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Greece: Draft law on legal recognition of gender identity must be strengthened so that transgender people enjoy human rights without discrimination

Amnesty International considers the recent draft legislative proposals presented by the Greek Ministry of Justice on legal recognition of gender identity as a much anticipated and important first step, but still requiring significant improvements in order to ensure that transgender people in Greece can enjoy their human rights without discrimination.

On 2nd May, the Greek government presented a draft law for public consultation, which removes the requirements of prior medical intervention, tests or treatment related to an individual's physical and mental health for a gender marker and name change.

Amnesty International believes that if this draft law is adopted by the Greek parliament, transgender people in Greece would be able to obtain legal recognition of their gender identity, while enjoying their right to bodily integrity and to be free from cruel, inhuman and degrading treatment.

However, the proposed legislation also has serious flaws in various areas. It would make legal gender recognition contingent upon single status – forcing married individuals to divorce in order to obtain legal recognition of their gender. It excludes adolescents under 17 from obtaining legal gender recognition, and stipulates that the amended gender marker corresponds to a person's 'external appearance'. It is not clear from the legislation how this will be adjudicated, leaving the possibility open that individuals seeking legal recognition of their gender will be expected to conform to gender stereotypes.

The proposed legislation also fails to establish a quick, transparent and accessible procedure, based on self-determination. It would breach the right to privacy particularly for children of transgender individuals and their parents, as it does not allow change of the gender marker on children's birth certificates after the parents of the latter have legally changed their own gender. The legislation also requires that applicants hold a birth certificate issued in Greece, which excludes certain transgender individuals belonging to groups such as refugees and migrants from obtaining legal gender recognition in Greece.

Amnesty International calls on the Greek government to amend the proposed legislation on legal gender recognition and bring it in line with human rights standards, specifically by:

- Removing the single status requirement;
- Removing blanket age restrictions and giving access to minors, on the basis of their best interest, taking into account their evolving capacities and their right to be heard;
- Removing the requirement of the correspondence between gender marker and gender external appearance;
- Allowing individuals to change their legal name and gender, including the gender markers on all official documents issued by the state, through a quick, accessible, and transparent procedure and in accordance with the individual's sense of gender identity, without limitations on the number of instances that a gender marker can be changed;
- Ensuring that legal gender recognition is not limited only to individuals holding birth certificates issued by a Greek Registry office, and ensuring that transgender individuals who have obtained legal recognition of gender identity in another country have the relevant decision recognized in Greece, without having to undergo anew a procedure of legal gender recognition;
- Allow individuals who identify as a gender that is neither male nor female to obtain official papers that reflect their gender identity.

BACKGROUND INFORMATION

Until recently, Greek courts have usually required transgender persons applying for a change in their gender markers and names to provide certificates that they had undergone medical treatments such as removal of their reproductive organs, hormonal treatment, and a psychiatric diagnosis that they suffered from 'gender identity disorder'. However, some landmark judgments in the past two years indicate a change in judicial practice. In 2016, the Athens Magistrates' Court found that medical procedures were not an obligatory requirement for legal recognition of gender identity in a case filed by a transgender man.

After a lengthy wait, a draft law on "Legal Recognition of Gender Identity and a National Mechanism monitoring and evaluating the Action Plan on the rights of the child" was presented by the Ministry of Justice Transparency and Human Rights on 2 May 2017.

In a letter addressed to Stavros Kondonis, Minister of Justice, Transparency and Human Rights on 13 May 2017, Amnesty International submitted a number of observations and recommendations and called the Minister to take these into account in revising the draft legislation on legal recognition of gender identity.

Following the completion of public consultation in mid-June 2017, the proposed legislation was forwarded to the Government's General Secretariat. In a speech, Ms Maria Yannakaki, Secretary General for Transparency and Human Rights announced that the aim was for the draft law to be tabled to the Parliament during the summer.

