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Fråga-svar

Ryssland. Angående transpersoner, könsbyte och möjlighet till byte av juridisk könstillhörighet.

Fråga

Hur ser den aktuella landinformationen gällande transpersoner i Ryssland ut? Kan en person som genomgått en könsbytesoperation byta juridisk könstillhörighet och id-handlingar?

Svar

Sammanställning av information:

United States Department of State (2012):

Transgender individuals faced difficulties in changing their names and gender classifications on government documents. Although the law allows for such changes, the government has not established a standard procedure for doing so, and in practice many civil registry offices denied these requests. When their documents fail to reflect their gender accurately, transgender persons often faced discrimination in accessing health care, education, housing, and employment.

Charity Foundation for Social and Legal Community Assistance Rainbow, LGBT Organization Coming Out & Inter-Regional Social Movement 'Russian LGBT Network' (2012) rapporterar att lagstiftningen, som tillåter byte av juridiskt kön, i praktiken tolkas och tillämpas godtyckligt. Enligt källan ställs det krav på medicinska åtgärder och kirurgiska ingrepp för att genomföra ändringar i officiella dokument trots att lagen inte kräver det¹:

¹ Se även Inter-Regional Social Movement 'Russian LGBT Network', *An Alternative Report; Discrimination on Grounds of Sexual Orientation and Gender Identity in Health Care, Education, Employment and Social Security in the Russian Federation*, maj 2011,

While the right to officially change one's legal gender status was established by Russian legislation, it is difficult to exercise this right because the legal mechanism to do so has not been developed, even after fourteen years. (s. 37–38)

[...]

Changes to the official documentation of transsexual people require, first of all, changes to their birth records and birth certificates. The civil registry offices in administrative procedures are charged with effectuating these changes. The supervision and monitoring of their activities are conducted by the regional departments of the civil registry and by agencies of the Ministry of Justice.

As noted, the current legislation allows transsexual people to make changes to their official documentation in principle. However, there is no clear mechanism for implementing the governing legislation. As a result, the current law is interpreted arbitrarily. What is of special concern is that the civil registry offices require the performance of various types of medical interventions and surgical procedures, in particular, before allowing transsexual persons to make changes to their official documentation. Such requirements are not in accordance with either existing legal norms or with current medical standards.

It is important to note that art. 70 of the FL on ACS does not contain any language regarding medical procedures. However, in practice, such procedures are often required by the relevant authorities.

This is a position of the Ministry of Justice. The Deputy Director of the Department of Legal Aid and Interaction with the Judicial System of the Ministry of Justice of the Russian Federation wrote in a letter, “the change of a birth record by the civil registry office could be possible only if a change of sex, being a result of surgeries, has already been performed and is an irreversible fact. Other methods (i.e., the possibility of issuing new documentations for persons with gender identity disorders before the performance of such surgeries) could be established only by federal legislation.”¹⁸

Following the Ministry of Justice, a number of regional departments of the civil registry have taken the same position. Because of this, the verbal nonofficial statements of individual governmental officers, rather than the law, become the rule when considering cases. For example, the head of the Department of the Civil

http://www.ecoi.net/file_upload/1788_1323094767_irms-russianfederation-cescr46-en.pdf, s. 6–8.

Registry of Tyumen Oblast noted: “in this case, civil registry offices are guided by oral explanations of the Ministry of Justice of the Russian Federation, which are provided for at professional trainings for civil registry officials in Moscow. According to the explanations of the Ministry of Justice, a citizen who has changed his/her sex, should submit a medical certificate to the civil registry office, which should include indications that this person has made a sex change surgery, and the conclusion that the citizen has changed her/his sex.”¹⁹

Very few regions have adopted practices that correspond to the human rights provisions and do not require applicants to undergo medical procedures in order to obtain new documentation. For example, such practice has been adopted in St. Petersburg.²⁰ However, in most Russian regions transsexual applicants are required to undergo medical procedures (such as surgeries, hormonal replacement therapies, irreversible interventions, etc.).²¹ (s. 74–75)

ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association (2012) rapporterar:

Legal gender recognition

In spring, in Novosibirsk, a post-operative transsexual applied for a change of identity papers, producing the necessary medical certificates on diagnosis and surgeries, but the Civil Registry Office refused to grant the application. Prior to the application, the Novosibirsk Regional Civil Registry Office had stated that they did change transsexuals' documentation if applicants submitted medical certificates relating to surgery. The applicant changed the documentation using court procedures instead. (s. 141)

Council of Europe (2011) om rapporterade hinder för transpersoner att få sin juridiska könstillhörighet utbytt²:

National legislation regulating gender recognition

Twenty-four Council of Europe member states have adopted legislation on the legal recognition of the preferred gender. This is the case in Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Italy, Latvia,²⁸⁷ Malta, Montenegro, the

² Se även Center for Reproductive Rights & Russian Association for Population And Development, *Supplementary Information on Russia, scheduled for review by the U.N. Committee against Torture during its 49th session (November 2012)*, 2012-10-10, http://www.ecoi.net/file_upload/1930_1354111771_crrrapd-russianfederation-cat49.pdf, s. 9.

Netherlands, Norway, Portugal, Romania, the Russian Federation, Slovakia, Spain, Sweden, Switzerland (in some cantons only – no national legislation), Turkey, Ukraine and the United Kingdom.²⁸⁸ (s. 85–86)

[...]

In the Russian Federation there is also no legal basis for sterilisation, though some civil registry offices or courts have reportedly required sterilisation in order to recognise the new gender. (s. 87)

[...]

In the Russian Federation there is also no legal requirement for divorce though some transgender persons reported that the existence of a marriage was regarded as an obstacle to be legally recognised in the new gender. (s. 88)

Inter-Regional Social Movement ‘Russian LGBT Network’ (2010) om processen för transpersoner att få sina handlingar utbytt:

Legal regulation in the field of gender reassignment is underdeveloped and unsystematic in Russia. Changing name, gender marker and corresponding documents for transgender people should be made on the basis of “a standard document confirming gender reassignment.”¹⁶ However, the Russian state has failed for 12 years to provide a template for the cited standard form. Without it, the practical application of the law is very difficult and in many cases the law is rendered useless. Consequently, transgender people are left out in a medical and legal limbo.

As a result, civil registry offices in practice often deny transsexual persons to change the gender marker, citing the fact that the conclusion given by a medical organization does not correspond with the standard form (but as was pointed out, such a form simply does not exist). No legislation or regulation requires surgery for changing the vital records. However, it is common practice that civil registry offices override their competencies and make the successfulness of an application depended on the “completeness” of the applicant’s gender reassignment – accordingly, surgical

intervention is required and one surgical procedure is regarded as not sufficient. (s. 7)

[...]

For the majority of transgender people, the process to receive documents reflecting their gender identity may endure one to two years; in areas with a lack of professionals it might even be longer. Despite the legal regulation it is necessary to firstly be under psychological supervision to obtain the permission to undergo surgery. The surgery is followed by another psychological survey, on which the recommendation is produced to change documents. Often this recommendation is challenged by the civil registry, forcing the applicant to go to court extending the procedure even more. In this time, many transgender people are facing impoverishment and unemployment as they find it difficult to find a job with documents not matching their appearance; or to keep a job while serving the often required stationary or ambulant psychological supervision for up to several weeks. (s. 8)

Moscow Helsinki Group & Inter-Regional Social Movement 'Russian LGBT Network' (2008) angående lagstiftningen och förfarandet vid byte av juridiskt kön och officiella handlingar:

The current legislation not only stipulates the possibility in principle of documenting the changed gender in the case of surgical gender reassignment of transsexuals, but also specifies the procedural provisions related to his question. Some specific examples are:

