European Social Charter

Submission by Women's Initiative Supporting Group (WISG),[1] Transgender Europe[2] and ILGA-Europe[3] on the 6th report by Georgia on the implementation of the revised European Social Charter

Article 11 -- The right to protection of health

(i) Medical treatment as compulsory requirement for legal gender recognition
(ii) Access by transgender persons to gender reassignment treatment

1. Introduction

Two of the processes associated with the reassignment of a person's gender are a legal process, in which a person's recorded sex and first name are changed in identity and other documents ("legal gender recognition"), and a medical process, in which the individual's physical characteristics may be brought in line with their preferred gender ("gender reassignment treatment"). Human rights principles require that the two processes should be completely separate and that the extent of the medical process should be determined by the needs and wishes of the individual. It can range from little or no medical intervention, through to extensive gender reassignment surgery.

In many Council of Europe member states these two processes are mixed together, with legal gender recognition being made conditional on a medical diagnosis and medical treatment. While medical treatment is often desired by transgender persons, this is by no means always the case, resulting in a situation where some individuals are faced with the choice of undergoing medical treatment (including in many member states, sterilisation) they do not need or wish, or being unable to obtain legal gender recognition.

[1] WISG is a non-governmental women's right organization established on 29 July 2000 by 8 women with different professions to unite our resources and who share the principles, that women should be involved in the activities directed to social changes. Our vision is the justice, equity, and democratic society where all women are aware of their right and are able to participate in all areas of the life. Our mission is to support democratic state building in Georgia; improving cultural, economic and social environment through the promotion of women's initiatives. Our key strategy in terms of women's empowerment is consolidation of women through creation of groups and networks to make "changes from beneath".

[2] Transgender Europe - TGEU, a not-for-profit umbrella organisation working for the full equality of trans persons in Europe, has 64 member organisations in 36 countries, enjoys participatory status to the Fundamental Rights Platform and is elected member of the Platform of European Social NGOs Social Platform. TGEU is in the process of applying for participative status at the Council of Europe.

[3] ILGA-Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe has more than 400 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 45 European countries.

Where transgender persons do wish to undergo medical treatment, they face significant obstacles in obtaining such treatment in many Council of Europe member states. These obstacles fall into three broad categories:

- failure of health services to provide necessary treatment, and where it is provided, failure, often, to provide treatment of an acceptable quality
- imposition of arbitrary requirements, including a diagnosis of mental disorder for accessing transgender health care
- failure to cover expenses for medically necessary treatment

The human rights situation of transgender persons in general, and the above questions in particular, have been extensively researched in recent years by the Office of the Commissioner for Human Rights, and documented in an Issue Paper, *Human Rights and Gender Identity* and a report, *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe*. Relevant extracts regarding the obligation to undergo medical treatment prior to obtaining legal gender recognition are set out in Appendices I and II; those relating to the difficulties faced by transgender persons seeking gender reassignment treatment are set out in Appendices V and VI.

Some key points are as follows:

1.1 Medical treatment as a compulsory requirement for legal gender recognition

Human Rights and Gender Identity notes that conditions for legal gender recognition vary widely across Europe. While a small number of member states require no medical treatment, most require that the individual has followed a medically supervised process of gender reassignment, has been rendered surgically irreversibly infertile, and/or has undergone other medical procedures, such as hormonal treatment. The paper notes that "such requirements clearly run counter to respect for the physical integrity of the person …. surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist….. It is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state enforced sterilisation."

Discrimination on grounds of sexual orientation and gender identity in Europe points out that "surgery leading to sterilisation has been identified as a requirement [for legal gender recognition] in 29 member states." It adds that in two other member states, Austria and Germany, the sterilisation requirement has been found unconstitutional, while in four no requirements of sterilisation are enforced. In the remaining 11 states there was either no legislation regulating legal gender recognition, or the situation regarding the sterilisation requirement was unclear.

In 2010 the World Professional Association for Transgender Health issued the following statement:

> *"No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures."*[4]

On December 19 2012 the Administrative Court of Appeals in Stockholm, Sweden followed the example of courts in Austria and Germany in finding the sterilisation requirement unconstitutional.[5]

In a report dated 1 February 2013 the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, raised the question of the coerced sterilisation and other coerced medical treatment of transgender persons, and, in a recommendation addressing the rights of LGBTI persons, made the following recommendation:[6]

[4] http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf
[5] The text of the ruling is available from ILGA-Europe
[6] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez – Human Rights Council – 22nd session

"88. The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization,……., when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups."

1.2 Access by transgender persons to gender reassignment treatment

In *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe* it is reported that:

(i) in 13 member states no facilities needed for gender reassignment treatments were identified, while even in the 28 member states where some facilities were identified, some countries did not make all necessary treatments available.

(ii) in 16 countries access to health insurance to cover these treatments was "highly problematic", while in some others provision was minimal, or provided only to some transgender persons.

Human Rights and Gender Identity observes that "The results of the problems transgender persons encounter in accessing their right to health care are reflected in health statistics. Several studies referenced in the FRA study show that a quarter to one third of transgender people surveyed had attempted suicide."[7]

2 Medical treatment as compulsory requirement for legal gender recognition

2.1 Specific Council of Europe human rights standards

The Committee of Ministers, in its *Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, recommended that member states should review prior requirements for legal gender recognition, including changes of a physical nature, in order to remove those which are "abusive". It also recommended that member states should make possible the change of name and gender in official documents in "a quick, transparent and accessible way", a requirement which rules out the lengthy procedures associated with gender reassignment treatment. The Recommendation's Explanatory Memorandum expanded on the above, noting that in some countries access to gender reassignment services is conditional upon procedures such as irreversible sterilisation, hormonal treatment, preliminary surgical procedures etc, and adding that existing requirements should be reviewed in order to remove those which are "disproportionate". Similar considerations applied with respect to prior requirements for legal recognition of a gender reassignment.[8]

While the Committee of Ministers stopped short of recommending an end to sterilisation and other medical treatment as prior requirements for legal recognition, its statement that such requirements were potentially abusive and to be reviewed was a significant step, given that the great majority of member states currently require such procedures.

