



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva

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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner of Human Rights has the honour to refer to the communication sent by the Special Rapporteur on violence against women and girls, its causes and consequences, dated 13 June 2024, Ref.: AL DEU 4/2024.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith Germany's response.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 6 August 2024



Office of the High Commissioner
of Human Rights
Geneva

DATE: 5 August 2024

TO: Beatriz Balbin
Chief
Special Procedures Branch
OHCHR

REF: AL DEU 4/2024

Safeguarding the human rights of all persons living in the Federal Republic of Germany is of utmost importance and a legal obligation the federal government is committed to in all of its legislative decision-making.

The Federal Republic of Germany refutes the allegation that in ensuring the right to self-determination, it “falls short of a number of human rights obligations”. The Act on Self-Determination with Regard to Gender Entry and Amending Other Regulations (henceforth “law on legal gender recognition”) is soundly based on human rights standards.

The main motivation for proposing legislation on legal gender recognition was precisely to safeguard a person’s gender identity in line with the general right of personality based on the German constitution (Article 2 para. 1 in conjunction with Art. 1 para. 1 of the Basic Law, *Grundgesetz*). The conception of this law is furthermore in line with international recommendations and provisions. In 2010 the Council of Europe’s Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/rec(2010)5) called on member states to “take appropriate measures” to ensure legal gender recognition, including by enabling “the change of name and gender in official documents in a quick, transparent and accessible” manner. This is in line with numerous judgments of the European Court of Human Rights (ECtHR) – in particular with regards to the right to respect for private and family life as enshrined in Article 8 ECHR (see *van Kück v. Germany*, Judgment 12 June 2003, Appl. No. 35968/97, pt. 69; *A.P., Garçon and Nicot v. France*, 6 April 2017, Appl. Nos. 79885/12, 52471/13 and 52596/13; *X. and Y. v. Romania*, 19 January 2021, Appl. nos. 2145/16 and 20607/16; *S.V. v. Italy*, 11 October 2018, Appl. No. 55216/08; *X. v. the former Yugoslav Republic of Macedonia*, 17 January 2019, Appl. No. 29683/16). The ECtHR in its case law has reiterated the necessity of an autonomous decision with regards to the choice of gender in order for a person to be able to live according to their gender identity and in human dignity (*Christine Goodwin v. United Kingdom*, Judgment 11 July 2002, Appl. No. 28957/95, pt. 90). Legal gender recognition procedures should be “fast, transparent and accessible” (*X and Y v. Romania*, Appl. nos. 2145/16 and 20607/16, para. 168).

The new law on legal gender recognition will enable non-binary, intersex and transgender persons to change their birth registries and subsequently identifying documents in line with their gender identity. The law does not make any changes to existing legislation, such as the General Act on Equal Treatment and therefore has no legal implications on the access to single sex spaces. Ensuring that single sex spaces, in particular women’s shelters, are in fact safe has always been a main concern for the government. As in fact, violence perpetrated against women – particularly by cis-men – remains a reality. The Association of Women’s Shelters explicitly [welcomed the new law](#) and voiced its concern over the increasing violence against intersex and transgender persons identifying as female and their particular marginalisation. The Association points out that women in all their diversity should receive shelter from violence. Furthermore, shelters have individual safeguarding procedures in place including risk assessments and protocols. When a woman seeks shelter from violence, the shelter will assess in each individual case if it is the right fit for her and if the shelter offers adequate resources for her multiple protection needs. Granting access depends on a number of factors and is not provided solely on the basis of a person’s gender entry.

The Federal Republic of Germany shares your goal to eliminate gender-based violence. This is a high priority issue for the government, which is why Germany ratified the Council of Europe's Convention on preventing and combating violence against women and domestic violence (henceforth, "Istanbul Convention") on 12 October 2017. The government is currently also working on the "Strategy of the Federal Government to prevent and combat violence against women and domestic violence" and a law on supporting survivors of gender-based violence. The root causes of violence against cis-women and violence against transgender, non-binary and intersex persons based on their gender are the same – they are rooted in misogyny and stereotypical ideas of how persons of a certain gender should act. Therefore, strengthening the rights of transgender, non-binary and intersex persons and thereby eliminating harmful gender stereotypes, a goal of the Istanbul Convention, is beneficial for safeguarding the rights of all women and girls.

