

Legal gender recognition – the case of Norway

Anniken Sørli, PhD Candidate, University of Oslo, Faculty of Law
anniken.sorlie@jus.uio.no

Legal recognition of transgender person's gender identity has transitioned from primarily being regarded as a patients' right to be detached from medicine. However, the fusion of law and medicine still forms the basis of current administrative practice for legal gender recognition in Norway. By legal gender recognition I mean change of legal gender in all documents with a gender marker, or identity documents that in other ways list an individual's legal gender. This change of legal gender facilitates passing - the ability to be read in accordance with one's gender identity. Medical recognition and the right to necessary health care, as ensured in the Patients' Rights Act, were at first regarded as a victory that ensured transsexuals legal gender recognition in Norway. This took place in the 1970's, at the same time as the World's first act regulating the civil status change of transsexuals was enacted in Sweden in 1972. However, this fusion of law and medicine later turned into the main obstacle for transgender human rights. With this presentation I aim to emphasize the crucial importance of transgender rights being defined as human rights concern distinguished from domestic patients' rights. This is of particular importance to the upcoming change of Norwegian administrative practice on change of legal gender. I tend to explain the process of legal gender recognition in Norway and why the situation has remained unamended for 40 years.

Current administrative practice

In Norway, the mandatory gender specific national identification number constitutes one's legal gender. This number lists the options of male and female – categories based on the biological definition of sex. However, pursuant to administrative practice established in the 1970's, legal gender can be changed after completing gender reassignment treatment. Since the 1970's, the diagnosis transsexualism, real-life experience, hormone treatment, and removal of reproductive organs have been required for change of legal gender. This practice is pursued although change of legal gender has been included in the administrative regulation on the Population Registration since 1994. Still, the requirements for change of legal gender were neither defined here, or in the new regulation from 2007.

A transition from a patients' right to a human right to gender identity

Although legal gender recognition for post-operative transsexuals was accessible in some European states before the landmark decision of Christine Goodwin versus United Kingdom from 2002, legal gender recognition was not until that time explicitly regarded as a human rights concern. Both in Norway and other countries legal gender recognition was examined as a question of necessary health care and offered only after gender reassignment treatment. With an increased international focus on transgender human rights, legal gender recognition is emphasized as a matter of human rights principles: such as autonomy, human dignity, non-discrimination and integrity as opposed to a diagnostic patients' right. This change is not reflected in current Norwegian practice on legal gender recognition.