Amnesty International has analysed the proposed legislation, and identified the following flaws:

REQUIREMENTS NOT CONSISTENT WITH INTERNATIONAL HUMAN RIGHTS LAW

Amnesty International believes that the single status requirement discriminates against transgender individuals who are married and wish to remain so and as result calls for its removal from the draft legislation. This requirement forces transgender persons to choose between their rights to marry and to found a family and to respect for private and family life, and their right to recognition before the law.

Because of the requirement of single status, people who are married and seek recognition of their preferred gender will face an invidious and costly choice. They must either give up the legal protection acquired in their union, and the right of their partner and children to private and family life, or forego legal recognition of their preferred gender, a violation of their right to private life and to recognition before the law. Transgender persons who choose to form a new legal union with their ex-spouse, who is legally the same gender as them, can only opt for civil unions, as Greek legislation does not include same-sex marriage. Civil unions stipulate a more limited set of rights than marriage: for instance, same-sex couple in civil unions cannot adopt children.

The organization considers a step towards the right direction the recently announced modification in the proposed legislation which allows 17-year-olds to obtain legal gender recognition with parental consent. However, this provision still excludes children younger than 17, as well as 17-year-olds whose parents refuse consent.

Denial of legal gender recognition to individuals under a given age is not consistent with existing international standards regarding the rights of the child and such restrictions are not necessary in the proposed legislation. Legal gender recognition should be accessible to children on the basis of their best interest and taking into account their evolving capacities and their right to be heard.

Legal recognition of gender identity should not be contingent on consistency between the new gender marker and the person's external appearance. Such requirement is grounded in stereotypical notions of gender and expectations; legal recognition of gender should not be contingent on conforming to gender stereotypes. As a result, the organization urges the Greek authorities to remove this requirement from the proposed legislation.

PROCEDURE FOR LEGAL RECOGNITION OF GENDER IDENTITY DOES NOT FULFIL THE REQUIREMENTS OF QUICKNESS, TRANSPARENCY, ACCESSIBILITY AND SELF-DETERMINATION

Amnesty International also notes that the envisaged procedure on legal gender recognition does not fulfil the requirement of quickness, transparency, accessibility and self-determination set in international human rights documents, such as the PACE Resolution on the Discrimination against Transgender People in Europe.¹ First of all, the change of a person's gender marker takes place following a judge's decision and is not based on the

¹ PACE Resolution 2048 (2015), Article 6.1.2.

individual's self-declaration. The applicant also has to appear in person before the competent court. Adding to this, a lawyer's assistance is required in this procedure.

As proposed by national NGOs, a procedure fulfilling the above criteria could be a declaration before the competent Registry Office for the change in the gender marker and name. Furthermore, the limitations placed on the number of instances that a person can change their gender marker restrict unnecessarily the rights of transgender persons and ought to be removed.

Finally, although under the proposed legislation authorities issuing documents such as passports and identity cards are obliged to issue new documents, the associated procedure is not automatically triggered. Greece ought to ensure that individuals can obtain official documents – including passports, ID cards and educational certificates – reflecting their name and gender without undue financial or bureaucratic burden.

CHILDREN OF TRANSGENDER PERSONS AND THE RIGHT TO PRIVATE LIFE

Transgender individuals must be allowed to change their legal name and gender markers on all official documents issued by the state. As a result, serious concerns arise over the stipulation that the gender marker of transgender people cannot be corrected in the birth certificates of an offspring born prior to the legal recognition of a parent's gender. Such provision breaches the right to privacy for both the children and their parents and must be removed.

GROUPS EXCLUDED BY THE PROPOSED LEGISLATION

The proposed legislation does not provide for official documents reflecting the gender identity of individuals who identify as neither male nor female. It also does not make the procedure available to people who are not in possession of a birth certificate issued by a Greek Registry Office. As a result, transgender EU nationals, migrants, asylum-seekers and refugees residing in Greece face an undue burden and will be unable to obtain legal recognition of their gender identity in Greece. This is particularly worrying in light of the vulnerability of certain groups such as refugee and migrant transgender women, who are particularly exposed to violence and threats of violence due to their gender identity and gender expression.

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