

Speech Richard Köhler for the Public Session “Human rights and health care in Europe” at the EPATH Conference, March 12, 2015, Gent, Belgium

Good evening,

My name is Richard Köhler. I am the Senior Policy Officer of Transgender Europe, an NGO working for the equality of all trans people in Europe.

On behalf of TGEU I am very grateful and I feel honoured for being invited to this panel to share with you some observations about human rights of trans people in Europe as of today. I would like to take stock of what has been achieved and highlight some of the challenges that remain to the realization of equality and human rights for trans people in Europe.

One of the most controversial issues is a potentially new diagnosis of “Gender Incongruence in Childhood” in the next International Catalogue of Diseases. As we will probably be discussing this during the coming days, allow me to start on this one, before opening the scope to the wider achievements and challenges.

To begin with, there is no clear consensus among researchers and health care providers with regard to the need for or global applicability of a “Gender Incongruence in Childhood” diagnosis.

Gender variance in pre-puberty childhood does not require any medical interventions such as hormone therapy or surgical procedures. Rather, children need information and support in exploring their gender identity and expression and dealing with sociocultural environments that are frequently hostile to gender variance.<sup>1</sup>

The key question should be how to ensure the best possible form of support to a child.

The diagnostic process involved in establishing a gender incongruence diagnosis is contradictory to the idea of supporting a child. The basis of differential diagnostics is the assumption that something is wrong with that person and that all other conditions first have to be excluded until ‘gender incongruence’ remains as the single determining factor. Society agrees here to fundamentally question a child’s identity and self-perception. This underlying doubt in a child’s experience and identity creates trauma and leads eventually to mental health problems.

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<sup>1</sup> GATE Civil Society Expert Working Group *Critique and Alternative Proposal to the “Gender Incongruence of Childhood” Category in ICD-11, 2013*

From across Europe we hear time and time again how such a diagnosis has a real live impact and harms children and their families; driving stigma, social exclusion and shame already at a young age.

Notwithstanding the excellent work by many professionals and their passionate commitment, we have to ask whether psychology and psychiatry should continue to play a key role in 'fixing' the issues gender creative children experience. Doctors are trained to "cure" illness. Are they the right ones to do the job here as well? Gender variance, gender fluidity, gender creativity does not need fixing.

On the contrary, we need to find ways on how to better support children, their parents and families. Support and counselling for parents, peer-support-groups for children, kindergartens respecting, embracing and celebrating gender variance, trans-inclusive school curricula - all outside of a clinical context - seem better yard sticks to achieve this goal.

A supportive environment - this is where our focus should lie. If we want to help children, we should not put a label on them, but work hard to make the society surrounding them to be actually more supportive. A proverb says: "It takes a village to raise a child." Similarly, it cannot be the responsibility of one profession alone. It is a societal task to make trans and gender variant children feel whole and welcome.

The successes the trans community achieved as a whole - the move from medical to a human rights discourse, which I will elaborate on in a moment - needs to be repeated for trans and gender variant children.

The suggested ICD-diagnosis on gender incongruence in adolescence and adulthood can be seen as a step in the right direction. As long as access to trans-related health care hinges on an ICD-definition, taking it out from the mental health chapter is a positive move away from the psychopathologisation of trans identities. However, on the long run we should aim for access to trans-related health care as any other medically necessary treatment.

It has to be welcomed that the proposed wording of the Gender Incongruence in Adolescence and Adulthood is not limited to the gender binary. However, here careful attention needs to be paid to the implementation and any explanatory documents and processes to stay true to the spirit and word of the text.

As a community we have come a long way and we can proudly look back on many achievements in the last decade. However, there are also challenges awaiting us.

Europe has seen a paradigm shift from treating trans related issues as a purely medical concern to the recognition of the right to ones very own gender identity. In 2014 Malta was the first European state to protect gender identity in its constitution.

10 years ago trans people from across Europe came together for the first time, recognizing the commonalities and strength that lays in international solidarity. It was the birth moment of a European transgender movement - and also of Transgender Europe. A movement that we see also today in this audience: proud, and confident demanding their rights – impatiently awaiting change – in legal, social and private spheres alike which has been overdue for so many years!

The European Court of Human Rights has since 2002 strengthened the rights of trans people. Trans people now know that their private and family life is protected by law, that they have a right to gender reassignment treatment, a right to a fair trial, that states have to provide for legal gender recognition, and that they are protected against discrimination under the European Convention for Human Rights.

The majority of European states now has regulations for legal gender recognition. Yet, trans people in 14 European states do not have established rules they can rely on. 34 states still request sterilisation, being divorced and/or a mental health diagnosis to be able to access legal gender recognition.<sup>2</sup>

We need to bring this number down from 34 to 0. Legal administrative processes, on the one hand, and medical needs, on the other hand, need to be clearly separated. The medical profession has a key role to play in this struggle.

