Statement by Lesbisches Aktionszentrum (LAZ) reloaded e.V. on the draft bill of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Justice of 9 May 2023

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I. Starting point: Constitutional Law

1. From personal rights to protection against discrimination on grounds of „sex“

In an effort to provide „gender identity“ with comprehensive protection against discrimination on the grounds of „sex“, the authors of the draft bill once draw on international legal sources of varying quality and significance.[1] To another, the General Equal Treatment Act (AGG) is cited as a domestic legal source, which „*determine(s) the concept of sex under EU law*“.[2]
Firstly, it should be noted that transsexuality is protected in the AGG under the characteristic „sexual identity“ (not sex).[3] Furthermore, protection against discrimination for transsexuals under EU law refers to people who have undergone gender reassignment surgery.[4]

This leaves the case law of the Federal Constitutional Court (BVerfG) as the most important authority for safeguarding fundamental rights in the Basic Law.[5]
In numerous decisions on the Transsexuals Act (TSG), BVerfG has established that transsexual persons have a right to recognition of their self-determined „gender identity“ on the basis of the general right of personality under Art. 2 para. (1) in conjunction with Art. 1 para. (1) of the Basic Law (GG)[6] .

In its decision on the third option[7] , BVerfG does grant protection against discrimination to those persons who *„...cannot be categorized as either male or female.“*[8] In the specific case, this means that the plaintiff with *„variants/disorder of sex development“* (X chromosome and missing second gonosome, so-called Turner syndrome), who could not be assigned to either

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[1] Draft bill by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Justice, draft law on self-determination with regard to gender entry and amending other provisions, https://www.bmfsfj.de/resource/blob/224548/4d24ff0698216058eb758ada5c84bd90/entwurf-selbstbestimmungsgesetz-data.pdf [cited: RE]: Cf. A.I.2 (p. 20), A.VII.2 (p. 28): Non-binding recommendations and resolutions, e.g., of the Council of Europe: Resolution 2048 from 2015, the Yogyakarta Principles 2006 of the international commission of jurists (icj) of the UN (which recently made a plea in favor of impunity for paedophilia, cf. Principle 16, https://www.icj.org/icj-publishes-a-new-set-of-legal-principles-to-address-the-harmful-human-rights-impact-of-unjustified-criminalization-of-individuals-and-entire-communities/ [last accessed: 24.05.2023], and the resolution of the UN General Assembly of 25 September 2015 "Transforming our world: the 2030 Agenda for Sustainable Development", https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-139225&filename=001-139225.pdf [last accessed: 24 May 2023]; also ECHR, judgement of 12 June 2003 on Art. 6 and 8 ECHR. However, ECHR has recently set clear limits for transpersons with regard to the right of descent, see https://www.faz.net/aktuell/politik/inland/trans-eltern-eu-gerichtshof-fuer-menschenrechte-weist-beschwerde-ab-18800018.html?GEPC=s5 [last accessed: 08 May 2023]
[2] S. RE, (fn. 1), B. Art. 1 Sec. 6 para. (2) (p. 43).
[3] Cf. BT-Drks. 16/1780 of 08/06/2006, p. 31, https://dserver.bundestag.de/btd/16/017/1601780.pdf [last accessed: 24 May 2023].
[4] Cf., e.g., ECJ, judgement of 30 April 1996, C-13/94, https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:61994CJ0013&from=DE [last accessed: 06 May 2023]; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, para. (3) p.23, https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:32006L0054 [last accessed: 24 May 2023].
[5] BVerfG sees itself as the guardian of the fundamental rights of the Basic Law (GG) vis-à-vis the EU, cf. BVerfG, judgement of the 2nd Senate of 30 June 2009 - 2 BvE 2/08 -, edge digits 241ff., https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/06/es20090630_2bve000208.html [last accessed: 25 May 2023].
[6] Cf. BVerfG, Decision of the First Senate of 6 December 2005 - 1 BvL 3/03 – edge digit 71, http://www.bverfg.de/e/ls20051206_1bvl000303.html [last accessed: 07 May 2023]
[7] BVerfG, Decision of the First Senate of 10 October 2017 - 1 BvR 2019/16, edge digits 1-69 [cited: BVerfG 2017], http://www.bverfg.de/e/rs20171010_1bvr201916.html [last accessed: 07 May 2023].
[8] BVerfG 2017 (fn. 7), edge digit 40.

the male or the female sex due to her physical constitution, was granted the right to obtain a third positive sex entry in the civil status register on the basis of the Civil Status Act (PStG) to be reformed due to violation of Art. 1 para. (1) in conjunction with Art. 2 para. (1) (general right of personality) and Art. 3 para. (3) GG (prohibition of discrimination on grounds of sex).

This means that people who are physically neither male nor female are discriminated against under Article 3 para. (3) GG because they cannot receive a positive sex entry at the registry office (due to the current binary sex model). No less, but also no more. Although BVerfG refers to its case law on the Transsexuals Act (TSG)[9] when explaining the protection of gender identity by the general right of personality, it does not equate the legal situation of intersex persons and those with a different *„gender identity" with* regard to sex entry in the civil status register[10] .

Irrespective of the legally unsecured starting position of virtually conflating sex and gender identity by removing the hurdles for changing sex entry of persons with a different „gender identity" (previously: transsexual persons)[11] , the so-called assessment practice in the TSG is criticized as „degrading" and a plea is made for its abolition in order to make it easier to change sex entry[12] .

However, the authors of the draft cannot refer to BVerfG; since there are different starting situations for intersex and transsexual persons, there is no unjustified unequal treatment with regard to the requirements for a legal sex change.[13] Consequently, BVerfG has no constitutional objections to attaching special conditions to the recognition of a sex change under civil status law for transsexuals. This is clear from its case law from 2011 and 2017 alone[14] *:*

„Since sex can be decisive for the allocation of rights and obligations and family assignments are dependent on it, it is a legitimate concern of the legislator to give the civil status permanence and clarity, to avoid a discrepancy between biological and legal sex as far as possible and to only grant a change of civil status if there are viable reasons for this and otherwise constitutionally guaranteed rights would be inadequately safeguarded. In order ***to exclude arbitrary changes of civil status, the court can demand proof based on objective criteria that the self-identified gender identity, which runs counter to the identified sex, is actually permanent and that its recognition is of existential importance for the person concerned"*** *[emphasis added by the author].*[15]

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[9] *Ibid, edge digit 39.*
[10] *Ibid., edge digits 56ff.*
[11] *But see also the Federal Government's draft bill to revise the law on sanctions - substitute custodial sentences, sentencing, conditions and instructions as well as placement in a detention center, B., On Article 1 (Amendment of the Penal Code -StGB-), No. 2 (Amendment of Section 46 (2) sentence 2 StGB), p. 78, https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RegE_Ueberarbeitung_Sanktionsrecht.pdf?__blob=publicationFile&v=2 [last accessed: 24 May 2023]; cf. statement LAZ reloaded, Stellungnahme-von-LAZ-reloaded_12_08_2022.pdf [last accessed: 24 May 2023].*
[12] *Cf. RE (fn. 1), A.I., p. 18f.*
[13] *Cf. BVerfG 2017 (fn. 7), edge digits 48, 45.*
[14] *BVerfG, Decision of the First Senate of 17 October 2017 -1 BvR 747/17- (non-adoption decision), edge digits 6, 10, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/10/rk20171017_1bvr074717.html [last accessed: 07 May 2023]; BVerfG, Decision of the First Senate of 11 January 2011 - 1 BvR 3295/07-, edge digits 64, 66, http://www.bverfg.de/e/rs20110111_1bvr329507.html [last accessed: 06 May 2023].*
[15] *BVerfG, Decision of the First Senate of 11 January 2011 - 1 BvR 3295/07- , edge digit 66, Requirements for registered civil partnerships, http://www.bverfg.de/e/rs20110111_1bvr329507.html [last accessed: 24 May 2023].*

Significantly, the latter sentence is missing from the draft bill.[16]

2. From protection against discrimination „on grounds of sex“ to the arbitrariness of the change of civil status

The authors of the draft bill thus deviate from the case law of BVerfG in one key point. In the case of transsexuality, high requirements must be placed on the amendment of sex entry to prevent arbitrary changes of civil status, because sex entry has a function as evidence[17], and the rights (e.g. advancement of women) and obligations of the person concerned are derived from it. For this reason, the legal overcoming of a physically unambiguous female or male sex requires an operative legal procedure (Section 4 para. (3) TSG).[18]

If this procedure is replaced by a simple, unquestionable declaration by the person concerned before the civil status register, validity and thus the evidentiary function of the sex entry - in particular through the abolition of the two professional expert opinions and the court proceedings - is abandoned despite assurances to the contrary[19],[20] .

3. From the arbitrariness of the change of civil status to the conflict of fundamental rights

In addition to biological women, girls and intersex persons, also biological men who claim a female „gender identity“ will in the future be able to claim the sex entry „female“ in the civil status register.

By conflating sex and gender identity in civil status law, the constitutionally protected sex-based rights of women and girls, which arise from Article 3 para. (2) GG, are thus jeopardized if members of the dominant sex can declare themselves to be „women“ with all the resulting rights.

The state which is obliged under Article 3 para. (2) sentence 2 GG to eliminate existing discrimination against women, is really preparing to undermine the entitlement to equal rights and special protection against discrimination by constructing a female „gender identity“ that is open to all men who want it?

A simple law to protect the personal rights of persons with a different „gender identity“ in accordance with Article 2 para. (1) in conjunction with Article 1 para. (1) GG cannot override the constitutionally protected rights of women and girls without itself violating the Basic Law.

