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LAZ reloaded e.V. to the Key Points of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Justice to the Self-Determination Act of 30.06.2022

1. Replacement of the Transsexual Law by a "Self-Determination Act"

The coalition partners of the German Federal Government want to "... abolish the transsexual law and replace it with a self-determination law. These include a procedure at the registry office, which makes changes to the sex entry in the civil status possible in principle by self-disclosure, an extended and sanctioned prohibition of disclosure and a strengthening of information and counselling services."¹

2. The objective stated in the key issues paper of the Minister for Family Affairs, Senior Citizens, Women and Youth, Lisa Paus, is "... a uniform regulation for all transgender, non-binary and intersex people... who want to change their gender entry or first names." In the future "... a declaration with self-insurance at the registry office that the gender identity does not match the sex entry will suffice. Neither the submission of a medical certificate nor an assessment are necessary."²

3. Amendment of civil status law for all

Contrary to the assertion to create a uniform law for different minorities (trans, non-binary, inter) and to create a piece of "normality" by abolishing "lengthy and costly court proceedings", as Minister of Justice, Buschmann, explained, the two ministers are concerned with much more: A change in civil status law for the entire population in one important point, the sex entry, which is ultimately to be made irrelevant by its "embargo period" of one year and by replacing it with the term "gender identity".

4. Change of sex entry by self-disclosure

On the one hand, this legislative project does not take into account the effects on the evidential function of sex entry in legal transactions. According to the German Federal Constitutional Court, in order to preserve precisely this evidential function, the legislature may very well make the change of sex entry dependent upon certain conditions, e.g., evidence "... based on objective criteria",³ such as expert opinions.

5. On the other hand, the loss of the evidential function of the sex entry – and that is what this is actually about – makes it more difficult to defend the rights of women, whose equality with men under **Art. 2 and 3 CEDAW, Art. 2 and 7 UDHR** is to be promoted by the State.

6. Consequences for women

6.1 Equality objective according to Art. 2 and 3 CEDAW, Art. 2 and 7 UDHR is threatened.

The annual eligibility of the sex entry in the registry office register for all persons who wish to do so, would, in the long run, abolish the federal statistics

¹https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf

²<https://www.bmfsfj.de/resource/blob/199382/1e751a6b7f366eec396d146b3813eed2/20220630-selbstbestimmungsgesetz-eckpunkte-data.pdf>

³ BVerfG, Beschl. d. Ersten Senats v. 11.01.2011 – 1 BvR 3295/07- Voraussetzungen für Eingetragene Lebenspartnerschaft, http://www.bverfg.de/e/rs20110111_1bvr329507.html

on the distribution of biological sexes, at least significantly distort them. The forecasts, expert opinions and measures against discrimination based on federal and state statistics would be made more difficult or impossible. Support plans to achieve equal rights such as political participation through parity laws, quotas, scholarships, women's sports, protection against male violence, freedom of expression and assembly would be disproportionately restricted. Last but not least, crime statistics, which under the current legal situation still reflect the extent of male violence against women, e.g., coercion, bodily injury, exhibitionism, rape, manslaughter and murder, would be rendered useless if male offenders could simply re-declare themselves "women". The logical step after the legally introduced change of the sex entry by self-disclosure and thus its arbitrariness would be its complete abolition in the registry office register. This would lead to considerable practical problems in legal relations. According to the former Federal Government: "The gender entry at birth is a reference entry that serves as evidence in all legal transactions in daily life... Therefore, if sex were not recorded in the civil status register but in other registers, the question of determining sex would only be postponed, but the legal position of citizens would be severely weakened."⁴ The elimination of sex entry in the register of persons would mean for women that the gender equality still to be fulfilled would be made impossible in all areas of life: How can the state comply with the principle of equality between women and men and the elimination of gender discrimination if it lacks statistical evidence of how many women there are and in which sectors of society they are discriminated against, even if the statistical quantity "woman" disappears? How should the promotion of women be implemented in the public sector if the women concerned do not have proof that they are women due to a lack of sex entry? According to this interpretation, the State's mandate under **Art. 2 and 3 CEDAW, Art. 2 and 7 UDHR** to implement the guaranteed equality of men and women - and not least the indispensable keeping of sex-specific statistics - could not be fulfilled. A draft law that indicates the arbitrariness of sex entry and thus its abolition must therefore be strictly rejected for reasons of Human Rights Law.