In 2009 the Human Rights Commissioner was the first high-level politician to recognize and spell out trans-related human rights concerns.<sup>3</sup> In 2010, the member states of the Council of Europe called for quick, transparent and accessible legal gender recognition procedures and other measures to end discrimination on grounds of gender identity. Activists in many countries have started a debate and progressive reforms that seem unstoppable. (to put it in Conchita Wurst's words).

Argentina is still the inspiring model for activists in many European countries. The Danish law revision showed us that legal gender recognition based on self-determination is possible. Malta waits in the wings to adopt its comprehensive gender identity, gender expression and sex characteristics Bill in the coming weeks.

Only two days ago, the European Court for Human Rights decided on a case of a trans man from Turkey.<sup>4</sup> Turkish courts had denied him access to gender reassignment surgery as he was still able to procreate. The Court found that his right to private life was violated. As a witness to the growing acceptance of trans people the Court stated „the clear and uncontested evidence of a continuing international trend in favour of increased social acceptance and of new legal gender recognition “.

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<sup>2</sup> TGEU, Trans Rights Europe Map

<sup>3</sup> Council of Europe Human Rights Commissioner, *Human Rights and Gender Identity*, 2009

<sup>4</sup> YY v Turkey, ECtHR, Application Number 14793/08

The Court also clearly said that the freedom to establish ones gender is an essential part of the right to self-determination. However, this, I am afraid, is still not being accepted reality everywhere. The Eurobarometer (2012) found that trans people are still invisible and that there is little understanding for the discrimination they face.

In recent years, the anti-gender movement has gained public ground in a number of European countries (France, Slovakia, Slovenia, Czech Republic, Italy, Hungary, Poland, and to a lesser extent Germany and Spain). While it openly targets the rights of LGBTI people, it also aims more widely at reinforcing gender norms. In times of crisis, austerity measures and public budget cuts they deny trans people the right to exist and as well agitate against availability and cost coverage for trans-specific health care. This climate of hate and bigotry challenges future progress and undermines achievements made. Last month, the Pope criticized equated gender theory to nuclear weapons.<sup>5</sup> We might smile about this acknowledgement of the revolutionary power we hold in our hands, but we also need to recognize the potential harm in such words. They too easily turn into violence or ignorance of violent structures. Trans people and particularly those who are already at an increased risk will bear the burden.

Elderly and young trans people, those who are poor or unemployed, trans sex workers and trans people from an ethnic minority or migrant community are particularly at risk to be discriminated and/ or attacked. In times of crisis, austerity measures and budget cuts trans people are the first to feel the blow.

In Greece, the Transgender Support Association has to organize a soup kitchen and pay electricity bills of elderly trans women to ensure their survival. Austerity measures in the UK make trans people fear that their needs and concerns are taken less seriously, being treated as luxury problems. Budget cuts cut down much needed support structures, pushing them back into the closet.

The Fundamental Rights Agency conducted the to-date largest study about experiences of discrimination of trans people.<sup>6</sup> Drawing from the experience of 6,579 trans respondents the EU Agency found a mixed picture throughout:

Employment: over one in three trans respondents felt discriminated against because of being trans when looking for a job.

Education: a quarter of trans respondents who attended school/university themselves or have a child/children in school/ at university, say they felt personally discriminated against by school or university personnel in the 12 months preceding the survey.

Healthcare: around one in five respondents who accessed healthcare services (22 %) or social services (19 %) in the year preceding the survey felt healthcare or social service personnel discriminated against them because of being trans.

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<sup>5</sup> See for instance Press relase by ILGA *The Pope's comparison - Gender Theory Like Nuclear Weapons?*

<sup>6</sup> Fundamental Rights Agency, *Being Trans in the EU*, 2014

Violence: The EU LGBT survey's most striking result is the high level of repetitive violence and hate-motivated crime trans persons suffer. This confirms our own findings. TGEU's research documented more than 90 reports about killed trans people in Europe since 2008. Many of them living in precarious circumstances as sex workers or migrants.

However, the EU survey also found that in countries that had adopted positive public measures trans people's wellbeing increased. The UK, Norway and very recently Finland adopted trans-inclusive progressive gender equality laws.

And health care practitioners can and should be important allies and experts to support our cause WITH us but not FOR us!

This is somewhat my vision for EPATH – that it becomes a strong ally for trans people. A reliable partner listening to and responding to the diverse needs of trans people have. A partner that respects and defends the rights of the communities it caters to. A place for professional exchange, learning and training.

It is certainly not an easy undertaking and those being the driving forces behind EPATH and this first conference have to be applauded for their vision and courage. On behalf of Transgender Europe I would like to express TGEU's readiness to work together with EPATH in order to improve the lives and wellbeing of trans persons in Europe for the better.

I wish all of us the best for this undertaking and lively yet respectful debates for the days to come.