In 2010 the Parliamentary Assembly called on member states to ensure that transgender persons are able to obtain legal gender recognition "without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy".[9]

In June 2013 the Parliamentary Assembly adopted a resolution entitled "Putting an end to coerced sterilisations and castrations", which deals*, inter alia,* with the coerced sterilisation of transgender persons. The resolution describes such sterilisations as "grave violations of human rights and human dignity" which "cannot be accepted in Council of Europe member states". It calls for the revision of laws and policies to put an end to such practices, and for financial compensation for victims.[10]

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[7] see Appendix V - extracts from *Human Rights and Gender Identity – Issue Paper* by the Commissioner for Human Rights
[8] see Appendix III for further details
[9] see Appendix III for further details
[10] Resolution 1945 (2013) "Putting an end to coerced sterilisations and castrations"
http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19984&lang=EN

The Human Rights Commissioner has likewise called for the abolition of "sterilisation and other compulsory treatment …. as necessary requirements for the legal recognition of a transgender person's preferred gender."[11]

2.2 The situation in Georgia regarding medical treatment as a compulsory requirement for legal gender recognition

The Report of the Commissioner for Human Rights *Discrimination on grounds of sexual orientation and gender identity in Europe* lists Georgia among the states which make surgery leading to sterilisation a requirement for legal gender recognition. [12]

A recent report *On implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity by Georgia,* documents the situation in Georgia regarding requirements for medical treatment in relation to legal gender recognition as follows:

According to the law on the Civil Acts (para 78), a person has a right to ask the civil act registration body to make changes and/or additions to his/her entry including the name. The ground of such request includes the change of gender "if a person likes to change name or/and last name due to the change of gender.[13] On the other hand, there is no official definition or explanation of how we should understand "change of gender" or what are the specific documents, that the applicant is required to present in order to achieve legal recognition of his/her gender.

According to the existing practice in the civil act registration body, in the case of gender reassignment, a person is entitled to change his/her personal data in the official documents, which is a long process. Before the actual surgery a transgender person has to be observed by psychologists and sexologists. These observations last for more than a year. At the end of the process the special committee has to conclude on whether or not the applicant is a "true transsexual" and then issues a relative document. Only after this document is issued a transgender person has the right to undergo the sex reassignment surgery. One more thing to do before the operation is the hormone therapy.

Consequently, irreversible sterilization, hormonal treatment and preliminary surgical procedures are mandatory procedures which one has to go through in order to be able to obtain new documents.[14]

The 6th report by Georgia on implementation of the revised Social Charter makes no reference to these questions.

2.3 The obligations of Contracting Parties

Article 11 of the European Social Charter requires the Parties to take appropriate measures designed "to remove as far as possible the causes of ill-health." Relevant supporting principles established in the case law of the European Committee for Social Rights ("the Committee") are as follows:

- The applicable definition of "health" is that set out in the Constitution of the World Health Organisation: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."
- With regard to the right to the highest possible standard of health: "The health system must be able to respond appropriately to avoidable health risks, that is ones that can be controlled by human action".[15]

[11] see Appendix II for further details
[12] See Appendix II
[13] Monitoring of implementation of CM/REC(2010)5 in Georgia. p.169. WISG. Tbilisi. 2012. http://women.ge/wp-content/uploads/2013/01/CM_REC20105GEORGIA_ENG_extended-version.pdf
[14] Ibid. page 141
[15] *FORM* for the reports to be submitted in pursuance of the European Social Charter (revised) - *adopted by the Committee of Ministers on 26 March 2008 - Article 11* – Scope of the provisions as interpreted by the ECSR; http://www.coe.int/t/dghl/monit slip a job oring/socialcharter/ReportForms/FormRESC2008_en.pdf

Requiring some individuals to undergo unwanted and unnecessary medical treatment, as a prior condition for legal gender recognition is in direct conflict with the above. Far from acting to "remove as far as possible the causes of ill health", the state both prejudices the attainment of "complete physical, mental and social well-being" and indeed acts in a manner which puts the health of individuals at risk unnecessarily.

While the Committee has not yet had the opportunity to address this issue specifically, international and comparative human rights standards leave no doubt that it amounts to a serious violation of the right to health. The relevant standards with regard to sterilisation are set out in Appendix IV. While Georgia does not require sterilisation, the principles underlying the standards in relation to sterilisation are equally applicable to other forms of coerced medical treatment. They lead to the following general conclusions:

- Full and informed consent is required for any medical invention. This applies particularly to sterilisation, a point which has been emphasised in the jurisprudence of the European Court of Human Rights (ECtHR). But it would apply equally to any other seriously invasive treatment.
- Making legal gender recognition contingent on medical treatment fatally undermines consent, giving rise to what amounts to coerced medical treatment.
- Coerced medical treatment interferes not only with the right to health, but, where sufficiently invasive, amounts to inhuman and degrading treatment.
- Such inhuman and degrading treatment cannot but qualify as a violation of the right to health.

