimination based on gender identity or gender expression can be hard to prove.

Educational and work certificates can be renewed to match one's current name and gender. According to the *Act on the Protection of Privacy in Working Life*, the employer may only deal directly with personal data necessary for employment. The *Personal Data Act* states that the collection and processing of sensitive personal data is prohibited, but even though sexual orientation and health are considered to be sensitive personal data, gender identity and gender history are not specifically covered. In practice, employers can preserve information e.g. on previous names of employees.

Act on Equality between Women and Men obligates employers to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation must be considered in the preparation of the employer's gender equality plans and in decisions regarding measures to promote gender equality. There is still a lack of systematic research regarding discrimination of gender minorities in employment. In a recent study, only 40% (approximately) of those employees who were familiar with the gender equality plan in their place of employment reported that the plan included transgender and intersex issues. One third of the respondents estimated that transgender or intersex employees would face discrimination in their place of employment.

The Ombudsman for Equality has limited resources for supervising compliance with the Act. Inspections are carried out mostly in places of employment where suspected discrimination has been reported. In addition, small-scale monitoring targeting certain industries is carried out from time to time. In 2016, equality plans of 60 municipalities were assessed and only 10 of these addressed gender identity or gender expression.

While the non-discrimination and equality legislation prohibit discrimination in employment on SOGIESC grounds, there is a lack of proactive and systematic measures to counter it. Another significant problem relating to non-discrimination on ground of sexual orientation is that the Non-Discrimination Ombudsman does not have the mandate to assess workplace discrimination; this is left to Regional State Administrative Agencies. This makes countering workplace discrimination ineffective.

VI. Education

Question 39

Taking into due account the over-riding interests of the child, are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of

- **sexual orientation?** Yes/No/**Partially**
- **gender identity?** Yes/No/**Partially**
-

If so, are there measures in place concerning in particular:

- a) **Anti-discrimination training or support and teaching aids?** Yes/No/Partially
- b) **Information, protection and support for pupils and students?** Yes/No/Partially
- c) **Respect for the self-determined name and gender marker of pupils and students in form of address, educational documents, and use of gendered facilities/classes?** Yes/No/Partially
- d) **Objective information on sexual orientation and gender identity in school curricula?**
Yes/No/Partially
- e) **School equality and safety policies and action plans?** Yes/No/Partially

Obligatory curricula include mention that education must increase knowledge on gender diversity.

According to the *Act on Equality between Women and Men*, education providers are obliged to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation must be considered in the preparation of the educational institution's gender equality plans and in decisions regarding measures to promote gender equality.

In practice, the legislation does not define sufficient policies to ensure a safe and supporting environment for students belonging to sexual and gender minorities. Educational institutions are obliged to create equality plans, but their content and application depends on the expertise of individual workers. There is no certainty that these plans mention sexual orientation or gender identity. There are no guidelines to enforce use of and respect for the self-determined name and gender marker or protection from discrimination when using gendered facilities. In addition, the information systems in some educational facilities have fixed gender markers based on social security numbers or do not allow use of unofficial names.

According to research, school is not a secure environment for young LGBTIQ people. It is concerning that the majority of those who reported bullying to teachers found that nothing has happened or that they themselves have been blamed for the situation. An increasing proportion of these young people state that they have not reported bullying because they have felt that it would not have led to any resolution, or that, because of it, they would have been forced to disclose their LGBTIQ identity. This is problematic, especially if these young LGBTIQ people, who have been bullied due to their sexual expression or orientation, also keep their identity and bullying experiences secret at home. Homophobic name calling is not harmless, and it maintains discriminatory attitudes at school and in educational activities.

In a study conducted in 2017, the students with non-binary gender identities in vocational schools were more likely to have experienced bullying, both from other students and from teachers. The study did not address transgender students of binary genders. Further research on discrimination against gender minorities in education is needed.

There is a need for providing wider protection against discrimination. When young people experience discrimination, they often do not know where to seek help. The implementation of equality needs more effective tools and approachable people and organisations who can help victims of discrimination.

There is a need to provide further education to teachers and other school personnel regarding the tackling of homophobic and transphobic bullying and discriminatory practices. This should be included as part of obligatory teacher training.

It should be ensured that young LGBTIQ people in schools and educational institutions receive necessary information, protection and support to enable them to live in accordance with their sexual orientation, gender identity and gender expression inter alia by raising awareness of LGBTIQ people in the school welfare services.

Guidelines or toolkits should be provided to schools and educational institutions about how to include issues facing LGBTIQ pupils and staff in non-discrimination and equality plans.

All school teaching needs to be examined from the viewpoint of diversity and equality. School premises must be made safer for young LGBTIQ people, for example, by reducing the rigid gender division of facilities.

In 2018, the Ombudsman for Equality will inspect the measures taken in comprehensive education to promote gender equality.