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[16] Cf. RE (fn. 1), A.I.4 (p. 24).

[17] In Germany, notarizations in the birth register and the birth certificate together with all details, i.e. including the gender entry, have probative value in public legal transactions for the person(s) concerned, cf. sections 54 (1), (2), 55 (1) no. 4 of the Civil Status Act (Personenstandsgesetz - PStG).

[18] See also Bundesgerichtshof -BGH-, decision of 22 April 2020, XII ZB 383/19, edge digit 48, http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=6668fa99a8cb55a6de6d911204bce4bb&nr=106062&pos=0&anz=1&Blank=1.pdf [last accessed: 07 May 2023]

[19] Cf. RE (fn. 1), A. II. (p. 25).

[20] "Sex entry at birth is a reference entry that serves as evidence in all legal transactions in everyday life...If the sex were therefore not recorded in the civil status register but in other registers, the question of the determination of sex would only be postponed, but the legal position of citizens would be severely weakened." Cf. draft bill of the Federal Government, draft law to amend the information to be entered in the register of births, BT-Drucks. 19/4669 of 1 October 2018, Explanatory Memorandum A.III Alternatives, p. 8, https://dserver.bundestag.de/btd/19/046/1904669.pdf [last accessed: 7 May 2023].

It would be necessary to balance the fundamental rights[21] of persons with a different gender identity (previously: transsexuals) under Article 2 para. (1) in conjunction with Article 1 para. (1) GG on the one hand with the fundamental rights of women and girls under Article 3 para. (2) and (3) GG to equal rights and special protection against discrimination on the other hand. In any case, competing fundamental rights must - in accordance with the principle of practical concordance - be harmonized in such a way that they can each achieve their maximum effect (principle of constitutional unity).[22] In order to provide women and girls with maximum protection, the validity of sex entry should be maintained by retaining the legal procedure under Section 4 para. (3) TSG. In addition, exemptions for women to guarantee autonomous and protected spaces, professional advancement and social participation could be considered. A similar decision has also been made in another Western industrialized country, Great Britain.[23]

II. Draft bill: Is the „balancing" of rights of women and girls against rights of persons with a different gender identity successful in light of the arbitrary change of civil status? Are the principles of the rule of law being observed?

Article 1 Law on self-determination with regard to sex registration (SBGG)

Section 1: Objective of the law **- supplemented, see explanations -**

The authors of the draft bill no longer want to make the *„assignment of sex entry"*[24] dependent on the assessment of other people, but *„in the case of persons whose gender identity differs from their sex entry, the information provided by the declaring person alone (should) be decisive for determining sex entry..."*[25]

The choice of words *„assignment of sex entry"* already betrays a departure from the meaning of the word „sex" as a biologically based fact. Moreover, if the sex entry is to be made by self-assignment independent of third parties, as is formulated to be the aim of the draft law, any woman or man may „assign" the sex that suits her or him at the time. This would potentially detach sex entry from the respective sex of all people recorded in the German civil status registers, and, as already explained under I.2, would thus lose its function as evidence. The arbitrariness of the change of civil status would render the statistics on the distribution of biological sex useless, or at least considerably distorted. In addition, forecasts, expert opinions and measures against discrimination based on the statistics would be made more difficult or impossible. In concrete terms, this would mean that men could also claim all the rights that women enjoy in order to compensate for their disadvantages in society, but this time with the label „woman". Support programs to achieve equality such as political participation through parity laws, quotas, scholarships, women's sports, protection from male violence, freedom of

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[21] Cf. statement by Prof. Dr. U. Lembke at the public hearing in the Bundestag Committee on Internal Affairs on 2 November 2020 on the draft laws by Bündnis 90/Die Grünen, FDP and Die Linke: "Protection against discrimination on the basis of deviations from the heterosexual norm must not be at the expense of protecting women from discrimination and violence within the logic of binary gender relations and vice versa. This is a major challenge for legislators...", https://www.bundestag.de/resource/blob/803586/b14cbe365e87aa7ffbe6b288abb180fc/A-Drs-19-4-626-E-neu-data.pdf [last accessed: 07 May 2023].

[22] Konrad Hesse: Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland. C.F. Müller GmbH, 1999, edge digit. 72; Martin Morlok, Lothar Michael: Staatsorganisationsrecht, Nomos, Baden-Baden, 4th edition 2019, Sec. 3, edge digit 94.

[23] House of Commons, Gender Recognition Act Reform, Consultation and Outcome, 17 February 2022, https://researchbriefings.files.parliament.uk/documents/CBP-9079/CBP-9079.pdf [last accessed: 17 May 2023].

[24] See RE (footnote 1), B. Re Sec. 1, subsection (1), no. 1 (p. 32).

[25] Ibid, p. 32f.

expression and freedom of assembly would be acutely threatened. Last but not least, the registered change of sex on „demand“ would provide legal legitimization for the already observable intrusion of men with female gender identity into protected (e.g. toilets, women's shelters, prisons) and autonomous women's spaces (e.g. clubs, pubs, association spaces). See more details in Section 6.

The aim of the draft bill to implement „respect“ and „respectful treatment with regard to gender identity“[26] at the expense of constitutionally guaranteed women's rights must be strictly rejected. The details will be discussed later (see Sections 2, 6 and 7 below).

Section 1 para. (2) of the draft bill contains the statement that „medical measures are not regulated in this Act“. It is unclear whether, in light of the arbitrariness of gender reassignment, the authors of the draft bill have also considered how the meaningfulness of medical statistics should be assessed and what perspective remains for gender-specific medicine, which is currently on the rise, without reliable statistics. [27]

The explanatory memorandum says nothing about this, but contents itself with the statement: *„The scope of application of this law does not include any predetermination with regard to medical measures, since the change of sex entry and first names does not affect a person's physique and is to be assessed independently of medical measures.“* [28]

This is correct from a legal point of view, but not from the perspective of children and young people in particular. The renowned Canadian child and adolescent psychologist Ken Zucker has long recognized that early social transition - and this is nothing other than changing the sex entry at the registry office - confirms children in their gender dysphoria and encourages them to pursue medical transition[29],[30]. For details on changing sex entry for children and adolescents, see Section 3 below.

Conclusion

„Respect“ and „respectful treatment with regard to gender identity“, based on Art. 2 para. (1) and Art. 1 para. (1) GG, are a justifiable goal of the draft bill. However, the instrument chosen to implement it, the arbitrariness of sex entry in the civil registry, runs the risk of disregarding fundamental rights, especially those of women under Article 3 para. (2) GG. This is constitutionally untenable and must therefore be strictly rejected.

Section 2: Declarations on sex entry and first names **- supplemented, see explanations -**

According to Section 2 para. (1), changing the gender entry is open to all persons *„...whose gender identity differs from their sex entry in the civil status register, ...“*[31] A more precise definition of the group of persons is not provided (what is „gender identity“?), with the exception

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[26] Ibid, no. 2 (p. 33).
[27] See also Jens Peter Paul, "Streit um das Selbstbestimmungsgesetz - Ein Sprengsatz mitten ins Leben", Cicero, 30 April 2023, p. 8, https://archive.ph/8eOT0 [last accessed: 8 May 2023].

[28] Ibid., B. Re Sec.1 para. (2) (p. 33f.).
[29] Kenneth J. Zucker, "The myth of persistence: Response to "A critical commentary on follow-up studies and 'desistance' theories about transgender and gender non-conforming children" by Temple Newhook et al. (2018), http://www.hbrs.no/wp-content/uploads/2017/05/The-myth-of-persistence-0ZUCKER.IJT_.2018.pdf [last accessed: 08 May 2023].
[30] The guideline project for children and adolescents with gender incongruence/gender dysphoria (Association of the Scientific Medical Societies in Germany (AWMF), register number 028 - 014) was published on 22 March 2024 as a provisional treatment guideline (consensus-based, not evidence-based!).
[31] Cf. RE (fn. 1), Sec. 2 para. (1) (p. 4).

of the remark that this also includes persons with variations in sex development and so-called „non-binary“ persons. The term „non-binary“ is also not defined[32],[33]. The target group therefore remains vague overall. At the same time, the authors of the draft bill emphasize that *„(t)he possibilities of a change in accordance with Section 2 SBGG...should only be open to this group of people“*.[34] It goes on to say: *„The registry office does not check whether the gender identity actually differs from the sex entry in the civil status register; it is a binding decision without the authority to check.“*[35]

In plain language, this means that the legislator leaves the target group vague, which, however, is entitled to get a new entry in the civil status register that is relevant as evidence for all German citizens, and dispenses with any examination of the truth of the matter; not even a plausibility check is carried out. This contradicts the requirements of certainty and clarity of standards. *„The certainty of the norm should also protect against abuse ... – in so far as the norm regulates the legal relationships between citizens - ... by them.*“ [36]

The fact that, according to Section 2 para. (2), a mere declaration by the person concerned is not sufficient, but also requires a highly personal „self-assurance“ and an „actual act by the registry office“, which *„does not (make)* the *registration purely declaratory“*[37] , does not change the finding of a lack of certainty and clarity of the law.