3. Access by transgender persons to gender reassignment treatment

3.1 Relevant Council of Europe human rights standards

Appendix VII sets out the relevant Council of Europe human rights standards. In addition to the jurisprudence of the ECtHR, both the Committee of Ministers and the Parliamentary Assembly have made recommendations in this field.

The former, in its *Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity*, has required that "transgender persons have effective access to appropriate gender reassignment services", and that "any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate." The Explanatory Memorandum adds that "such coverage should .. be ensured in a reasonable, non-arbitrary and non-discriminatory manner".

The Parliamentary Assembly, in its resolution *Discrimination on the basis of sexual orientation and gender identity,* has called on member states to "ensure in legislation and in practice [the right of transgender persons] … to access gender reassignment treatment….".

Furthermore, in its resolution *Equal Access to Health Care*, the Parliamentary Assembly has identified transgender persons as being one of the vulnerable groups particularly affected by inequalities in access to care. In respect of these groups, it has called *inter alia* for states to reduce the proportion of health expenditure payable by them, to ensure the accessibility of health-care facilities and health professionals, and to introduce training courses for health professionals stressing the need to combat arbitrary applications and discrimination.

3.2 The situation in Georgia regarding access by transgender persons to gender reassignment treatment

The report, *On implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity by Georgia,* documents the situation in Georgia regarding access by transgender persons to gender reassignment treatment as follows:

According to the Ministry of Health, transgender people have access to gender reassignment services: "a multi-profile team guarantees the coordinated activity, respecting the right to health of an individual".[16] However, it is a fact that Georgian legislation neither prohibits gender reassignment surgery nor regulates it, and gives absolute discretion to medical institutions when deciding who is eligible for gender reassignment surgery and in respect of the procedures applicable to the entire reassignment process. Such a gap can result in arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure.[17]

As regards recovery of costs, gender reassignment services are not covered by state-funded programs or any of the private insurance packages available in the country. According to an internal study conducted by the LGBT organisation Identoba, gender reassignment is a complex process and consists of three stages: checks and consultation procedure before the operation, operation and post-operation rehabilitation process.

The break-down of costs are the following:

1. Costs related to checks and consultation procedure prior surgery. These among others include: initial consultation with a sexologist, two tests with different psychologist, two tests with different psychiatrist, 12 visits to the sexologist, consultations regarding genetics, etc.

2. Costs related to the surgery itself.

3. Post-surgery tests, endocrinological tests, hormone therapy.

In total, these services cost 19900 GEL, which is 9500 EURO.[18]

All the costs for the gender reassignment services have to be borne by the patient. (Whereas e.g., other medical procedures, e.g., various tests, dental care, birth-giving, etc. can be covered by various private and state-sponsored health insurance packages available in Georgia). In Georgia certain category of medical operations is funded or co-funded by the state based on the Decision of the Georgian Government No.77 (which approves State Healthcare Programmes for 2011). The main criteria for selecting which services fall under this category are the importance of the disease and low or special social status of the beneficiaries. Gender reassignment surgery, despite its high social importance, is not included in this category of medical services. Considering the level of poverty and unemployment in Georgia, many may find gender reassignment procedures financially inaccessible.[19]

Identoba has already sent a recommendation to relevant state authorities to co-fund gender reassigment procedure.

Thus, in summary, the state makes no contribution towards the cost of gender reassignment treatment, despite requiring such treatment as a condition for gender legal recognition. Furthermore, the absence of regulations governing gender reassignment treatment can result in arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure.

The 6th report by Georgia on the implementation of the revised European Social Charter makes no reference to these questions.

3.3 The obligations of Contracting Parties

Article 11 of the European Social Charter requires the Parties to take appropriate measures designed "to remove as far as possible the causes of ill-health." Relevant supporting principles established in the case law of the Committee are as follows:

[16] Monitoring of implementation of CM/REC(2010)5 in Georgia. Para.35.1. p.151. WISG. Tbilisi. 2012. http://women.ge/wp-content/uploads/2013/01/CM_REC20105GEORGIA_ENG_extended-version.pdf
[17] Monitoring of implementation of CM/REC(2010)5 in Georgia. p.111. WISG. Tbilisi. 2012.
[18] Monitoring of implementation of CM/REC(2010)5 in Georgia. p.151. WISG. Tbilisi. 2012.
[19] Monitoring of implementation of CM/REC(2010)5 in Georgia. p.111. WISG. Tbilisi. 2012. http://women.ge/wp-content/uploads/2013/01/CM_REC20105GEORGIA_ENG_extended-version.pdf

- The applicable definition of "health" is that set out in the Constitution of the World Health Organisation: "Health is a state of **complete physical, mental and social well-being** and not merely the absence of disease or infirmity."[20]
- With regard to the right to the **highest possible standard of health**: "The health system must be able to respond appropriately to avoidable health risks, that is ones that can be controlled by human action".[21]
- With regard to the right of **access to health care:** "The health care system must be accessible to everyone… Restrictions on the application of Article 11 may not be interpreted in such a way as to impede disadvantaged groups' exercise of their rights to health. This interpretation is the logical consequence of the non-discrimination provision in Article E of the Charter." [22]
- With regard to costs: "The right of access to health care requires that the cost of health care should be borne, at least in part, by the community as a whole.[23] This also requires that the cost of health care must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community." [24]

4. Conclusions

The practice of requiring transgender persons to undergo medical treatment including sterilisation, as a condition of legal gender recognition is incompatible with Article 11 of the European Social Charter (see paragraph 2.2 above). Accordingly, we respectfully request that the Committee return a finding of non-conformity with Article 11 of the Social Charter.