6.2 The right of women and lesbians, in particular, to physical and psychological integrity under Art. UNDEVW, Art. 1-4 is endangered

The opening of the legal "floodgates" for all people to change their sex upon request and register accordingly, provides all men, including those who are not gender-reassigned, with the legal legitimacy to enter protected (e.g. women's shelters, girls' emergency services, women's prisons) and autonomous women's spaces (e.g. associations, pubs, bars, clubs) without legal hurdles; sexualized violence against lesbians is also one of the consequences. This endangers the right of women in general and lesbians in particular to physical and psychological integrity that is to be guaranteed by the State according to **UNDEVW, Art. 1-4**.

7. Changing sex entry of minors

While it is the task of the legal guardians to submit the amendment to the registry office for minors under the age of 14 and for legally incompetent minors, minors from

⁴ *Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Änderung der in das Geburtenregister einzutragenden Angaben, BT-Drucks. 19/4669 vom 01.10.2018, Begründung A.III Alternativen, S. 2, <https://www.dip21.bundestag.de/dip21/btd/19/046/1904669.pdf>*

the age of 14 should submit the declaration themselves with the consent of the legal guardians. If the parents do not agree, the family court may, at the request of the minor, replace the parents' decision – based on the child's best interests. How the family judge should be able to assess the maturity and capacity of judgement of the applicant child with regard to her/his health and quality of life in the event of a social transition without formal evidence proceedings, i.e. without a juvenile psychiatric report, only in view of the impression in the personal interview, is not clear. To prevent a violation of **Art. 3 (1) UNCRC**, the opinion of one, preferably two, experts should be a minimum requirement for the regulation in question.

8. Strengthening education and counselling services for minors and their parents

Admittedly, the key issues paper speaks of "competent" and "open-ended" advice for minors and their parents, inter alia on "effects of the change of first name and civil status, (on) gender development" and "gender identity". However, "reference should also be made to counselling services offered by relevant clubs and associations", which probably means lavishly subsidized trans lobby organizations with rather trans affirmative advice, which state agencies are paving the way for. The renowned Canadian child and adolescent psychologist Ken Zucker has long confirmed that the early social transition confirms children in their gender dysphoria and encourages them to head for the medical transition. The ministers thus abandon the physical and mental integrity of children to be protected by the State according to **Art. 3 (1) UNCRC** in favor of "gender identity", which is to be helped to "succeed" over sex as a category.

9. Extended prohibition of disclosure subject to sanctions

The prohibition of disclosure under § 5 of the German Transsexual Act prohibits third parties (except close relatives and former spouses) from revealing or investigating the applicant's former first name after the district court's decision has become final. The extension of the prohibition of disclosure, including salutation and sanctions, means that women who reject a change of first name and gender entry by self-disclosure or who are critical of the opening of women's and lesbian spaces for men with "female gender identity" and consequently refuse to base the salutation of a "transperson" not on biological sex but on "felt" gender, would risk in the future of becoming perpetrators of an administrative offence subject to a fine. When asked, the ministers explained that the fine framework would be between € 5,000 and € 10,000. In plain language, this means that the legislator wants to forbid its citizens – as in George Orwell's "1984" – to tell the truth under threat of sanctions. Namely, that there are two sexes. That men cannot be lesbians because lesbians are obviously women whose sexual orientation is directed towards other women. This "prohibition of truth" is not compatible with the guaranteed freedom of expression under **Art.19 UDHR**.

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