According to the wording of the explanatory memorandum, the *„self-insurance“* is intended to *„(ensure) that the lack of conformity of the previous sex entry with the gender identity is the reason for the change of sex entry.“ „(It) serves to prevent any improper utilization...“*[38]

It is unrealistic to assume that this formal hurdle („paperwork“) will dissuade a person who intends to change her/his sex entry in the civil status register because it would be inappropriate, as the whole procedure only takes half an hour according to the draft law.[39]

The reference that the registry office may *„...in cases of obvious abuse, i.e., if there are objective and concrete indications of abuse...refuse to register the declaration“,* while *„the person concerned (may) then appeal to the court with the aim of ordering the registry office to register the declaration (Section 49 PStG)“*[40]*,* does not hold water either. Unclear terms (*„objective“ and „concrete“*) are retained and the dispute about this is shifted to the judiciary as an *„individual case“.*

Finally, the authors of the draft bill assume that *„...a certain sex entry in the civil status register may not only be advantageous, (so that) as a rule it cannot be assumed that inappropriate*

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[32] *The negative definition of "non-binary" in RE (fn. 1), A.I.1. (p. 19): "persons who do not feel that they belong to either the male or the female sex" is a negative definition and therefore insufficient in terms of clarity of norms.*

[33] *It is not possible for the authors of the draft bill (cf. RE, footnote 1, A.I.1., p. 19) to refer to the decision of BVerfG on the "3rd option", as it deals exclusively with intersex persons: "Art. 3 para. 3 sentence 1 GG...also protects people who do not belong to these two categories in their gender identity from discrimination* ***on the basis of this sex, which is neither exclusively male nor exclusively female...****". [emphasis added by the author], see BVerfG 2017 (fn. 7), edge digit 58, and text pp.2f.*

[34] *Ibid, B. Re Sec. 2 (p. 34).*

[35] *Ibid.*

[36] *BVerfG, Judgement of the First Senate of 26 July 2005, - 1 BvR 782/94, para. 184, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2005/07/rs20050726_1bvr078294.html [last accessed: 08 May 2023]*

[37] *RE (fn. 1), B. Re Sec. 2, Re para. (1) (p. 34f).*

[38] *Ibid, B. Re Sec.2, Re para. (2) (p. 35).*

[39] *Ibid, A.VII.4. para. (2) (p. 29).*

[40] *Ibid. B. Re Sec. 2, Re para. (2) (p. 35)*

declarations will be made"[41]. It can be confidently assumed that those affected have carefully considered this step. As already mentioned above, sex entry „female" grants all rights that are granted to women due to their social disadvantage, e.g. quota places (see Sections 1 and 7).

As clarified in the explanatory memorandum, the draft bill does not provide for mandatory counselling.[42] The complete removal of „hurdles" for changing sex entry in the civil status register is unprecedented in the German legal landscape. For comparison: A woman who wants to have an abortion is expected to undergo compulsory counselling by specialists (§ 219 penal code, StGB). In this case, she is not allowed to make a self-determined decision. A change of sex entry in the civil status register, which serves as evidence for the person concerned and indirectly for all other German citizens, should be allowed to do this of her/his own free will without any assistance from competent experts? This is unacceptable for constitutional reasons.

Section 2 paras. (3) and (4) deal with the change of first name(s) due to different gender identity. Individual or all first names can be dropped, added to or replaced, whereby new first names must be gender-neutral or belong to the opposite sex. Apart from the fact that these options differ considerably from other naming laws, which only allow first name changes under strict conditions, a changing understanding of gender-neutral first names is expected to lead to potential disputes and opportunities for misuse for people who are unhappy with their first name.[43] The authors of the draft law therefore do not regulate the matter themselves in order to avoid expected disputes, but instead defer such cases to the judiciary.

Conclusion

The use of the terms *„gender identity"* and *„non-binary"* for any change to sex entry in the civil registry violates the principles of clarity and certainty of standards. This opens the door to abuse. *„Self-insurance"* and the possible rejection of the requested change to sex entry by the registry office in the presence of (undefined) „objective" or „concrete" indications are not suitable for preventing the threat of abuse. Moreover, the principle of the rule of law and the principle of democracy are violated (see II. Section 6, text to footnote 66, pp. 12, 16).

Section 3: Declarations by minors and persons with carers
-supplemented, see explanations -

While it is the task of the legal guardians to apply to the registry office for change of sex entry or first names for minors under the age of 14 and for minors lacking legal capacity (para. 2); minors aged 14 and over are supposed to make the declaration themselves with the consent of their legal guardians (para. 1).[44] If the parents do not agree, the family court can replace the parents' decision at the request of the minor or ex officio after notification by the respective

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[41] *Ibd.*
[42] *Ibid, B. Re Sec. 2, para. (1) (p. 35).*
[43] *See also Constantin van Lijnden, Sabine Menkens, "Jetzt probt die Ampel bei der Selbstbestimmung den Spagat", Die WELT from 1 May 2023, https://www.laz-reloaded.de/wp-content/uploads/2023/05/jetzt-probt-die-Ampel-beim-SelfIDGesetz_.pdf [last accessed: 24 May 2023].*
[44] *For comparison: when smoking/drinking, https://www.test.de/filestore/5392208_t201811083.pdf?path=/protected/46/61/6bdbba33-30dc-4fa5-a8a3-ee351a910fe6-protectedfile.pdf&key=77947DD2AE30E23278810B277DB557CDF4EA3375 [last accessed: 17.05.2023] and for tattoos, https://www.cas-tattoo.de/rechtliche-situation-minderj%C3%A4hriger/ [last accessed: 17.05.2023], minors are subject to severe restrictions: tattoo studios protect themselves legally by usually only engraving tattoos from the age of 18 and insisting on permission from the legal guardians beforehand. For reasons of youth protection, there are also clear legal regulations restricting the advertising of cosmetic surgery, see the Therapeutic Products Advertising Act (HWG), p. 28f., https://repository.publisso.de/resource/frl:4406987-1/data [last accessed: 17 May 2023].*

registry office, *„... if the change of sex entry or the first names is not contrary to the best interests of the child“*.[45]

The affirmative formulation „*consent, if it does not contradict the best interests of the child*“ is the standard for personal care in guardianship law (Section 1795 para. 3 Family Act - FamFG).[46] Nevertheless, this standard is adopted for the highly problematic replacement of the will of the custodial parent in the light of the fundamental parental right (Art. 6 para. (2) sentence 1 GG). The consent of the family court is to be the rule; a refusal requires special justification and, according to the authors of the draft bill, should apparently remain the exception.

In the proceedings, the court must determine *„...whether the child has sufficient mental maturity to fully understand the significance and scope of the decision to change her/his civil status entry and to base her/his decision on this knowledge.“*[47] To this end, it should hear the minor(s), the parents and the youth welfare office. „If necessary“, the court can obtain an expert opinion. The questions to be answered are also formulated affirmatively here: *„...whether the change of sex entry is not contrary to the best interests of the child, also taking into account the wider social environment in the family, school and circle of friends“*[48].

It is not clear how the family court judge should be able to assess the applicant child's maturity and capacity for judgement with regard to her/his health and quality of life in the event of a social transition based solely on the impression gained at the personal interview. To consider an expert opinion as not being mandatory, but only „if necessary“ and, moreover, to consider only limited questions, i.e., generally without formal evidence proceedings by means of a youth psychiatric expert opinion, to be appropriate, does not do justice to the situation of presumably gender dysphoric children and certainly does not serve their „best interests“. It should be remembered that, according to scientific findings, the social transition of minors in most cases leads to the extremely problematic medical transition (see above text to footnote 29, p. 6). The expert opinion of two experts should be a minimum requirement for the regulation in question.

If the parents do not agree on the consent to change their child's sex entry, they can appeal to the family court, as consent can only be given by mutual agreement in a matter of considerable importance (Sections 1627, 1628 Civil Code -BGB-). The authors of the draft bill suggest that the court delegates the decision to one parent. They do not mention that this is only possible at the request of one parent.[49] If the parents are not only temporarily separated, the authors of the draft bill even suggest that (on application) one parent should be given sole parental custody in whole or in part (Section 1671 BGB), for example, *„if one parent categorically rejects the child's gender identity, which differs from the sex entry, and it is to be expected that...further decisions of considerable importance cannot* be *made by the parents by mutual agreement in the interests of the child.“*[50] The concerns of a parent about the social and possibly medical transition of the child should therefore be answered with a withdrawal of custody instead of recommending the obtaining of adolescent psychiatric reports. This affirmative and at the same time sanction-based approach inadmissibly curtails parental rights under Article 6 para. (2) sentence 1 GG[51]. In view of the highly controversial scientific treatment of presumably gender

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[45] *RE (footnote 1), Sec. 3 para. (1) (p. 5), B., Re Sec. 3, para. (1) (p. 37).*
[46] *Ibid, B., Re Sec. 3, para. 2 (p. 39f.).*
[47] *Ibid, para. 1 (p. 38).*
[48] *Ibid.*
[49] *Ibid.*
[50] *Ibid.*
[51] *Cf. also Jens Peter Paul (fn. 27), p. 6f.*

dysphoric children[52] , it is not in the best interests of the child[53] , but rather ideologically driven and should therefore be rejected.

Furthermore, the draft law *does "…not provide for mandatory counselling before the declaration of the change of sex entry".*[54] The mandatory assessment by two medical-psychological experts in accordance with TSG is to be replaced by a voluntary counselling service offered by *„self-help"*, i.e., translobby organizations, as well as those in accordance with Social Code -SGB- VIII. Among other things, *„information on the development of individual gender identity"* is to be provided there.[55] It should be noted here that one-sided „positive" counselling in the sense of „transidentity" does not do justice to the complex situation of presumably gender-dysphoric children and adolescents and often leads to irreversible physical interventions, the consequences of which the young patients, predominantly girls, are unable to understand and often regret.[56]

Conclusion

The substitution of the consent of the custodial parents for the application to change sex entry of a minor aged 14 or over by the family court without the mandatory obtaining of two adolescent psychiatric reports must be strictly rejected due to the disproportionate restriction of parental rights under Article 6 para. (2) sentence 1 GG, and for reasons of the best interests of the child. For the same reason, voluntary counselling services are not an effective means of replacing the opinions of two medical-psychological experts.