The failure of the Georgian authorities to provide regulations or establish requirements for gender reassignment treatment which reflect the medical needs of transgender persons is evidence that Georgia does not meet the requirement to provide effective access to health care for all, without discrimination (see paragraph 3.2 above), as is its failure to ensure that medical insurance covers, or contributes to the coverage of important elements of such medically necessary treatment, on a non-discriminatory basis.

Accordingly, we respectfully request that the Committee also return a finding of non-conformity with Article 11 of the Social Charter with regard to effective access to health care.

25 September 2013

[20] Conclusions 2005, Statement of Interpretation on Article 11§5
[21] Conclusions XV-2, Denmark, pp. 126-129
[22] Digest of the case law of the European Committee of Social Rights – 1 September 2008. Article 11, right of access to healthcare – page 82
[23] Conclusions I, Statement of Interpretation on Article 11; Conclusions XV-2, Cyprus
[24] Conclusions XVII-2, Portugal

Appendix I. *Human Rights and Gender Identity - Issue Paper* by the Commissioner for Human Rights

Relevant extracts on the imposition of medical procedures, including sterilisation, as a condition for the change of sex and name

Conditions for the change of sex and name

Access to procedures to change one's sex and one's first name in identity documents is vital for a transgender person to live in accordance with one's preferred gender identity. Indeed, the ability to live in the preferred gender and be legally recognised as such is preconditioned by identity papers that are used to conduct everyday life, for example when using a health insurance card, a driving licence or an educational certificate during a job application process. The often lengthy and bureaucratic processes for the recognition of sex and name change result in the inability to travel with valid documents, even to visit relatives in a neighbouring country for a weekend. It could also lead to restrictions on participation in education or employment wherever birth certificates are necessary or sex is indicated on national identity cards. It can mean that transgender people without the correct documentation are effectively hindered from meaningful participation in the labour market, leading to unemployment.

There is a need to distinguish between procedures for the change of first name and those for the change of sex. However, both processes frequently require that the individual concerned must first be considered eligible for the procedure by the medical profession.

It should be stressed that the eligibility conditions for the change of sex in documents vary widely across Europe. It is possible to roughly distinguish three categories of countries. In the first category, no provision at all is made for official recognition. As pointed out above, this is in clear breach of established jurisprudence of the ECtHR. In the second and smaller category of countries, there is no requirement to undergo hormonal treatment or surgery of any kind in order to obtain official recognition of the preferred gender. Legal gender recognition is possible by bringing evidence of gender dysphoria before a competent authority, such as experts from the Ministry of Health (in Hungary), the Gender Reassignment Panel (in the UK) or a doctor or clinical psychologist. In the third category of countries, comprising most Council of Europe member states, the individual has to demonstrate:

1. that (s)he has followed a medically supervised process of gender reassignment – often restricted to certain state appointed doctors or institutions;

2. that (s)he has been rendered surgically irreversibly infertile (sterilisation), and/or

3. that (s)he has undergone other medical procedures, such as hormonal treatment.

Such requirements clearly run counter to the respect for the physical integrity of the person. To require sterilisation or other surgery as a prerequisite to enjoy legal recognition of one's preferred gender ignores the fact that while such operations are often desired by transgender persons, this is not always the case. Moreover, surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist. Yet the legal recognition of the person's preferred gender identity is rendered impossible without these treatments, putting the transgender person in a limbo without any apparent exit. It is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation.

It needs to be noted that many transgender people, and probably most transsexual persons among them, choose to undergo this treatment, often including the elimination of procreative organs. The treatment is often desired as a basic necessity by this group. However, medical treatment must always be administered in the best interests of the individual and adjusted to her/his specific needs and situation. It is disproportionate for the state to prescribe treatment in a "one size fits all" manner. The basic human rights concern here is to what extent such a strong interference by the state in the private lives of individuals can be justified and whether sterilisation or other medical interventions are required to classify someone as being of the one sex or the other.

Two important national court rulings support this view. On 27 February 2009, the Austrian Administrative High Court ruled that mandatory surgery was not a prerequisite for gender (and name) change. A transgender woman, who underwent all changes apart from the genital surgery and lived as a woman in all social relations, could establish to the court that her particular employment situation would not be conducive to the several months' sick leave needed for the operation and that she could not leave her family financially uncared for. This led the court to point out that the legislator had to abolish the original requirement since the court was not able to establish any need for this specific requirement pertaining to transsexual women. In Germany, the Federal Supreme Court has indicated in a judgment that "an operative intervention as a precondition for the change of gender is increasingly regarded as problematic or no longer tenable among experts".

The key point here is that there is no inherent need to enforce one set of specific surgical measures for the classification of an individual to be eligible for changing sex. Similar reasoning lies behind the Spanish Ley de Identidad de Género and the British Gender Recognition Act. Both laws have recognised that the protection of the majority's assumed unease with the procreation of transgender people – which is, due to hormonal treatment and the wishes of most concerned individuals, extremely rare – does not justify a state's disregard of their obligation to safeguard every individual's physical integrity. States which impose intrusive physical procedures on transgender persons effectively undermine their right to found a family.

Regarding conditions to be eligible for the change of first name, there is a similar pattern to some of the procedures for change of gender described above. The process can be easy or require lengthy and/or costly procedures and medical interventions, or it can be denied entirely. In some countries names can only be changed upon medical testimony that the (full) gender reassignment has taken place, including genital surgeries which are not accessible or wished for by persons for a number of different reasons. In other countries such proof is not necessary but instead, or in addition, people need to have a gender dysphoria diagnosis and two years of hormonal treatment to qualify for the name change.

