



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Malta
Title:	Recognition of right of each person to their gender identity and its free development
Date:	9 June 2015
Expert:	Peter G Xuereb
<u>Context</u>	
Issue at stake:	Gender identity recognition
Ground of discrimination:	Sex and gender
Source:	Legislation
Field:	Gender Identity
Applicable law:	Gender Identity, Gender Expression and Sex Characteristics Act, Act XII of 2015

Content

Legislative development: In September 2006, Joanne Cassar, a transsexual woman, was denied the right to marry her partner. In 2007 a judge in Malta ordered government officials to issue her the appropriate documentation. The Director of Public Registry successfully contested that ruling in May 2008. Cassar filed a constitutional application in the First Hall of the Civil Court charging a violation of her fundamental human rights. She won that case initially, but lost on appeal in 2011. In April 2013, she reached a settlement with the Government, which included financial compensation in addition to promised statutory changes. Transgender persons in Malta who have undergone irreversible gender reassignment surgery may change the sex recorded in official documentation such as identity cards, birth certificates and passports. In April 2014, Malta became the first European state to add recognition of gender identity to its constitution as a protected category. The Parliament has now adopted the Gender Identity, Gender Expression and Sex Characteristics Act, Act XII of 2015.¹

Article 3 of the GIGESC Act recognises the right of each person to their gender identity and the free development thereof. The NGO 'Transgender Europe' (TGEU) declares that the envisioned legal gender recognition procedure fulfils the Council of Europe standards of 'quick, transparent and accessible' gender recognition procedures, based on self-determination.

Under Article 5, the procedure introduced before a notary requires a simple declaration based on a person's self-determination and prohibits requests for medical information. The entire process lasts a maximum of 30 days. According to TGEU this quickly enables the individual to pursue their life without further interference.

¹ <http://justiceservices.gov.mt/LegalPublications.aspx?pageid=31&year=2014&type=2&p=2> accessed 7 March 2015. See also <http://tgeu.org/gender-identity-gender-expression-sex-characteristics-act-malta-2015/>, <http://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law/> accessed 7 March 2015.

According to Article 7, an application by a legal minor is regulated by analogy through a court procedure. Parents or legal guardians of an underage person can therefore apply. The best interests of the child and the views of the minor have to be given due consideration.

The Act foresees that parents or guardians may decide to postpone the inclusion of a gender marker on the birth certificate until the child's gender identity is determined. This has to be welcomed as it allows for time the child to make an informed decision about it.

It also regulates health care provision, prohibition of normalising genital surgeries on intersex infants, and reform of public data collection. Moreover, measures are foreseen in areas of health, non-discrimination and criminal justice to create supportive and inclusive environments for trans and intersex persons.

Key points of analysis: The Parliament has now passed the Gender Identity, Gender Expression and Sex Characteristics Act, Act XII of 2015. With this Act, applicants can change their gender identity documents simply by filing an affidavit with a notary, eliminating any requirement for medical gender reassignment procedures.

Internet link sources:

(all accessed 9 June 2015)

<http://justiceservices.gov.mt/LegalPublications.aspx?pageid=31&year=2014&type=2&p=2>

<http://tgeu.org/gender-identity-gender-expression-sex-characteristics-act-malta-2015/>

<http://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law/>

<http://www.hrw.org/news/2015/04/01/dispatches-malta-s-inspiring-gender-recognition-law>

http://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Pages/Consultations/GIGES_C.aspx

<http://www.maltagayrights.org/localcampaignsselected.php?title=Proposed%20Gender%20Identity%20Act%20For%20Malta>