Section 4: Effectiveness; withdrawal of the declaration **- amended, see explanations -**

The change of sex entry or first names is only entered in the civil status register three months after the declaration has been made and thus becomes effective (Section 4 sentence 1). The authors of the draft law are of the opinion that *„...the deferred effectiveness (serves) as a period for consideration and reflection and (should) prevent the effectiveness of declarations that are not seriously intended".* In the meantime, the declaration can be withdrawn in writing by the applicant.[57]

This precautionary measure ignores reality. While declarations „for fun and games" (Minister of Justice Buschmann in the press conference on the key points paper on 30 June 2022) are likely to be the exception, changing sex entry with the aim of taking legally legitimized possession of rights reserved for women and women's spaces is a far greater danger. See the comments under II. Sec. 6.

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[52] Cf. paper by the Scientific Services (WD), German Bundestag, "Gender identity disorders and gender dysphoria in children and adolescents. Information on the current state of research, Ref.: WD 9-3000-079/19, 15 November 2019, https://www.bundestag.de/resource/blob/673948/6509a65c4e77569ee8411393f81d7566/WD-9-079-19-pdf-data.pdf [last accessed: 09 May 2023] ; "Ad-hoc statement of the German Ethics Council 'Trans identity in children and adolescents: Therapeutic controversies - ethical orientations'", 21 February 2020, https://www.ethikrat.org/forum-bioethik/trans-identitaet-bei-kindern-und-jugendlichen-therapeutische-kontroversen-ethische-fragen/ [last accessed: 09 May 2023];

[53] Cf. video: Clemens Riha interviews Dr Alexander Korte, https://www.candoberlin.de/filme/alexander-korte-im-interview/ [last accessed: 09 May 2023].

[54] RE (fn. 1), B., Re Sec. 3 (p. 37).

[55] Ibid, A. III. (p. 26f.).

[56] Cf. Dr Renate Försterling (herself transitioned), statement on the "Draft law to repeal the Transsexuals Act and introduce the Self-Determination Act" by Bündnis 90/Die Grünen and FDP parliamentary groups, Berlin, 16 May 2021, https://www.praxis-foersterling.de/Stellungnahme%20zum%20Entwurf%20des%20Selbstbestimmungsgesetz,%20Dr.%20med.%20Renate%20Foersterling.pdf [last accessed: 17 May 2023].

[57] RE (footnote 1), B., Re Sec. 4 (p. 40).

Conclusion

The postponed effectiveness of the declaration on change of sex entry defeats the alleged purpose of a „precautionary measure“ against abuse.

Section 5: Blocking period; determination of first name in the event of a change back **- supplemented, see explanations -**

It is possible for adults to change sex entry again one year after the last change (Sec. 5 para. (1) sentence 1); this period does not apply to minors (Section 5 para. (1) sentence 2).

With this short or completely cancelled period, the above applies (I.2., p.4): The validity and evidentiary function of sex entry is abandoned for everyone. The regulation is even less effective for minors: why should minors, who are still in the process of physical and psychological maturation, already have a „gender identity“ that must then also be officially documented? One gets the impression that facts are being created here that are intended to send minors on the „trans train“.

The one-year time limit is intended to serve as *„precipitate protection*“[58] for adults. Apart from the fact that a one-year period is far too short for this and will fail to fulfil its purpose, the far more serious legal consequence of such a regulation, the abandonment of the validity of sex entry, is clear.

One more comment on the experience of abuse abroad: shortly after the amendment to the Swiss Civil Code came into force in 2021, a man had himself declared a woman at the civil registry office at the beginning of January 2022, which enabled him to take advantage of the more favorable pension arrangements for women (drawing his pension one year earlier than men).[59]

Conclusion

The low change-back block for adults must be rejected for reasons of validity and evidentiary function of sex entry, and the complete waiver of the change-back block for minors is also prohibited for reasons of the best interests of the child.

Section 6: Effects of changes to sex entry and first names **-supplemented, see explanations-**

Section 6 para. (1) states that *„...the current sex entry ... is decisive in legal transactions, insofar as reference is made to sex assignment under civil status law or the first names and nothing else is stipulated by law.“*[60]

The explanatory memorandum to the law explains that the respective sex entry *„...is relevant for regulations that pursue the goal of realizing equality between women and men, eliminating existing disadvantages on the basis of sex, in particular, disadvantages for women, and preventing future disadvantages (e.g. regulations on job advertisements, job interviews...)“*.[61]

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[58] *Ibid, B., Re Sec. 5 para. (1) (p. 41).*
[59] *"Luzern person lets herself be declared a woman for financial reasons", 'Blick'/Schweiz, 21 January 2022, https://www.blick.ch/schweiz/zentralschweiz/um-ahv-frueher-zu-kassieren-luzerner-laesst-sich-aus-finanziellen-gruenden-zur-frau-erklaeren-id17166091.html (last accessed: 10 May 2023).*
[60] *RE (footnote 1), Section 6 para. (1) (p.6).*
[61] *Ibid, B., Re Sec. 6 para. (1) (p. 42).*

This clearly shows what it means to conflate sex and gender identity by arbitrarily changing sex. In the future, for example, men will be allowed to apply for positions that are reserved for women in order to compensate for existing disadvantages „due to their sex". The constitutionally protected sex-based rights of women and girls, which arise from Article 3 para. (2) GG, run the risk of being undermined if members of the dominant sex can declare themselves to be „women" with all the resulting rights without controls or sanctions in the event of abuse (see I.3 above, p. 4f.). This regulation is not constitutional and must therefore be strictly rejected.

The fact that this abuse is a real danger is shown by the example of a man who declared himself to be a „woman" in lower ranks of the Green Party in order to get a quota place for women. However, the Federal Arbitration Court of the Green Party put a stop to this: *„... the advancement of women, like the protection of minorities, can only work if it is not undermined by members of the dominant group... (It is) „not just a matter of self-definition. Rather, the right to gender self-determination is in tension with... programmatic self-determination (i.e., women's quota) ... for equal opportunities"*[62].

Section 6 para. (2) contains a „clarification", irrespective of sex entry and comparable to the previous legal situation under Section 10 para. (1) TSG: *„With regard to access to facilities and rooms and participation in events, the domiciliary rights of the respective owner or proprietor and the right of legal entities to regulate their affairs by statute remain unaffected"*[63].

The explanatory memorandum to the law on sex-specific toilets, changing rooms and sex-specific saunas therefore refers to the AGG. The *„...different treatment of two persons who are entered in the civil status register as members of the same sex under civil status law ... may constitute discrimination; however, this (may) be justified in accordance with the provisions of the AGG"*, namely *„...in the area of civil law obligations...if there is an objective reason... Section 20 para. (1) sentence 2 no. 2 AGG cites the 'need to protect privacy or personal safety' as an example of an objective reason... However, a refusal of access cannot be based across the board on* ***gender identity*** *[emphasis added by the author]".*[64]

This „solution" to a problem that first arose through the conflation of sex and gender identity does not work. Minority rights are to be enforced at the expense of women's rights. If the operators of saunas and other sex-specific premises defend themselves in individual cases, these „discrimination cases" will probably end up in court. The women will not have much success, as men cannot be excluded from women's spaces *„on the basis of gender identity"*.[65] They would have the burden of proof that men are disturbing their privacy or threatening their personal safety.

The authors of the draft bill are reminded that the principle of the rule of law and the democratic requirement to balance fundamental rights (see I.3., p. 5) oblige the legislature to make the necessary regulations itself and not to delegate them to other powers.[66]

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[62] *Bundesschiedsgericht Bündnis 90/Die Grünen, judgement of 22 December 2022, Ref. 05/2022, p. 22f., https://docserv.uni-duesseldorf.de/servlets/DerivateServlet/Derivate-56322/GR18-05.pdf [last accessed: 23 May 2023].*

[63] *RE (fn. 1), Sec. 6 para. (2) (p.6). At the same time, however, the explanatory memorandum adds that "...the concept of sex within the meaning of the AGG (is) in any case determined by EU law...", ibid., B, Re Sec. 6 para. (2) (p. 43). This is not correct, see I.1. above (p. 2).*

[64] *Ibid. (p. 43f.).*

[65] *Ibid.*

[66] *BVerfGE (decision collection of BVerfG) 83, 130, edge digit 38 - Josefine Mutzenbacher.*

Incidentally, the reality is already quite different. Non-profit, autonomous women's projects are often faced with the choice of becoming „trans-inclusive“ or having to forego State funding.[67]

Girls' toilets are already being converted into unisex toilets in anticipatory obedience to transgender ideology.[68]

Completely ignored by the authors of the draft bill is the situation of lesbian women: If every man can declare himself a woman and therefore also a „lesbian“, there will no longer be any safe spaces for lesbians in the future where their sexual orientation is not questioned. With the planned SBGG, men with a different gender identity would even receive legal legitimization for their actions.

From now on, lesbian women can no longer know whether men are present, making the once safe space unsafe. There is also the danger that male perpetrators of violence will exploit this procedure to gain access to lesbian spaces. This is already a problem in the lesbian scene.[69]

It follows that it is not so much the minority of men with a female gender identity that needs to be protected, but the majority of homosexual women, whose exclusive spaces are in danger of disappearing.