Appendix II. Report of the Human Rights Commissioner *Discrimination on grounds of sexual orientation and gender identity in Europe*

Extracts addressing the imposition of medical procedures, including sterilisation, as a condition for the change of sex and name

Recommendations

5. Privacy: gender recognition and family life

2) Abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person's preferred gender.

Chapter 5 Privacy: gender recognition and family life

Surgery leading to sterilisation as a requirement for legal gender recognition

Some countries require surgery leading to sterilisation before they legally recognise the new gender. It should be stressed that this requirement would also apply in the absence of a medical necessity or the applicant's wish for such surgery. Surgery leading to sterilisation has been identified as a requirement in 29 member states (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Italy, Latvia, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Romania, San Marino, Serbia, Slovakia, Sweden, Switzerland, Turkey and Ukraine). In two member states, Austria and Germany, the "sterilisation requirement" has been declared unconstitutional by their respective constitutional courts, but no new legislation has been proposed or adopted. In four member states – Hungary (administrative practice), Portugal, Spain and the United Kingdom (by law) – no requirements of sterilisation are enforced. 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. In the remaining 11 member states there is either no legislation regulating legal gender recognition or the situation regarding the sterilisation requirement is unclear.

Appendix III. Specific Council of Europe human rights standards on sterilisation and other compulsory medical treatment as requirement for legal gender recognition

I. **Committee of Ministers**

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity[25]

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

Explanatory Memorandum to the Recommendation

20-21. [….]. As affirmed in Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

In some countries access to gender reassignment services is conditional upon procedures such as irreversible sterilisation, hormonal treatment, preliminary surgical procedures and sometimes also proof of the person's ability to live for a long period of time in the new gender (the so called "real life experience"). In this respect, existing requirements and procedures should be reviewed in order to remove those requirements which are disproportionate. It should be noted, in particular, that for some persons it may not possible, for health reasons, to complete every hormonal and/or surgical step required. Similar considerations apply with respect to the legal recognition of a gender reassignment, which can be conditional to a number of procedures and prior requirements, including changes of a physical nature.

35-36 [……] Concerning the conditions governing gender reassignment procedures, international human rights law provides that no one may be subjected to treatment or a medical experiment without his or her consent. Hormonal or surgical treatments as preconditions for legal recognition of a gender change (see §19 above) should therefore be limited to those which are strictly necessary, and with the consent of the person concerned.

II. **Parliamentary Assembly**

Discrimination on the basis of sexual orientation and gender identity - Resolution 1728 (2010)

16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

16.11.1. […….]

16.11.2. documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy;

[25] Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

Appendix IV. International Human Rights Standards on Forced Sterilisation of Transgender Persons[26]

National legislation and/or practice making legal gender recognition contingent on the individual concerned undergoing medical procedures resulting in their sterility are in breach of Article 11 of the Social Charter on the right to the protection of health. Although the Committee has not yet had the opportunity to address this issue specifically, this conclusion may be derived from international and comparative standards on the right to health more generally. In interpreting the provisions of the Social Charter, the Committee takes into account "the principles established in the case-law of other human rights supervisory bodies"[27], and in particular the case-law of the European Court of Human Rights.[28] Since the Social Charter is **"**a living instrument", it "must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments."[29]

Forced sterilisation is a blatant breach of the right to bodily integrity and of reproductive rights. UN Treaty Bodies and Special Procedures have repeatedly affirmed that the right to health comprised the right of individuals to retain control and sovereignty over their bodies. For example, the ESCR Committee stated that "[t]he right to health contains both freedoms and entitlements, including the right to control one's health and body, […] the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation".[30] The right to health also protects an individual's "sexual and reproductive health". [31]

The prohibition of forced sterilization is firmly entrenched in international law. The UN High Commissioner for Human Rights affirmed that the right to health included the "right to be free from […] forced sterilization."[32] The CEDAW Committee similarly stated that "[c]ompulsory sterilization…adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children."[33] In addition to interfering with the right to health, forced sterilization may amount to inhuman and degrading treatment.[34] Sterilisations performed on various groups including

[26] The authors of this submission are indebted to the International Centre for the Legal Protection of Human Rights (INTERIGHTS) for permission to use their research material in the preparation of this Appendix.

[27] See for example Complaint No. 30/2005, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, 6 December 2006, at para. 196.

[28] For example, the Committee stated that the right to protection of health guaranteed under Article 11 should be read in conjunction with the standards developed under Articles 2 and 3 of the European Convention on Human Rights, (Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11§5).

[29] Complaint No. 18/2003, *World Organisation against Torture (OMCT) v. Ireland*, Decision on the merits, 7 December 2004, at para. 63.

[30] ESCR Committee, General Comment No 14, E/C.12/2000/4 (2000) at para 8. See also Report of the Special Rapporteur on Economic, Social and Cultural Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, E/CN.4/2003/58 (13 February 2003) at para 24.

[31] Report of the Special Rapporteur on the right to health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/66/254 (3 August 2011), at para 6 accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf; Also see Article 16§1(e) of the CEDAW, which provides that states must protect the individuals' right to "decide freely and responsibly on the number and spacing of their children". Similarly, the ESCR Committee stated that reproductive health entailed the freedom to "decide if and when to reproduce", ESCR Committee, General Comment No 14, E/C.2./2000/4, (2000) footnote 12.