VII. Health

Question 40

Are there appropriate measures in place to ensure that

- a) the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of**
 - **sexual orientation?** Yes/No/**Partially**
 - **gender identity?** Yes/No/**Partially**
- b) education, prevention, care and treatment programmes and services in the area of sexual and reproductive health are available to all individuals, regardless of their**
 - **sexual orientation?** Yes/No/**Partially**
 - **gender identity?** Yes/No/**Partially**
- c) the specific needs of LGBTI persons are taken into consideration in the development of national health plans, including**
 - **suicide prevention measures?** Yes/No/Partially
 - **health surveys?** Yes/No/**Partially**
 - **medical curricula and training programmes?** Yes/**No**/Partially
 - **in the monitoring and evaluating of quality of health-care services?** Yes/No/Partially

Question 41

**Are patients in hospital able or subject to medical emergencies free to identify their “next of kin”? Yes/No
And are rules on issues regarding “next of kin” applied without discrimination on grounds of**

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Question 42

Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment specialized psychological, endocrinological and surgical services without being subjected to unreasonable requirements? Yes/No/Partially

The treatment of gender incongruence is part of the public health care system. In Finland, two units are responsible for the diagnosis and treatment of transgender people. The law stipulates that the composition of the unit must enable correct handling of the diagnosis, treatment and follow-up of transgender patients, including specialists in psychiatry and endocrinology. In addition, Helsinki University Hospital must have a specialist in plastic surgery who has expertise in genital reconstruction.

At the moment, these two units are oversubscribed and the waiting lists are extensive. The diagnostic process itself takes a long time and has been criticized for the lack of transparency. Long suspensions in the process are common. The treatment situation of non-binary transgender people is unclear and varies depending on individual clinicians.

In some municipalities, getting a referral to one of the diagnostic units can be challenging, especially for young people, even though there are no legal or medical justifications for this. At the moment, only individuals over 13 can begin the diagnostic process. Puberty inhibiting medication is not available.

The legislation does not cover psychological services and support in the context of treatment of gender incongruence. The general public health care provides mental health services, but most service providers lack expertise on gender identity issues.

Because of the difficulties accessing necessary treatments, some individuals acquire hormonal treatment via unofficial channels or go abroad for surgery.

Question 43

Where legislation provides for the coverage of necessary health care costs by public or private social insurance systems, are there measures in place to ensure that gender reassignment procedures are covered? Yes/No/Partially

The treatment of gender incongruence is part of the public health care system, although low income individuals still struggle with the expenses (see Question 28). The legislation for the treatments mentions only hormonal treatment and genital reconstructive surgery. In practice, other treatments are covered, such

as chest reconstruction surgery, breast augmentation, hysterectomy, chondrolaryngoplasty (tracheal shave), vocal surgery, voice therapy, and facial hair removal. Facial surgery is not covered. Many patients seek certain treatments, such as chest reconstruction surgeries, from private service providers due to the long waiting times. Hormonal treatment is not available in private clinics.

Question 44

Are there legislative or other measures in place ensuring that no person is subjected to gender reassignment procedures, including so-called “conversion therapies”, without their informed consent?

Yes/No/**Partially**

In particular, are there measures in place to ensure that, unless necessary for health reasons, no child has their body irreversibly changed by medical practices designed to impose a gender identity because of their sex characteristics without their full, free and informed consent? Yes/**No**/Partially

“Conversion therapies” aimed at manipulating a person’s sexual orientation or gender identity are prohibited within medical practice/health care providers. However, such practices can occur outside of the health care system and are offered by e.g. religious groups. LGBTIQ NGOs have been advocating for a total ban on “conversion therapies”.

There is no legislation or other measures to protect intersex children from irreversible medical procedures performed without their full, free and informed consent.

VIII. Housing

Question 45

Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property? Yes/No/**Partially**

The non-discrimination and equality legislations prohibit SOGIESC discrimination with regard to housing. However, specific measures to counter discrimination of LGBTIQ people within this sector are missing.

Question 46

With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of

- **sexual orientation?** Yes/No/**Partially**

- **gender identity?** Yes/No/Partially

See the answer above.

IX. Sports

Question 47

Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events? Yes/No/Partially

Some individual sporting federations have taken certain preliminary measures to tackle discrimination and raise awareness in general as well as, in some cases, specific anti-discrimination measures relating to LGBTIQ+ identities.

For example, it has been planned that, in certain football games during Helsinki Pride Week, the players will use rainbow coloured armbands to raise awareness and oppose discrimination.

Some big Finnish stadiums participated in a “discrimination-free-zone” campaign in 2017.