The legislative process allowed the law on legal gender recognition to undergo thorough scrutiny - non-governmental organizations were involved at various stages of the legislative procedure. The *Deutscher Frauenrat* (German Women's Council) – the biggest umbrella organization in Germany uniting 60 active women's organisations throughout the country – [voiced its support for](#) the new law on legal gender recognition highlighting its necessity to eliminate structural discrimination against transgender persons. The *Deutsche Frauenrat* warned against the reproduction of mistrust and false stereotypes by associating the law with transgender persons posing a threat or being violent. They also pointed out concern for the hostile discourse around the law. Multiple other associations, basing their assessments on human rights, expressed a positive opinion of the law. These include the [German Institute for Human Rights](#), [Amnesty International](#), the Federal Association of [Women's Support Services and Women's Crisis Helplines](#) and the [German Women's Lawyers Association](#) amongst others.

Transgender, intersex and non-binary persons themselves are predominantly affected by violence. A fact also recognized by the Istanbul Convention. Based on the [Politically Motivated Crime Report](#), it can be assumed that acts of violence due to 'gender diversity' have increased (for 2022, 417 such crimes were officially recorded – a higher level of underreporting is expected). In 2024, a [study](#) by the EU Agency for Fundamental Rights on LGBTIQ equality found that transgender and intersex people face increasing victimization when it comes to hate-motivated violence and discrimination.

The law on legal gender recognition furthermore has the best interests of the child at heart. Children and adolescents, whose gender identity do not conform to their sex assigned at birth, experience enormous psychological stresses and social challenges; the [suicidality rates](#) are [particularly alarming](#) when it comes to transgender children. The [German Ethics Council](#) pointed out that children and adolescents have a constitutionally protected right to live a life corresponding to their own perceived gender identity and to have this right recognised. In its [statement concerning the bill on legal gender recognition](#), the Federal Association for the Protection of Children (*Kinderschutzbund Bundesverband*) – an umbrella organisation with over 50.000 members in Germany – explicitly welcomed the legislation and highlighted the importance of ensuring children could also benefit from the law.

In order to ensure children are supported in their decision-making process, the law on legal gender recognition foresees that legal representatives provide the declaration on behalf of their children until they have reached the age of 14 years. Children above the age of five need to be present at the civil registry office. Above the age of 14, children can provide the declaration on their own with the agreement of their legal representatives. If the legal representatives refuse to agree, family courts may replace the missing consent and authorize the declaration. The family court and the legal guardians are legally bound to only act in the best interests of the child. The declaration before the civil registry's office should also entail the declaration that the child or their legal guardian have received advice. This can refer to advice by psychological specialists or by public or independent providers of child and youth welfare. The law on legal gender recognition solely allows for the administrative procedure of changing a legal gender entry. The change of the legal gender entry of a child is reversible at any time.

We have duly taken note of your statement voiced in your position as an independent expert. We are also closely following developments within the United Nations, where we have perceived numerous calls in support of legislation akin to the German law on legal gender recognition. For example, under the leadership of Argentina, a cross-regional group of 28 states, supported by 66 organisations, [called for legal gender recognition](#), based on self-identification in March 2023. In her [Report](#) on Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, the UN High Commissioner for Human Rights in 2019 already found that “each person’s self-defined gender identity is integral to their personality” and called out abusive requirements, such as “medical certification, in violation of international human rights standards.” She further suggested the introduction of a “simple administrative process (...) and (to) give minors access to recognition of their gender identity”. Furthermore, the UN Independent Expert on Sexual Orientation and Gender Identity in his [Report](#) on legal recognition of gender identity of July 2018, recommended member states “eliminate abusive requirements as prerequisites for change of name, legal sex or gender” and for procedures to “be based on self-determination by the applicant” and “be based solely on the free and informed consent of the applicant” (UN doc A/73/152p. 23 and 24).