[32] Office of the United Nations High Commissioner for Human Rights and World Health Organisation, *The Right to Health*, Fact Sheet No. 31 (2008) Geneva, available at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

[33] Comm. on the Elimination of Discrimination against Women ("CEDAW"), General Recommendation No.19 *Violence against women*, U.N. Doc. A/47/38 (1993) at 22. See also CEDAW, General Recommendation No. 24, *Women and health*, U.N. Doc. A/54/38 (1999) at 22: "acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives." Human Rights Committee in its Concluding Observations on Slovakia, U.N. Doc. CCPR/C/SVK/CO/3 (2011) at para 13: "While welcoming the investigation into the forced sterilization of Roma women and the adoption of Act No. 576/2004 Coll. on health care and services, which introduces the notion of informed consent, the Committee is concerned at the narrow focus of the investigation and the lack of information on concrete measures to eliminate forced sterilization, which, allegedly, continues to take place (arts. 7 and 26)."

[34] Committee against Torture ("CAT"), Concluding Observations on Czech Republic, CAT/C/CR/32/2 (2004), at para 5(k)) regarding the forced sterilization of Roma women. See also CAT, Concluding Observations on Slovakia, CAT/C/SVK/CO/2 (2009) at para 14 as well as the Concluding Observations on Peru, CAT/C/PER/CO/4 (2006) at para 23; European Court of Human Rights, *V.C. v. Slovakia*, Application No 18968/07, Judgment of 8 November 2011 (Violation of article 3, sterilization without valid consent of a woman of Roma origin). See also *María Mamérita Mestanza Chávez v. Peru*, Inter-American Commission on Human Rights, Case 12.191, Report 71/03, Friendly Settlement Agreement (2003) available at https://www.cidh.oas.org/annualrep/2003eng/Peru.12191.htm.

women,[35] persons with disabilities,[36] and intersex people[37] have been condemned on a number of occasions. The International Federation of Gynaecology and Obstetrics (FIGO) and the World Health Organization (WHO) have also condemned the practice of forced sterilisation, [38] as well as the World Medical Association (WMA) and IFHHRO – International Federation of Health and Human Rights Organizations, the latter with specific reference to transgender persons.[39]

Any medical intervention, including sterilisation, requires the full and informed consent of the individual in question. Making legal gender recognition contingent on forced sterilisation fatally undermines consent. The European Court has had the opportunity to rule on the issue of informed consent in a case concerning the sterilisation performed on a Roma woman immediately after giving birth.[40] Although the applicant formally consented to the operation, the Court held that consent was invalid. This was because the applicant gave consent during labour, while at the same time she lacked the information necessary to make an informed decision. Echoing this position, the UN Special Rapporteur on the Right to Health highlighted the fact that informed consent should not be confused with "mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right to be involved in decision-making".[41] Best practices and medical literature on the issue of informed consent share the same position.[42] An individual should be able to refuse a medical procedure "without losing rights to other medical health or other services or benefits". [43] The European Court of Human Rights has defined the right to refuse medical treatment as a component of an individual's "inalienable right to self-determination".[44]

[35] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *A.S. v. Hungary*, Communication No. 4/2004 , CEDAW/C/36/D/4/2004, (29 August 2006) available at: http://www.unhcr.org/refworld/docid/4fdb288e2.html; *V.C. v. Slovakia* (2011) *supra* FN8.

[36] UN Committee on the Rights of the Child, Concluding Observations on Australia, CRC/C/15/Add268 (2005) at para 46(e). See also, ESC, General Comment No. 5, U.N. Doc E/1995/22 (1995) at para 31 (infringe article 10 (2) of the ICESCR, "Special protection should be accorded to mothers during a reasonable period before and after childbirth.") and CERD, Sessional/Annual Report of Committee, UN Doc A/59/18(SUPP) (2004) at para 389.

[37] Committee against Torture ("CAT"), Concluding Observations on Germany, CAT/C/DEU/CO/5 (2011) at para 20.

[38] WHO, *Declaration on the Promotion of Patients' Rights in Europe,* EUR/ICP/HLE (1994) (informed consent is a prerequisite to medical intervention); FIGO new guidelines on "Female Contraceptive Sterilization", at para 2 and 6 (2011) available at http://www.stoptortureinhealthcare.org/sites/default/files/figo-sterilization-guidelines_0.pdf.

[39] World Medical Association and International Federation of Health and Human Rights Organisations, "Global Bodies call for end to Forced Sterilisation" (Media Release, 5 September 2011) available at http://www.wma.net/en/40news/20archives/2011/2011_17/index.html.

[40] *V.C. v. Slovakia,* at 118-119 (2011) *supra* FN8.

[41] Report of the Special Rapporteur on the right to health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/64/272 (10 August 2009).

[42] See FIGO new guidelines on "Female Contraceptive Sterilization", para 7, available at http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf and FIGO Committee, *Figo Ethical Issues in Obstetrics and Gynaecology for the Study of Ethical Aspects of Human Reproduction and Women's Health* (2009) on page 14, accessible at http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf as well as American Medical Association (AMA) position on informed consent, available at http://www.ama-assn.org/ama/pub/physician-resources/legal-topics/patient-physician-relationship-topics/informed-consent.page.

[43] World Health Organisation (Hatcher, R.A. and others), The Essentials of Contraceptive Technology. Baltimore, lohns Hopkins Bloomberg School of Public Health, Population Information Program, (1997) at page 9/10-1, available at http://whqlibdoc.who.int/publications/2003/1885960018_eng_part2.pdf

[44] European Court of Human Rights, *Pleso v Hungary,* Application No 41242/08, Judgment of 2 October 2012, para 66.