On the subject of women's shelters, the explanatory memorandum to the law states that *„(the) respective autonomously organized women's shelter (decides) on access on its own responsibility in accordance with the respective statutory purpose and in the exercise of domestic authority. As before, the entry in the civil status register is irrelevant for access to a women's shelter, as its purpose is to protect against sex-specific violence“.*[70]

Autonomously organized women's shelters are generally non-profit associations and therefore dependent on State support. What was said above about non-profit women's projects therefore applies here as well (“trans-inclusive”).

Women's shelters were founded in the 1970s by women from the autonomous women's movement to protect women from male violence. Today, men can often request admission due

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[67] *The Lesbian Spring Meeting 2021 experienced an unprecedentedly negative media campaign and lost its patron (Senator for Health, Women and Consumer Protection, State of Bremen) because it offered gender-critical events and was not explicitly "trans-inclusive", cf. https://www.laz-reloaded.de/wp-content/uploads/2023/05/Stellungnahme_Bremer-Senatorin-Bernhardt_zum-LFT-2021_27_05_2021.pdf [last accessed: 24 May 2023], and Magnus Hirschfeld Foundation, https://mh-stiftung.de/2021/04/27/statement-bmh-lft2021/ [last accessed: 19 May 2023].*

[68] *info@leute.tagesspiegel.de, Steglitz-Zehlendorf, 26.01.2023, **"Unisex-Toilette und Plakate.** The Queer-AG's first project was to set up a unisex toilet in the school: one of two girls' toilets was acquired in 2022 and acceptance at the school was said to be high. "This is how we create visibility," says Anna. The working group's latest campaign is posters that provide information about sexual orientation, gender expression and the diversity of genders, among other things. The posters are to be displayed throughout the school and are intended to encourage reflection - including on discrimination and "toxic masculinity", emphasizes Hanna. See also Gunnar Schupelius, "Gender-Stern wird zum Nachteil für alle, die sich nicht anpassen", BZ, 26 February 2020, https://www.bz-berlin.de/berlin/kolumne/gender-stern-wird-zum-nachteil-fuer-alle-die-sich-nicht-anpassen [last accessed: 11 May 2023].*

[69] *See also LGB Alliance Germany, 27 November 2021, http://lgballiance.de/2021/11/27/stellungnahme-zum-koalitionsvertrag/ [last accessed: 26 May 2023]; Caroline Lowbridge, BBC News, 26 October 2021: 'We're being pressured into sex by some trans women', https://www.bbc.com/news/uk-england-57853385 [last accessed: 26 May 2023].*

[70] *RE (fn. 1), B., Re Sec. 6 para. (2) (p.44).*

to „trans inclusivity“ if they have experienced violence.[71] However, this does not necessarily mean that biological women and men with a different gender identity are treated „equally“ by the staff at the women's refuge. The „sex-specific“ role behavior also continues in women's shelters - to the detriment of women. However, this problem is not discussed publicly - rather in the social media.[72]

Regarding the role of the Women's Shelter Coordination Association (financially supported by the Federal Ministry of Family, Seniors, Women and Youth - BMFSFJ), which, according to the explanatory memorandum to the law, supposedly „supports women's shelters ... from a professional point of view“[73], *'Geschlecht zählt'* (*Sex Matters*) writes*: „The Women's Shelter Coordination Association is ... itself not involved in the operational work of the women's shelters and therefore cannot support them from a professional point of view. Nevertheless, it obviously shapes and directs their political orientation in its favor. The understanding of shelters for women, that the women's shelter coordination organization has, is clearly expressed on social media when it posts: „No one is admitted to a women's shelter solely on the basis of sex.“*[74]

When it comes to the use of women's parking spaces, the authors of the draft bill put the cart before the horse: the objective reason *„...for the use of women's parking spaces (is) not the sex entry under civil status law, but the risk of becoming a victim of offences against sexual self-determination.“*[75] As the victims of these offences are primarily women and their sex entry under civil status law is (still) proof of this fact, it serves to protect them, as preferential rights (use of sex-specific parking spaces) can be claimed on this basis. It is precisely this exclusivity that is to be abolished in future, as the civil status entry „female“ will in future also be open to men with a *„different gender identity“*. On what basis can women then still demand special privileges for their protection?

Sports clubs, which are supposed to decide on access to their facilities and events on their own responsibility and in accordance with their statutes, will be confronted with countless problems and possibly lawsuits. They will have to decide on sex segregation or combination in sporting competitions, depending on the type of sport, regardless of or in accordance with the sex assignment under civil status law. This mixed situation will almost certainly be to the detriment of women's sport and lead to a fragmentation of the legal situation.

However, the suggestion by the authors of the draft law that advertising for sex-specific women's sport is best achieved by focusing on sex entry under civil status law would have exactly the opposite effect: since biological constitution is particularly important in sport - which is why women were excluded from sport for centuries - the conflation of sex and gender identity results in a dramatic distortion of competition to the detriment of women and ultimately the drying up of women's sport. This is also incompatible with the constitutionally protected rights of women under Article 3 para. (2) and para. (3) GG.

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[71] *Cf. Sabine Menkens, "Denen sollen wir erzählen, sie sollen Frauen mit Penis als Mitbewohnerinnen akzeptieren?", Welt+, 24 April 2023, https://www.laz-reloaded.de/wp-content/uploads/2023/05/Menkens_Welt_24_04_2023.pdf [last accessed: 24.05.2023].*

[72] *Facebook screenshot, https://www.laz-reloaded.de/wp-content/uploads/2023/05/Screenshot1-FB_Frauenhaus-und-Transgender.pdf [last accessed: 24 May 2023].*

[73] *RE (fn. 1), B., Re Sec. 6 para. (2) (p.44).*

[74] *Cf. "Sex matters", https://geschlecht-zaehlt.de/frauen-gegen-frauen-statt-frauen-helfen-frauen/ [last accessed: 11 May 2023].*

[75] *RE (fn. 1), B., Re Sec. 6 para. (2) (p.45).*

Prison accommodation, i.e., specifically in women's prisons, has so far been the scene of scandalous violence by trans-identified „women“ against female prisoners, especially in Anglo-Saxon and Anglo-American countries.[76]

The explanatory memorandum to the draft bill states that *„the Basic Law and the prison's duty of care require... that the security interests and personal rights of all prisoners be taken into account when placing them in prison.“*[77] This also applies to the wish of a transgender prisoner to be transferred to the prison intended for opposite-sex prisoners; sex entry would not be the only decisive factor here. Reference is made to the legal competence of the Federal States in the penal system, *"...to be able to make a differentiation taking into account the individual case..."*[78] *in the "... accommodation of transgender prisoners..."*[79],[80].

In Germany, the State of Berlin was the first to implement a corresponding amendment to the law: „*The principle of separate accommodation may be deviated from in individual cases, taking into account...the needs of the other prisoners, in particular, if prisoners...do not feel that they belong to the sex specified in their official civil status entry, but to another sex* or *permanently neither to the male nor the female sex*“.[81] The States of Hesse and Schleswig-Holstein have followed suit.[82]

The State of Berlin - in view of the fact that it was not possible to change sex entry in the civil registry without further ado in 2021 – is, indeed, showing respect for the *„needs of other prisoners“*, i.e., female prisoners in the respective individual case decision. However, after the introduction of the SBGG, it would be questionable whether this consideration is still be made by the prison management vis-a-vis other prisoners, i.e. women, since, according to the logic of transgender ideology, men who „feel“ like women are „women“. What *„security interests“* should still be affected in the absence of a demarcation criterion (the different sex entry is omitted)? The right of imprisoned biological women to physical and psychological integrity would thus be acutely jeopardized (Article 2 para. (2) GG), but it could only be claimed with difficulty due to lack of a demarcation criterion.

Section 6 para (3) makes it clear that *„...the assessment of sporting performance...can be regulated independently of the current sex entry.“*[83]

The authors of the draft bill also refer to the Federal States when it comes to regulations for school sports (admission to single-sex units; grading) and sports tests for recruitment to the police service of a Federal State. They must decide exclusively how to deal with people who make use of their „right“ to change their sex entry at will. Apart from a probable fragmentation

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[76] *Diana Shaw, "Transgender policy that led to male sex offenders in women's jails set to be reviewed", Women are Human, 6 November 2021, https://www.womenarehuman.com/transgender-policy-that-led-to-male-sex-offenders-in-womens-jails-set-to-be-reviewed/ [last accessed: 12 May 2023].*
[77] *RE (fn. 1), B., Re Sec. 6 para. (2) (p.45).*
[78] *Ibid.*
[79] *Ibid.*
[80] *But see, Stephan Klenner, "Mit Recht zum Geschlechtswechsel?", FAZ of 11 August 2022, no. 185, p. 8, https://archive.ph/0AVcO [last accessed: 25 May 2023].*
[81] *Law on the execution of prison sentences in Berlin (Berlin Prison Act - StVollzG Bln) of 4 April 2016, as amended on 14 September 2021, in force 25 September 2021, Section 11 para. (2), https://gesetze.berlin.de/bsbe/document/jlr-StVollzGBEV1P11 [last accessed: 12 May 2023].*
[82] *RE (fn. 1), B., Re Sec. 6 para. (2) (p.45).*
[83] *Ibid, Sec. 6 para (3) (p.6).*

of the law between the 16 Federal States, it may be assumed that women and girls will be the ones to suffer in the event of permissive regulations, as sporting performance is heavily dependent on physical constitution. It is no coincidence that the International Swimming Federation (FINA)[84] and the International Association of Athletics Federations (IAAF)[85] have virtually ruled out the participation of men with a female gender identity in women's sports competitions.

