

2021 Rule of Law Report - targeted stakeholder consultation



About you

- **I am giving my contribution as:**
 - Civil society organisation/NGO
- **Organisation Name:**
 - Transgender Europe (TGEU)
- **Main Areas of Work:**
 - Other
- **If “Other” please specify:**
 - Human rights based CSO representing trans people in Europe and Central Asia
- **Description of organisation and URL:**
 - TGEU is a member-based human rights organisation representing the trans community in Europe and Central Asia, with 157 member organisations in 47 different countries. TGEU has an office in Berlin, Germany, as well as a team of 10 members of staff and a Board.
 - <https://tgeu.org/>
- **Transparency Register Number:**
 - 384028912403-82
- **Country of Origin**
 - Germany
- **First Name**
 - Jonas
- **Surname**
 - Hamm
- **Email Address of the organisation (this information will not be published)**
 - tgeu@tgeu.org
- **Publication of your contribution and privacy settings**
 - public
- Yes, I agree with the [personal data protection provisions](#).

Please provide any relevant information on horizontal developments here: (5000 characters max)

One of the main priorities of TGEU's work is in the field of legal gender recognition (LGR). LGR refers to the process of changing the official name and gender marker of a trans person to correspond to their gender identity. TGEU supports EU member states and trans communities across the EU with developing LGR procedures that are quick, transparent, accessible and based on self-determination as recommended by CoE PACE resolution 2048 (<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>) and in the EU LGBTI Equality Strategy 2020-2025.

Except for Hungary, all EU member states do offer some framework for trans people to access LGR. Hungary ended LGR procedures in May 2020, violating the principle of rule of law, by going against established positive obligations to provide LGR, but established by the Hungarian Constitutional Court and the ECtHR. For more information, see chapter on Hungary.

While all other EU states do offer some framework for LGR, most states fail to live up to the established human rights framework to provide LGR procedures that are “quick, transparent, accessible and based on self-determination”. Instead are often hurdlesome, and involve abusive requirements such as mental health diagnoses, a requirement to be single or divorce one’s spouse (divorce requirement) or even compulsory sterilisation. Even though LGR lies mostly within the competency of EU member states, there is a rule of law aspect to the topic with the positive obligation to provide LGR in the first place and with regards to at least some of the abusive requirements frequently in place:

Even though the ECtHR ruled in 2017 (A.P., Garçon & Nicot v. France) that enforced sterilisation is incompatible with the ECHR, up to this day 5 EU member states (Finland, Latvia, Czech Republic, Slovakia, Romania) still require sterility for trans people to access LGR (see <https://tgeu.org/trans-rights-europe-central-asia-index-maps-2020/>)

- **Questions on developments in Member States**
- **Member States covered:**
 - Hungary
- **Other institutional issues related to checks and balances - Hungary**
 - **Accessibility and judicial review of administrative decisions**
 - **Implementation by the public administration and State institutions of final court decisions**

In the case of Hungary, two problematic developments with regards to the rule of law and legal gender recognition have arisen in 2020:

In May 2020 Hungary passed a law making legal gender recognition impossible. The term “sex” on birth certificates has been replaced with the term “birth sex” which is defined as an immutable category. (see also http://transvanilla.hu/images/briefing/Transrights_updateHungary_november2020_Transvanilla.pdf)

) The law adopted in May directly contravenes jurisprudence from the Constitutional Court of Hungary, and therefore violates Article 2 of the Treaty of the European Union (TEU) in terms of the responsibility of Member States to uphold the rule of law. The Hungarian Constitutional Court had ruled in 2001 that legal gender recognition and name change is within the fundamental rights of trans people in Hungary (see Hungarian Constitutional Court decision 58/2001-XII. 7) confirming jurisprudence by the ECtHR.

In 2018 the Hungarian Constitutional Court found that Hungary also had a positive obligation to adopt regulations for LGR and name change for lawfully settled non-Hungarian citizens living in Hungary and set a deadline for parliament to adopt such legislation by 31 December 2018 (Hungarian Constitutional Court decision 6/2018-VI. 27). The legislative change requested by the Constitutional Court has not yet been carried out. The case went on to the ECtHR, which ruled in July 2020 that Hungary had breached its obligation to protect the right to private life under Article 8 of the Convention by rejecting the application of an Iranian transgender refugee to have his name and sex marker changed officially (RANA v. HUNGARY; Application no. 40888/17). According to information from Hungarian LGBT NGO Hatter Society, the claimant has received the financial compensation the ECtHR had ordered, but has still not received new identity documents reflecting his name and gender identity.