Appendix V. *Human Rights and Gender Identity – Issue Paper* by the Commissioner for Human Rights[45]

Relevant extracts on access to health care

3.3 Access to health care

The right to the highest attainable standard of health is guaranteed by several treaties, including the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. However, transgender persons suffer from several problems in achieving this standard. The Transgender EuroStudy sheds an alarming light on the experiences of transgender people in relation to inequality and discrimination in accessing healthcare in Europe……

The European Court of Human Rights has established as a positive duty that states provide for the possibility of undergoing surgery leading to full gender-reassignment. Depending on an individual transgender person's wishes and needs, the person thus has to have access to hormone treatment, gender reassignment surgery or other medical interventions, such as lasting hair removal and voice training. It is important to recognise that for most people concerned treatment is a medical necessity to make meaningful life possible. Treatment must be adapted to the individual's needs in order to have successful results.

The case law of the European Court of Human Rights clearly requires states not only to provide for the possibility to undergo surgery leading to full gender-reassignment, but also that insurance plans should cover "medically necessary" treatment in general, which gender reassignment surgery is part of. [……]. This standard should be implemented in all Council of Europe member states. However, the Transgender EuroStudy surveying the healthcare experience of transgender persons in the EU found that 80% of transgender people in the EU are refused state funding for hormone treatments, and 86% of transgender persons in the EU are refused state funding for surgery to change their sex. As a result, over 50% of transgender persons undergoing surgery to change their birth sex pay entirely for the procedures on their own. [……]

Some countries only allow one clinic in the whole country to provide treatment, sometimes hampering new research and, potentially, the quality of care. The right to access gender reassignment treatment should include a reasonable choice of available treatment centres and treatment expenses should be reimbursed according to the national health care rules. The quality of transgender-related treatment often does not even come close to the 'highest attainable standard of health', sometimes resulting in life-long bodily harm. Many transgender persons who opt for gender reassignment surgery are forced to go abroad, facing great difficulty in reimbursing their expenses. Overall, the situation creates inequalities in access to healthcare within a country and between countries……

The results of the problems transgender persons encounter in accessing their right to health care are reflected in health statistics. Several studies referenced in the FRA study show that a quarter to one third of transgender people surveyed had attempted suicide._In research carried out in Ireland 26% of transgender persons had attempted suicide at least once and half of the transgender respondents in a large-scale study into the health situation for LGBT people in Sweden had at one point or another in their lives considered taking their own life - 21% had actually tried to do this.

[45] https://wcd.coe.int/ViewDoc.jsp?id=1476365

Appendix VI. Commissioner for Human Rights report on *Discrimination on grounds of sexual orientation and gender identity in Europe* - 2nd edition:

Extracts relating to access to health for transgender persons

Recommendations - 6. Access to health care, education and employment

2) Review any requirements of a diagnosis of mental disorder for accessing transgender health care in view of eliminating obstacles to the effective enjoyment, by transgender persons, of the rights to self-determination and the highest attainable standard of health.

4) Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible to transgender persons subject to informed consent and ensure that they are reimbursed by health insurance.

Chapter 6 – access to healthcare, education and employment

Specific obstacles for transgender persons when accessing health services

Transgender persons who wish to undergo gender reassignment treatment can face a range of obstacles when trying to access health services. The European Court of Human Rights has established that states have a positive duty to provide for the possibility to undergo gender reassignment as "medically necessary" treatment, which should be covered by insurance schemes. Failure to provide this places a disproportionate burden on a person "in one of the most intimate areas of private life", according to a groundbreaking ruling in 2003. The Court restated this in another case in 2007.

Twenty-eight member states offer full or partial gender reassignment treatment to transgender persons (Austria, Belgium, the Czech Republic, Germany, Denmark, Estonia, Finland, France, Hungary, Greece, Georgia, Iceland, Ireland, Italy, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Serbia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Ukraine). The differences between these 28 member states are significant, ranging from member states where quality expertise centres are available and those where some but not all necessary treatment is available. In Malta and Ireland, for example, hormonal treatment is available, but no surgery. In yet other member states services are only available in one city.

In 13 member states (Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Montenegro and San Marino) no facilities needed for gender reassignment treatments were identified. Transgender persons from these 13 countries wishing to undergo gender reassignment would then have to go abroad (they are explicitly advised to do so in some member states). For the remaining six member states information on availability of health facilities is unclear.

A person who wants to access gender reassignment treatment must usually meet a strict and unified "one size fits all" list of requirements. Such requirements may be based on legislation or regulations, though often this is rather a matter of custom and practice. Generally requirements include medical and psychological assessments of the applicant and/or the diagnosis of gender dysphoria or gender identity disorder (following the WHO classification). Yet other member states require applicants to undergo a "real-life experience" (RLE) by living in the preferred gender for a specified length of time, which varies by state. Doctors may assess the "success" of such RLE on the basis of the person's clothing taste and gender-normative behaviour. According to transgender persons, they have to perform in a highly stereotypical way, often going to the extremes in their preferred gender to fit the eligibility criteria. Other requirements include the risk of suicide of the client, absence of "homosexual inclinations", or vague concepts such as "no serious flaws in the ability for social adaptation". Concerns have also been raised by transgender persons in relation to medical professionals who have large decision-making powers over their access to treatment.

Financial obstacles to accessing gender reassignment treatment

The European Court of Human Rights has required states to provide insurance to cover expenses for "medically necessary" treatment, which gender reassignment surgery is a part of. However, research for this report shows that access to health care insurance is highly problematic in at least 16 countries (Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, Moldova, Montenegro, Poland, Romania, the Russian Federation, Serbia, Slovakia and Turkey). In these countries transgender persons claim that they must bear the financial burden of medically necessary health care themselves.