Section 6 para. (4) clarifies that the current sex entry is irrelevant as far as medical measures are concerned.[86] In this area, therefore, only the biological sex counts and the question arises again as to the meaningfulness of medical statistics and sex-specific medicine (cf. II. Sec. 1, p. 6).

Conclusion

The authors of the draft bill never tire of asserting that the current sex entry in the civil status register is relevant for regulations that pursue the goal of realizing equality between women and men. But when it gets more specific, namely the legal consequences of changing sex entry, the explanations in the explanatory memorandum to the law remain vague without exception: in the case of sex-specific spaces and social participation for women and girls, reference is made either to domestic law, the Federal States or private sports associations, and in the case of women's car parks, interestingly enough, to criminal law as protection. However, this would no longer be appropriate for offenders with any sex change. In short, the „opening clause“ of Section 6 para. (1) (sex entry is decisive unless otherwise stipulated by law) means that change of sex entry should be left to „the free play of forces“ with regard to the consequences.[87] This opens the door for the dominant (male) sex to undermine the rights of women and girls to their hard-won protective and autonomous spaces and their participation in society (e.g. sport, sex-equitable medicine, sex-specific statistics). This must be strictly rejected, as it jeopardizes the rights of women and girls under Article 2 para. (2) GG - right to psychological and physical integrity - and Article 3 para. (2) and para. (3) GG - equal rights for men and women and special protection against discrimination for women. Furthermore, this legislative inaction violates the principle of the rule of law and the democratic principle, as the legislature is obliged to make the necessary regulations itself when balancing fundamental rights and not to delegate them to other powers.

Section 7: Quota regulations

The provisions of Section 7 para. (1) and para. (2)[88] on quotas represent a special regulation compared to Section 6 insofar as they relate to the appointment of members to committees or bodies for which a minimum proportion of female **and male** members [emphasis added by the author] is prescribed by law (Federal Act on the Appointment of Members to Bodies, Co-Determination Act, Minimum Wage Act, SGB III, IV and V, Stock Corporation Act). Entry in the civil status register is decisive for sex assignment at the time of appointment. If sex entry changes for at least one person thereafter, the underrepresented sex is only taken into account

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[84] https://www.watson.de/sport/lgbtq/825039872-fina-schwimm-weltverband-beschliesst-neue-regeln-fuer-trans-personen [last accessed: 12 May 2023].
[85] https://www.t-online.de/sport/mehr-sport/leichtathletik/id_100149492/leichtathletik-weltverband-schliesst-trans-frauen-aus.html [last accessed: 12 May 2023].
[86] RE (footnote 1), Sec. 6 para. (4) (p.6).
[87] Cf. also Jens Peter Paul (fn. 27), p. 6.
[88] RE (fn. 1), Sec. 7 para. (1), (2) (p. 6).

accordingly from the start of the next appointment period. This is intended to create „legal clarity“ and „legal certainty“.[89]

The situation is completely different for appointments to positions that are exclusively reserved for female employees, such as the positions of equal opportunities officer, their deputies (Section 19 para. (4) sentence 2, para. (5) of the Federal Equal Opportunities Act - Bundesgleichstellungsgesetz- BGleiG), and the women of confidence pursuant to Section 20 para. (4) sentence 4 BGleiG. According to the logic of 'sex equals gender identity', men with a different gender identity and a corresponding entry in the civil status register will in the future enjoy the passive right to vote for positions previously reserved exclusively for women. The position will only become vacant again if the job holder re-registers as a man in the civil status register after one year.

In view of the authors of the draft bill, this does not disadvantage „other groups of people“, i.e. women. The reasoning: on the one hand, people with a different gender identity would be discriminated against in everyday and professional life, *„...so that their promotion in professional life (is) a social concern.“*[90] *„On the other hand, a change of gender identity should not be carried out lightly and only for the purpose of utilizing the supposed advantage of a quota regulation.“*[91] This is because the person concerned is bound to his self-declaration for one year and generally has to pay the costs for document corrections.

These „arguments“ are in no way convincing: *„(The) lamented under-representation of women (would not) be remedied if nothing changed in the composition of the individual areas (civil service, management positions, parliaments), but a sufficient number of people ... identified themselves as „female“„*.[92] The „promotion“ of minorities at the expense of women is unacceptable due to a collision with the constitutional mandate of equality (Article 3 para. (2) sentence 2 and para (3) GG). Moreover, the exclusion of abuse of the change of sex entry at the expense of women assumed by the authors of the draft bill fails to take account of reality. The case before the Federal Arbitration Court of the Greens proves the danger of abuse all too clearly; indeed, the elimination of State (or in this case: party) control formally invites it (see text to footnote 62, p. 12).

Conclusion

By conflating sex and gender identity in the quota system for jobs, the hard-won rights of women in professional life are being jeopardized. In future, they will have to share the jobs reserved for them with men who have a female entry in the civil status register by self-declaration. As this clearly puts them at a disadvantage compared to men and opens the door to abuse, too, this regulation is also not constitutional and must be strictly rejected.

Section 9: Assignment to the male sex in the event of tension and defense

The authors of the draft bill state with this regulation that *„(the) legal classification of a person as male remains, as far as it concerns service in arms on the basis of Article 12a of the Basic Law...“*.[93] This applies if *„...from a point in time of two months before the determination of the*

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[89] RE (fn. 1), B., Re Sec. 7 (p. 46f.).
[90] Ibid. (S.47).
[91] Ibid.
[92] Cf. Prof. Dr Judith Froese, "Gender should be more than self-definition", FAZ, 20 May 2022, https://archive.ph/rTGx7 [last accessed: 24 May 2023].
[93] RE (fn. 1), Sec. 9 (p. 7).

case of tension or defense as well as during the same..." „...the change of sex entry from 'male' to 'female' or 'diverse' or the deletion of sex entry is declared..."[94]

This is explained by the fact that *„(the) Basic Law...*provides for ***a deliberate distinction between men and women*** [emphasis added by the author] *...*"[95] in cases of defense and tension. *„Due to this **constitutionally overriding requirement** [emphasis added by the author*], *the legal allocation to the male sex (remains)..."*[96] This is because *„the purpose of the regulation is to counteract the **circumvention of compulsory service** [emphasis added by the author] with a weapon..."*[97] An SBGG hardship regulation[98] , which was initially planned, ultimately fell victim to the departmental vote; reference is now made to the hardship regulation that applies to all conscripts.[99]

Let us note: When determining a *duty* that distinguishes between men and women, in order to avoid „*circumvention*", the *change of the sex entry* in a clearly defined period of time is *irrelevant,* namely *„...if the entry is changed at a time when the Bundestag pursuant to Article 80a paragraph 1 of the Basic Law...or the Joint Committee pursuant to Article 115a paragraph 1 of the Basic* Law..."[100] has scheduled a resolution on the determination of the case of tension or defense.

The impression arises that double standards are being applied here: Article 3 para. (2) GG, which states that men and women have equal rights, i.e., which clearly distinguishes between men and women and recognizes that women have the same *rights* as men[101] , which includes special protection against discrimination (see I.3, p. 4f. above), is not observed when it comes to a law on the protection of minorities; risks of abuse are trivialized or outright denied and their solution is shifted to the private law level and the judiciary.

In the case of constitutionally required duties of men such as serving in the armed forces, „circumvention possibilities" are considered quite likely and the change of sex entry within a certain period of time is declared irrelevant by law.

Conclusion

Minority rights can only be organized in connection with the rights and duties of GG. The fundamental right under Article 3 para. (2) GG must be observed, as must the provisions on compulsory military service under Article 12a GG. No more, but also no less.

Section 11: Parent-child relationship **- amended, see explanations -**

With regard to the designation of the parental role („*mother*" or „*father*"), the regulations in Section 11 differentiate according to whether the respective designation for existing or future legal relationships is related to biological parentage. This means that the „*birth mother",* i.e. the woman, is always the „*mother*" at birth of the child regardless of sex entry (Section 1591 Civil Code -BGB-).[102] „*Father"* is only the „*father*" if this has been established by a court (§ 1592

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[94] *Ibid.*
[95] *RE (fn. 1), B., Re Sec. 9 (p.49).*
[96] *Ibid. (p. 50).*
[97] *Ibid.*
[98] *Cf. Draft bill of 28 April 2023, Section 9 (p. 7), https://www.laz-reloaded.de/wp-content/uploads/2023/05/ReferentenEntwurf_SBGG_2023_04_28.pdf [last accessed: 25 May 2023].*
[99] *RE (footnote 1), B., Re Section 9 (p. 50).*
[100] *Ibid.*
[101] *An achievement by one of the "mothers" of GG, Elisabeth Selbert, in the Parliamentary Council in 1948/1949!*
[102] *GE (footnote 1), section 11 para. (1) sentence 1 (p. 8).*

no. 3 BGB); this also applies regardless of sex entry.[103] So far, so clear. It becomes confusing as to who can claim the title of „*father*" in cases where the person concerned is married to the mother at the time of birth or has recognized paternity (Section 1592 nos. 1 and 2 BGB). Here, sex entry at the time of birth is to be decisive, as in these cases the ability to procreate is not relevant.[104] However, the draft bill „...*pursues the goal of legally assigning children to their biological parents in such a way that their parentage is not attributed to two legal mothers or fathers in contradiction to their biological conception*"[105].

