

Trans & Intersex Equality

Legal Seminar on Experiences of Non-Discrimination in the EU and EFTA

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Who we Are?

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Questions

What do you know about transgender individuals and persons who experience intersex variance?

Do you know anything about how, in Europe, these people are protected by EU, ECHR and domestic laws?

European Commission Report 2018

Trans and Intersex Equality Rights in Europe – A Comparative Analysis

Seminar Itinerary

- Overview of the Report
 - What 'Protected Characteristics'?
 - Male Pregnancy
 - Non-Binary
 - Healthcare
 - Segregated Spaces

But...

It's Up to You!

Terminology

- ❖ Transgender
- ❖ Gender Identity (vs. Sexual Orientation)
- ❖ Intersex
- ❖ Sex Characteristics
- ❖ Cisgender
- ❖ Transition
- ❖ Non-Binary
- ❖ Gender Expression
- ❖ Gender Confirmation Treatment

Trans and Intersex Equality Report 2018

Why?

Trans and Intersex Equality Report 2018

Report Structure

- Introduction
- International Human Rights Framework
- Legal Gender Recognition
- National Equality Frameworks
- Healthcare
- Single-Sex Facilities
- Education
- Retirement Pensions
- Employment
- Sanctions and Remedies
- Summary of Conclusions

Questions?

Do you have any questions at this stage about the general conclusions within the report?

Specific Issues

- **What 'Protected Characteristics'?**
- **Male Pregnancy**
- **Non-Binary**
- **Healthcare**
- **Segregated Spaces**

What Protected Characteristics?

- ❑ EU-sex equality law grounded in and built upon binary
- ❑ exception (or merely a 'dent'?) in equality law: transition (2006/54)
- ❑ national legislation: varied picture
 - ❑ protected grounds: from minimal compliance (restricted to transition in context of 2006/54) to inclusive interpretations of 'sex' to adding separate grounds
 - ❑ Ireland: treating trans discrimination as discrimination on the ground of disability

What Protected Characteristics?

- ❑ in how far are trans / intersex / non-b & cis gender discrimination connected? do they share the same root causes, or only sometimes?
- ❑ best way to protect trans, intersex and non-binary people against discrimination? additional grounds or broad interpretation of sex/gender?
- ❑ should EU sex equality law be reconceptualized so as to better protect against trans and intersex discrimination?
- ❑ what, if anything, can the EU / EU non-discrimination law contribute to the struggle to improve the position of people with intersex variance?

Male Pregnancy – I

- Historic Imposition of **Sterilisation** Requirements

Why?

- ✓ Natural Reproduction
- ✓ Child Welfare
- ✓ Legal Certainty

Male Pregnancy – II

Reforms:

AP, Garçon and Nicot v France (ECHR, 2017)

But:

What about Non-Discrimination Frameworks?

Healthcare

- complicated national systems (public / private, funding, insurance)
- aspects:
 - attitudes
 - access to trans-related health care
 - funding, access (availability services / expertise, waiting lists)
 - types of treatment available
 - funding of treatment
 - re-funding (and sometimes recognition) of treatment abroad

Non-Binary Recognition

What are 'non-identities'

Issues to Consider:

- ☐ Relationship with Intersex?
- ☐ Existing Models of Non-Binary Recognition?
- ☐ What would a Non-Binary Gender Recognition Law Look Like?
- ☐ Pathways to Progress?

Single-Sex Spaces

- **Absence of Specific Legislation in Europe**
- **Fears about trans access to segregated spaces? (e.g. propriety, abuse, etc.)**
- **A Model Law?**

Thank you!