In the remaining 31 member states, research for this report shows that there is partial or full reimbursement. In Germany, Portugal, Sweden and Italy public health insurance covers most if not all expenses related to a person's gender reassignment treatment. In Greece, Iceland and Ireland, payment by public health insurance for treatment abroad has been reported, though not confirmed as a general rule. In San Marino, since gender reassignment facilities are not available in the country, transgender persons may have the costs of surgeries performed abroad reimbursed by the national health fund. Hungary's health insurance cover for gender reassignment treatment is 10% of the total costs. In the Netherlands, not all surgery is covered, and some surgery is covered only partially. Malta covers only hormone treatment. Norway covers costs for some but not all transgender persons, depending on the particular diagnosis of the person. In Switzerland private health insurance companies have in the past refused transgender people. In the judgment *Schlumpf v. Switzerland* the European Court of Human Rights found that the refusal of the insurance company to cover the costs of the applicant's gender reassignment surgery due to non-compliance with the requirement to complete two years of observation in order to ascertain the existence of "true transsexualism" was in violation of Article 8. In the UK around 86% of transgender respondents claimed that they were refused state funding for surgery and more than 80% claimed they were refused funding for hormone treatment. Over half of transgender respondents said they had funded their own treatment. Coverage of public health insurance is unclear in the countries not mentioned above.

Appendix VII. Council of Europe standards – transgender access to health

I. Jurisprudence of the European Court of Human Rights

In *van Kück v. Germany,* the ECtHR found that the burden on the applicant to prove the medical necessity of gender reassignment and the genuine nature of her transsexualism during court proceedings was unreasonable. The ECtHR held that

- "the very essence of the Convention being respect for human dignity and human freedom, protection is given to the right of transsexuals to personal development and to physical and moral security"
- "the civil court proceedings touched upon the applicant's freedom to define herself as a female person, one of the most basic essentials of self-determination"[46]

L v. Lithuania involved the case of a transgender person who could not complete full gender-reassignment surgery owing to the absence of legal provisions regulating such surgery. The ECtHR found that the circumstances of the case left "the applicant in a situation of distressing uncertainty *vis-à-vis* his private life and the recognition of his true identity", and that there had been a violation of Article 8. It ruled that if the necessary legal provisions could not be implemented within three months, the State must pay the applicant €40,000 as an alternative, to enable him to have the final stages of the necessary surgery performed abroad. [47]

II. Committee of Ministers

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states

on measures to combat discrimination on grounds of sexual orientation or gender identity[48]

"35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate."

Explanatory memorandum to the Recommendation

"35-36.The Court's case-law considers the right to sexual self-determination as one of the aspects of the right to respect for one's private life guaranteed by Article 8 of the Convention and requires Contracting States to provide for the possibility to undergo surgery leading to full gender-reassignment, but also that insurance plans should cover "medically necessary" treatment in general, which gender reassignment surgery may be part of.[91] Where legislation provides for coverage of necessary health care costs by public or private social insurance systems, such coverage should then be ensured in a reasonable, non-arbitrary and non-discriminatory manner,[92] taking into account also the availability of resources. Concerning the conditions governing gender reassignment procedures, international human rights law provides that no one may be subjected to treatment or a medical experiment without his or her consent. Hormonal or surgical treatments as preconditions for legal recognition of a gender change (see §19 above) should therefore be limited to those which are strictly necessary, and with the consent of the person concerned. …"

III. Parliamentary Assembly

Discrimination on the basis of sexual orientation and gender identity

[46] *van Kück v. Germany* (Application no. 35968/07) - paragraphs 47, 73 and 82.
[47] *L. v. Lithuania* (Application no. 27527/03) - paragraphs 59 and 74
[48] Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

Resolution 1728 (2010)[1]

"16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

[16.11.1. -2.]

16.11.3. access to gender reassignment treatment and equal treatment in health care areas;"

Equal Access to Health Care

Resolution 1946 (2013)[49] (emphasis added by author)

"1. The right to health is a fundamental human right. Protection of health is an essential condition for social cohesion and economic stability and represents one of the indispensable pillars of development. Access to care is a key aspect of the right to health.

2. The Parliamentary Assembly observes that inequalities in access to health care are growing in the Council of Europe member States. Various factors are at the root of this phenomenon, including financial, geographical and language barriers, corruption, socio-economic inequalities and certain migration and security policies which are unmindful of health needs. [….]

3. The Assembly notes that inequalities in access to care, including mental health care, particularly affect vulnerable groups, including people experiencing financial problems such as the unemployed, single parent families, children, the elderly, as well as Roma, refugees, migrants, especially those in an irregular situation, transgender persons, persons in detention and homeless people. These inequalities lead to a phenomenon of non-recourse or delayed recourse to care, which could have disastrous implications for both individual and public health and lead in the long term to an increase in health expenditure.

4. Recalling its Resolution 1884 (2012) "Austerity measures – a danger for democracy and social rights", the Assembly once again draws attention to the negative impact of austerity measures on social rights and their effects on the most vulnerable categories. [….].

5. […] The Assembly therefore calls on the Council of Europe member States to:

6.1. reduce, where appropriate, the proportion of health expenditure payable by the most disadvantaged patients and take all other necessary measures to ensure that the cost of care does not hinder access to care, including the promotion of increased use of generic drugs;

6.2. ensure the accessibility of health-care facilities and health professionals throughout the territory by taking appropriate measures, having recourse where appropriate to incentive measures;

6.3. ensure the accessibility of information on the health system, including vaccination and screening programmes, and set up health education programmes, while taking account of the specific needs of the different vulnerable groups and of the requirement to reduce language barriers to a minimum;

[6.4 … 6.7]

6.8. introduce training policies for health professionals stressing the need to combat arbitrary applications, discrimination and corruption in the health sector.

[49] http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19991&lang=EN