This means that women with a male gender identity (not the woman giving birth!) who have already changed their sex entry to „male" before the birth of the child can become a „father", and men with a female gender identity who have changed their sex entry from „male" to another sex after birth of the child can also become a „father"[106],[107]. For all other variants, however, the term „father" is out of the question. This applies to the lesbian partner of the mother (with a female sex entry)[108] and to the man with a female sex entry at the time of birth (for *„equality reasons"*). But the latter person could file a court application for recognition of paternity in accordance with Section 1592 no. 3 BGB[109],[110].

However, persons whose „gender identity" is not consistent with the available parental role, e.g. „*mother*" with a male first name and male sex entry or „*father*" with a female first name and female sex entry, could have the designation „parent" entered in the subsequent certification of the child's birth entry under the new civil status law; this also applies to the other parent.[111]

Apart from the fact that this differentiating regulation is hardly comprehensible to the general public and certainly also to many government agencies (authorities, courts), it is completely confusing from the child's point of view: woman with a male gender identity as „mother" and man with a female gender identity as father, but only in certain cases, and the option of a neutral term „parent" to eliminate contradictions. The „best interests of the child" probably have been given the least thought in this regulation.

Conclusion

The regulation of the cases mentioned in § 1592 nos. 1 and 2 BGB must be rejected, as it violates the constitutional principles of truth and clarity of norms and the best interests of the child.

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[103] Ibid., Sec. 11 para. (1) sentence 2 (p. 8).
[104] Ibid, B., Re Sec. 11, para. (1) sentence 2 (p. 54).
[105] Ibid, B., Re Sec. 11 (p. 53). Cf. also Sec. 8 Applicability of legal provisions on fertility and procreative capacity (p. 7) and B., Re Sec. 8 (p. 48f.).
[106] Ibid, B., Re Sec. 11 para. (1) sentence 2 (p. 55).
[107] This applies accordingly to people with variations in sexual development.
[108] In this case, according to the coalition agreement, there is to be a solution in the future new parentage law, cf. RE (fn. 1), B., Re Sec. 11 para. (1) (p. 56).
[109] Ibid, B., Re Sec. 11 para. (1) sentence 2 (p. 55f.).
[110] For adopted children, biological parentage is not relevant, so that a change of sex entry prior to adoption is relevant, cf. ibid., Section 11 para. (2) (p. 8).

[111] Ibid., B., Article 3 Amendment of the Civil Status Act, No. 3. c) (p. 11), and B., Re Article 3 (Amendment of the Civil Status Act), Re No. 3, Re letter c (p. 63), and Article 4 Amendment of the Civil Status Ordinance, No. 1.b), and B., Re Section 11, Re letter b (p. 65).

Section: 12 Sex-neutral regulations

According to this, all „...*legal provisions that refer to men and women and provide for the same legal consequences for both sexes ...* should apply *to persons regardless of the* sex *entered in the civil status register...*“[112] .

In their explanatory memorandum, the authors of the draft bill refer to Article 3 para. (2) sentence 1(!) and para. (3) GG, according to which men and women have equal rights(!) and no one may be discriminated against on the basis of their sex and any or no sex entry.[113] This is the crux of the matter: sex and gender identity are conflated. This is inadmissible (see above I., pp. 2-5).

Conclusion

By conflating sex and sex entry at will, special protection against discrimination for women compared to men is undermined. This is not compatible with Article 3 para. (2) and para. (3) GG and must therefore be rejected.

Section 13: Prohibition of disclosure **- supplemented, see explanations -**

After a person's sex entry has been changed, the previously registered sex and the first names registered before the change may not be disclosed or researched without the person's consent (Section 13 para. (1)).[114]

The offence of „disclosure“ is then *„to be understood as the communication of a fact to a third party who does not know this fact at the time of the communication, does not know it to the extent communicated, does not know it in this form or does not know it with certainty.“* [115] If the previous sex entry or the previous first names are generally known or known to the addressee, the offence of the prohibition of disclosure is not given.[116] „*Inquiries“* are „*detailed, intensive or continuous enquiries“ about the previous data of the previous person*.[117] Exceptions are a „*special public interest*“ or the substantiation of a „*legal interest*“. A public interest exists, for example, in the determination of the insurance history in the statutory pension insurance scheme, a legal interest, for example, in the assertion of claims for damages or maintenance or in the determination of identity due to a contract or will.[118]

According to the authors of the draft bill, the target group of this prohibition of disclosure is to be extended: it will not only cover State bodies, but also private individuals. This means that the entire society is the addressee of this prohibition.[119]

This affects freedom of the press and freedom of opinion, which „*must be weighed up in each case, taking into account the circumstances of the individual case*.“[120] The journalistic protection of sources, the interest in reporting, a statement in the political opinion campaign on the one hand (Art. 5 para. (1) sentences 1 and 2 GG) and „*the general right of personality of*

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[112] *Ibid, Sec. 12 (p. 8).*
[113] *Ibid, B., Re Sec. 12 (p. 56).*
[114] *Ibid, Sec. 13 para (1) (p. 9).*
[115] *Ibid., B., Re Sec. 13 para. (1) (p. 58).*
[116] *Ibid.*
[117] *Ibid. (p. 57).*
[118] *Ibid., Sec. 13 para (1) (p. 9), and ibid., B., Re Sec. 13 para (1) (p. 57f.). See also ibid., Sec. 10 Amendment of registers and documents (p. 7f.), and ibid., B., Re Sec. 10 para. (1) (p. 50ff.).*
[119] *Critical of this new "reality doctrine": Christoph Türcke, Emerit. Philosopher, "Gesetzlich verordnetes Vergessen" of 26 July 2022, FAZ, https://archive.ph/IrG18 [last accessed: 25 May 2023].*
[120] *Ibid., B., Re Sec. 13 para. (1) (p. 58).*

the ... person due to the privacy affected" on the other hand, whereby the latter enjoys „*particularly extensive* protection"[121] , i.e. takes precedence.

This means that freedom of the press and freedom of opinion are severely restricted by the ban on disclosure and that individual cases are left to be decided by the judiciary. Due to the arbitrary nature of changing sex entry by any woman or man, this is such a far-reaching restriction that it is difficult to be reconciled with Article 5 para. (1) GG.

However, the explanatory memorandum to the draft bill did not discuss at all whether women who feel harassed by men with a female gender identity in front of or in their autonomous or safe spaces and express this by pointing out the men's possibly clearly visible sex characteristics, are also addressees of the prohibition of disclosure. Here, the authors of the draft bill find themselves in a factual dilemma: on the one hand, the prohibition of disclosure should not apply if the previous sex entry is generally known or known to the addressee (see above text to footnote 116, p. 20). Does this also apply to the obvious appearance? On the other hand, the rejection of a person in the context of domiciliary rights must not refer to *„gender identity"* (cf. above II. Section 6, p. 12).[122]

Apart from these factual ambiguities, the constitutionally guaranteed rights of women are not even the subject of discussion, as was the case with press law and general freedom of opinion in the „political battle of opinions". However, women's freedom of opinion is jeopardized by the prohibition of disclosure, which is therefore incompatible with Article 3 para. (2) and para (3) and Article 5 para. (1) sentence 1 GG.

Section 13 para. (2) sentence 1 standardizes an exception to the prohibition of disclosure for former or present spouses, relatives in a direct line, and the other parent to the child of the person concerned. They are only obliged to disclose the changed sex entry and first names if this is necessary for keeping of public books and registers or in legal transactions, but not in social life. This exemption does not apply to other relatives (e.g. siblings) or friends and acquaintances; nor does it apply to spouses, children and the other parent who married, were born to or adopted by the person concerned after the change of sex entry or who is the other parent of these last-mentioned children (Section 13 para. (2) sentence 2).

This extremely complicated and in part incomprehensible regulation (siblings?) should be rejected due to its impracticality and lack of realism (coexisting realities?).

Conclusion

Freedom of opinion and freedom of the press are disproportionately curtailed by the ban on disclosure, and individual cases are shunted off to the judiciary. Factual ambiguities in obvious cases (domestic law, expression of opinion) violate the constitutional principles of truth and clarity of norms and, as they are particularly detrimental to women, violate Article 3 paras. (2), (3) and Article 5 para. (1) GG. The exceptions to the prohibition of disclosure are not always comprehensible and impracticable in detail, and also violate the constitutional principles of truth and clarity of norms.

<u>Section 14: Fines</u>

Violations of the prohibition of disclosure (Section 13 para. (1)) should be punishable as an administrative offence if the person concerned is *„intentionally harmed"* by the disclosure, since

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[121] Ibid.

[122] See also, Jens Peter Paul (footnote 27), p. 9. The prohibition of disclosure applies in case of changing rooms also to lifeguards.

the prohibition of disclosure *„does not have sufficient effect without the imposition of a fine...“.*[123]

The *“(right) to informational self-determination in a particularly intimate and therefore sensitive area of the persons concerned, as well as in the resulting violation of material and non-material interests that the perpetrator was interested in”*, should be protected.[124]

An example is the case where a person leaves her/his previous social environment after changing sex entry and first name in the civil status register and makes a „*fresh start*“ in her/his new environment with a changed sex entry and first name. *„Someone“* now informs the person's new environment that sex entry has been changed *„...in order to damage the reputation of the person concerned and to impede her/his professional advancement out of envy or resentment. The result intended by the perpetrator materializes; ...the person concerned...loses...significant parts of her/his customer base...“*[125] In addition to financial losses, moral damages are also covered, i.e. the „*public exposure of the protected person („character assassination“)“.*[126]

Deliberate behavior with intent to cause damage and corresponding success is punishable in accordance with Section 14 para. (2) with a fine of up to € 10,000.[127]

Even if innocent „*conversations over the* garden *fence*“[128] do not fulfil the elements of the prohibition of disclosure subject to a fine due to a lack of intent to cause harm, public figures cannot be *„disclosed“*, negligent actions and attempts do not fulfil the elements of the offence or are not subject to a fine, and the intent to cause harm and causal success would have to be proven in court, the penalty of „up to ten thousand Euros“ represents a considerable threat scenario for the individual and definitely an attack on freedom of expression (see also Section 13). The „chilling effect“ as a deterrent effect of a state measure[129] causes self-censorship, intimidation and conformist behavior not only among individuals, but also among large groups of people.