- ☐ The Federal Law "On Acts of Civil Status" 1997, which provides for the possibility of rectifying acts of civil status based on the document confirming gender reassignment issued by a health institution (art.70), at the same time changing the name of the citizen (art.60) and issuing a new birth certificate;
- ☐ The Provision of a Passport of the Citizen of the Russian Federation of the 8th July 1997¹¹, according to which gender reassignment is grounds for passport replacement;
- ☐ Administrative Regulations of the Federal Migration Service on the provision of state service relating to the

issue, replacement and fulfilment of the state duty to keep records on passports of the citizens of the Russian Federation, attesting identity of the citizen of the Russian Federation on the territory of the Russian Federation, approved by the Order of MOI RF of 28th December 2006¹², according to which, in the case of gender reassignment, it is necessary to present the passport to be replaced and the name change certificate in order to receive a new passport;

□ The Order of the Federal Fund of Compulsory Health Insurance of the 15th August 2000 No.67 “On the Introduction of the Unified System of CHI Health Insurance Police Number Formation”¹³, according to which YYYYMMDDNNNN facets of the health insurance policy number remain unchanged during the entire life of the citizen except for cases of gender reassignment.

Thus, the Russian legislation provides for the main grounds establishing the possibility and orders relating to gender reassignment. However, there are certain gaps: art.70 of FL “On Acts of Civil Status” mentions not only a document confirming gender reassignment issued by a health institution, but a standard document. Such standard form has not been approved yet, and there are situations when registry offices do not recognise the document issued by a health institution as grounds for modifying the civil status.

Thus, in order to use their rights (formally guaranteed by the legislation) citizens have to apply to the court. In their turn, courts deliver a judgment on establishing the legal fact of gender reassignment, which is not quite an unambiguous solution from the viewpoint of legal theory and legislative practice . (s. 12)

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende.

Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden.
Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

Center for Reproductive Rights & Russian Association for Population And Development, *Supplementary Information on Russia, scheduled for review by the U.N. Committee against Torture during its 49th session (November 2012)*, 2012-10-10,

http://www.ecoi.net/file_upload/1930_1354111771_crrrapd-russianfederation-cat49.pdf (Hämtad 2013-03-12)

Charity Foundation for Social and Legal Community Assistance Rainbow, LGBT Organization Coming Out & Inter-Regional Social Movement 'Russian LGBT Network', *Alternative Report; Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment in the Russian Federation in Relation to Sexual Orientation and Gender Identity*, 2012,

http://www.ecoi.net/file_upload/1930_1354114342_lgbt-russianfederation-cat49.pdf (Hämtad 2013-03-12)

Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe*, September 2011,

www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf (Hämtad 2013-03-12)

ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2011*, Maj 2012,

http://www.ecoi.net/file_upload/1930_1340787606_annual-review-2011-all.pdf (Hämtad 2013-03-12)

Inter-Regional Social Movement 'Russian LGBT Network', *An Alternative Report; Discrimination on Grounds of Sexual Orientation and Gender Identity in Health Care, Education, Employment and Social Security in the Russian Federation*, maj 2011,

http://www.ecoi.net/file_upload/1788_1323094767_irmsm-russianfederation-cescr46-en.pdf (Hämtad 2013-03-12)

Moscow Helsinki Group & Russian LGBT Network, *The situation of lesbians, gays, bisexuals, and transgender people in the Russian Federation*, 2008, http://www.ilga-europe.org/home/publications/reports_and_other_materials/the_situation_of_lesbians_gays_bisexuals_and_transgender_people_in_the_russian_federati on 2008 translated in 2010 (Hämtad 2013-03-12)

Russian LGBT Network, *Shadow Report - Discrimination and Violence against lesbian and bisexual women and transgender people in Russia*, submitted for the 46th CEDAW Session New York, USA 12 – 30 July 2010, 2010,
http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/LGBTNetwork_RussianFederation46.pdf (Hämtad 2013-03-12)

United States Department of State, *2011 Country Reports on Human Rights Practices - Russia*, 2012-05-24,
<http://www.unhcr.org/refworld/docid/4fc75a6b73.html> 8hämtad 2013-03-12)