

# HUMBOLDT LAW CLINIC GRUND- UND MENSCHENRECHTE



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### **Psychiatry in legal gender recognition procedures in Europe**

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The vast majority of trans people in Europe need to undergo psychiatric assessment and prove a mental health diagnosis in order to obtain legal gender recognition. Consequently, trans people are classified as 'sick' even though they are not.

Firstly, the paper explores the role and level of engagement of psychiatry in legal gender recognition proceedings in 49 European states, which range from expert assessments to "real-life-tests" to weeks-long psychiatric institutionalisation in the Ukraine. Aside from the 14 states that do not provide any legal gender recognition procedure, others regularly require the ICD-diagnosis "transsexualism" as a form of mental and behavioural disorder. The requirement of this diagnosis is either explicitly stated under statutory law, created by interpretations of law, produced by court precedent, or implied, as the diagnosis is a condition for sterilisation or gender reassignment surgeries that are mandatory for legal gender recognition. A psychotherapeutic therapy is rarely explicitly required but is usually needed to undergo mandatory sterilization or treatments to have the diagnosis confirmed or as a follow-up on the diagnosis.

Secondly, this paper provides a human rights law analysis. It finds that the psychiatric requirements within legal gender recognition proceedings that trans people face impact their lives and violate human rights: The right to private life (Article 8 of the European Convention on Human Rights (ECHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR)) is infringed through forced medical treatment, through pathologisation and resultant stigmatisation, dependence and heteronomy; the right to non-discrimination (Article 14 ECHR, Article 2 ICCPR, Article 2 (2) International Covenant on Economic, Social and Cultural Rights (ICESCR)); the right to protection of health (Article 11 European Social Charta, Article 12 ICESCR); the right to recognition before the law (Article 16 ICCPR); and, possibly, the prohibition of torture and inhuman and degrading treatment or punishment (Article 3 ECHR, Article 7 ICCPR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment). Consequently, it is our assertion that to adhere to human rights obligations, a state needs to provide a legal gender recognition procedure that does not require any psychiatric diagnosis or intervention, but is based solely on self-determination.