X. Right to seek asylum

Question 48

May a well-founded fear of persecution be recognised as a valid ground for the granting of refugee status and asylum under your national law, when based on

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

and are measures in place to ensure that asylum requests may not be turned down on the ground that the claimant can escape persecution in the country of origin by keeping their sexual orientation or gender identity secret? Yes/No/Partially

Question 49

Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

In particular, does your country remove from the lists of safe countries of origin any state that criminalise or persecute same-sex relations or transgender identities? Yes/No/Partially

Are there measures in place to ensure that applicants will not be asked to provide detailed account of their sexual practices or to produce “evidence” such as images or films of intimate acts to prove their sexual orientation or gender identity in asylum claims? Yes/No/Partially

Are there measures in place to ensure that applicants will not be subjected to psychological tests to determine their

- **sexual orientation?** Yes/No/Partially
- **gender identity?** Yes/No/Partially

Question 50

Are specific measures in place to prevent violence against LGBT asylum seekers deprived of their liberty?

Yes/No/Partially

In particular, are alternatives to detention offered to LGBT asylum seekers whose protection cannot be guaranteed? Yes/No/Partially

Question 51

Is the self-determined name and gender identity of a transgender asylum seeker respected throughout, including in particular related to placement, use of gendered facilities, form of address, and official documents? Yes/No/Partially

There is a lack of systematic information on the situation of transgender asylum seekers. There have been several cases where the Finnish Immigration Service or court did not believe that the asylum seeker belonged to a sexual or gender minority. Asylum seekers have expressed concern about whether officials understand the impact of belonging to a gender minority in their country of origin.

The reception centres have taken into consideration the special needs of individuals belonging to gender minorities, such as the need for a private room, although sometimes only after contact with LGBTIQ-NGO workers. There have been reports of discrimination and harassment from other asylum seekers, in which the reception centre staff has not been able to intervene. Transgender asylum seekers have reported feeling unsafe in reception centres.

The legislation concerning asylum has weakened the rights of persons to apply for asylum in Finland. For example, access to legal aid has been restricted. These changes seem to have also weakened the right to apply for an asylum on SOGIESC grounds. NGOs have been concerned about inadequate assessment of asylum applications by officials, unsafe living conditions in asylum centres, and lack of LGBTIQ-specific support while in Finland.

XI. National Human Rights Structures

Question 52

Are National Human Rights Structures (equality bodies, ombudsperson, national human rights institutions, and/or National Preventive Mechanisms) clearly mandated to address discrimination on grounds of

- **sexual orientation? Yes/No/Partially**
- **gender identity? Yes/No/Partially**

The Non-Discrimination and Equality Ombudsmen have regular dialogue with LGBTIQ NGOs, and address and promote SOGIESC as their resources permit. Another positive development is that the Children's Ombudsman has established a special working group called 'LGBTI and Children' to address challenges specific to LGBTIQ children and children living in rainbow families. Additional resources to the Ombudsmen would be required to ensure more active and targeted promotion of LGBTIQ non-discrimination and equality matters. Targeted measures would be needed to increase people's awareness and access to their rights.

XII. Discrimination on multiple grounds

Question 53

Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity? Yes/No

Question 54

Are there measures in place pro-actively identifying, protecting and/or supporting groups affected by multiple discrimination? Yes/No****

In particular, with regard to

- **lesbian, bisexual and trans women? Yes/**No****
- **LGBTI persons of colour? Yes/**No****
- **LGBTI persons of ethnic minority backgrounds, including Roma persons? Yes/**No****
- **LGBTI asylum seekers and refugees? Yes/**No****
- **LGBTI persons from religious minorities? Yes/**No****
- **LGBTI sex workers? Yes/**No****
- **LGBTI persons with disabilities? Yes/**No****

Section III - General assessment and dissemination of the Recommendation and its

Appendix

Question 55

How would you assess the status of implementation of the Recommendation in your country? Fully satisfactory/Adequate/Insufficient /Absent

There is currently no systematic plan to implement the Recommendation in Finland. Relevant and important legislative improvements have been made, partly due to the possibility of making popular legislative initiatives, but measures to implement e.g. the *Non-Discrimination and Equality Legislation* have been insufficient. The present government has simply refused to reform the legislation regulating legal gender recognition.

Question 56

Which obstacles, if any, have been encountered in the implementation of the Recommendation?

In general, there is a lack of will from the government to implement LGBTIQ-specific initiatives, which has been demonstrated by e.g. lack of gender diversity themes from the governments gender equality plan and unwillingness to initiate a reform of the legal gender recognition law. Obstacles to advance LGBTIQ positive measures include negative views of politicians and political parties and authorities' lack of knowledge, skills and sometimes even willingness to promote human rights of LGBTIQ people and address discrimination.

Question 57

Has the Recommendation, including its Appendix, been translated in all your national languages?

Yes/No/Partially

Question 58

Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

There have been no specific measures since the first review cycle of the Recommendation.