This particularly affects women as those primarily affected by the legal effects of the arbitrariness of changing sex entry: if they are critical to change of first name and sex entry by self-declaration or to the opening of women's and lesbian spaces for men with a “female gender identity”, and consequently refuse to base the form of address to a trans identified man on his „perceived“ gender rather than on his biological sex, they risk becoming the focus of the ban on disclosure, which is subject to fines, and could prefer to waive their freedom of opinion as a precautionary measure. The imposing of fines should therefore be rejected.

Conclusion

The „chilling effect“ of a high fine is a State measure that leads to self-censorship, intimidation and conformist behavior and represents an attack on freedom of opinion. Women in particular, as those primarily affected by the legal effects of the arbitrariness of changing sex entry, can become the focus of the prohibition of disclosure, which is subject to a fine, and waive their

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[123] RE (fn. 1), Sec. 14 para. (1) (p. 9); and ibid., B., Re Sec. 14 para. (1) (p. 59).
[124] Ibid., B., Re Sec. 14 para. (1) (p. 59).
[125] Ibid. (p. 60).
[126] Ibid.
[127] Ibid, Sec. 14 para (2) (p. 9).
[128] Ibid., B. Re Sec. 14 para. (1) (p. 61).
[129] A term from Anglo-Saxon law: the deterrent effect of a State measure that prevents someone from exercising her/his fundamental and human rights as a precautionary measure because tshe/he fears sanctions, see https://www.freitag.de/autoren/netzpiloten/studie-beweist-selbstzensur-durch-ueberwachung [last accessed: 16 May 2023], https://www.telemedicus.info/chilling-effects-und-ueberwachung/ [last accessed: 16 May 2023].

freedom of expression as a precautionary measure. The imposition of fines as a draconian „deterrent effect“ is therefore incompatible with Article 5 para. (1) GG because it constitutes an attack on democracy.

Article 13 Evaluation

The draft bill provides for an evaluation of the law within five years of it coming into force.[130] In addition to the effects of the ban on disclosure, it is to be evaluated *„... whether the regulations have been misused.“*[131]

However, this does not require five years, because the potential for abuse and damage to women is obvious, as selected cases from abroad and Germany prove - unfortunately disregarded in the general part of the explanatory memorandum.[132]

France: Transgender ideology is dangerous for children;[133]

Great Britain: Lesbian lawyer wins lawsuit against her employer for discrimination based on the statement that sex and body are one;[134]

Austria: University favors „FLINTA“ (women, lesbians, intersex, non-binary, trans-identified, asexual) persons over women in violation of its statutes;[135]

Scotland: The UK government has vetoed the Scottish government's planned Gender Recognition Act (Self ID), as the proposed legislation does not include „sex“ as a characteristic worthy of protection and therefore conflicts with the UK Equality Act. Under this Act, so-called „single sex“ establishments, i.e. women's refuges, schools, clubs, etc., can also be authorized. The Scottish head of government, Nicola Sturgeon, resigned after the Scottish Prison Service also came out in favor of sex segregation in prisons and the majority of the Scottish population spoke out against the proposed legislation.[136]

Switzerland: Shortly after the reform of the Civil Code, a man declares himself a woman before the civil status registrar in order to take advantage of the more favorable pension regulations for women (cf. text to footnote 59, p. 11).

USA: Woman confronted by large man in women's changing room; sex = gender identity? - 20 US states have successfully prevented the Biden administration from imposing regulations on the scope of sex discrimination in summary proceedings[137] ;

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[130] *RE (fn. 1), Article 13 Evaluation (p. 16).*
[131] *Ibid, B., On Article 13 (p. 68).*
[132] *Ibid., A.I.3 (p. 21ff.).*
[133] *France: https://genspect.org/france-says-non-to-gender-ideology/ [last accessed: 17 May 2023]; USA: CHARLOTTE GRIFFITHS found herself facing a dilemma [last accessed: 17 May 2023]; https://www.laz-reloaded.de/wp-content/uploads/2022/07/Tennessee-v.-Dept-of-Educ-Granting-PI-7-15-2022.pdf [last accessed: 17 May 2023].*
[134] *United Kingdom: https://www.faz.net/aktuell/feuilleton/debatten/transgender-das-biologische-geschlecht-ist-kein-vorurteil-18205776.html [last accessed: 17 May 2023], see also footnote 23.*
[135] *Austria: https://www.salzburg24.at/news/salzburg/salzburg-flint-bevorzugung-von-oeh-rechtswidrig-117155647 [last accessed: 17 May 2023].*
[136] *https://www.schwulissimo.de/neuigkeiten/england-stoppt-trans-gesetz-verfassungskrise-zwischen-england-und-schottland [last accessed: 17 May 2023]; https://www.schwulissimo.de/neuigkeiten/ruecktritt-schottland-premierministerin-sturgeon-tritt-nach-trans-debatte-zurueck [last accessed: 17 May 2023].*
[137] *USA: CHARLOTTE GRIFFITHS found herself facing a dilemma [last accessed: 17 May 2023]; https://www.laz-reloaded.de/wp-content/uploads/2022/07/Tennessee-v.-Dept-of-Educ-Granting-PI-7-15-2022.pdf [last accessed: 17 May 2023].*

Germany: man with a female gender identity murders patient in Munich clinic; both were accommodated in the same wing[138]; Federal Green Arbitration Court denies „womanhood“ to man who declares himself a woman in order to be nominated for a quota place (cf. text to footnote 62, p. 12).

Conclusion

For reasons of foreseeable abuse, a period of two years from the law coming into force until its evaluation would be entirely sufficient.

III. Overall assessment

Despite the legally uncertain starting position, the authors of the draft bill conflate sex and „gender identity“ by removing legal hurdles to changing sex entry for any woman or man with a claimed „deviating gender identity“.

This implies:

- The use of the barely definable, indeterminate legal terms „gender identity“ and „non-binary“ for any change to sex entry in the civil status register violates the constitutional principles of certainty and clarity of norms and thus has the potential for abuse.

The foreseeable consequences for women as well as encroachments on the rights of parents and the draconian threats of fines for anyone who violates the ban on disclosure are serious:

- Sex entry in the civil status register loses its function as evidence. This makes it more difficult, if not impossible, to enforce sex-based rights of women and girls in accordance with Article 3 paras. (2) and (3) GG:
    - Planned regulations for sex-specific spaces and the social participation of women and girls (domestic law, state jurisdiction, criminal law, private statutory authority) are unsuitable for their protection and social participation.
    - From now on, women's rights when filling quota positions in professional life must be shared with men who have a female sex entry in the civil status register.
    - The special protection against discrimination of Article 3 para. (3) GG is being undermined.
    - Statistics on the distribution of biological sexes become useless, or at least considerably distorted. Furthermore, forecasts, expert opinions and measures against discrimination based on statistics are made more difficult or impossible.

- Parental rights under Article 6 para. (2) sentence 1 GG and the best interests of the child are violated:
    - Substitution of consent of the custodial parents for the application to change sex entry of a minor aged 14 or over by the family court without the mandatory obtaining of two adolescent psychiatric reports disproportionately restricts parental rights in accordance with Article 6 para. (2) sentence 1 GG and is contrary to the best interests of the child.

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[138] *Germany: https://www.schwulissimo.de/region/bayern/grausamer-mord-muenchner-klinik-opfer-erschlagen-und-verbrannt [last accessed: 23 May 2023].*

- The determination of the „father's role“ in § 1592 nos. 1 and 2 BGB, which depends on sex entry, violates the constitutional principles of truth and clarity of norms and the best interests of the child.

- Disclosure prohibition subject to fines
  - Freedom of opinion and freedom of the press (Article 5 para. (1) sentences 1 and 2 GG) are being disproportionately curtailed.
  - The exceptions to the prohibition of disclosure are not always comprehensible in detail and violate constitutional principles of truth and clarity of norms.
  - Factual ambiguities in the case of an obvious appearance (domiciliary right, freedom of opinion) violate the rule of law principles of truth and clarity of norms and, since they are particularly detrimental to women, violate Article 3 para. (2) and Article 5 para. (1) GG.
  - The „chilling effect“ of a high fine is a State measure that leads to self-censorship, intimidation and conformist behavior and, as a draconian „deterrent“, is incompatible with Article 5 para. (1) GG because it represents an attack on democracy.

Recommendation:

It would be necessary to balance the fundamental rights of persons with a different gender identity under Article 2 para. (1) in conjunction with Article 1 para. (1) GG on the one hand with the fundamental right of women and girls under Article 3 para. (2) and para. (3) GG on the other hand in accordance with the principle of practical concordance. The fundamental rights under Article 3 para. (2) and (3) GG must be observed in the same way as the regulations on compulsory military service under Article 12a GG. No more, but also no less.

In order to maximize the impact of Article 3 paras. (2) and (3) GG, it would be necessary to maintain the validity of sex entry for the protection of women and girls by retaining the legally formative procedure under Section 4 para. (3) TSG and to create guaranteed and appropriate exceptions for women to ensure autonomous and protected spaces, professional advancement and social participation.

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