

Position and claims of the VLSP* Executive Board on the rehabilitation and compensation of trans* persons¹

September 2018

As a professional association, the VLSP* (the German Association for Lesbian, Gay, Bisexual, Trans*, Intersexual and Gay People in Psychology) welcomes the fact that initial steps have been taken towards the rehabilitation and compensation of homosexuals convicted according to Sections 175 and 175a (Warnecke, 2017).

We would now like to draw attention to the human rights violations against trans* persons (e.g. transsexuals, transidents, transgenders) in Germany and demand corresponding solutions for compensation and rehabilitation.

The German Transsexual Law (TSG, Federal Ministry of Justice, 1980) passed in 1981 contained (and still contains) considerable human rights violations and disadvantages for trans* persons who have invoked the TSG for themselves, as well as for their relatives. These include, for example, elaborate, expensive and often humiliating psychiatric assessments. Numerous proposals to amend statutory regulations have been made; in particular, reference is made to the Policy Paper Law (Bundesverband Trans* 2016) presented in 2016 by the Bundesverband Trans* (now Bundesvereinigung Trans* e.V.) on the need to reform the law with regard to trans* persons.

As the TSG is still valid, the VLSP* supports the demands to revise this law as soon as possible.

We fully endorse the recommendations formulated in the report by Laura Adamietz and Katharina Bager (2016) regarding the need for regulation and reform in connection with the TSG: A law should be formulated that protects self-determination in gender assignment; legally valid changes to gender entries and first names should be possible at the request of the person with low thresholds, with no psychiatric/psychological/medical assessment of the person in the procedure. When registering the birth of the child of a trans* person, this parent should be registered as a father or mother (or as a gender-neutral parent) according to his or her personal gender assignment, and trans* persons should be effectively protected from third parties disclosing their assigned sex against their will.

The German Federal Constitutional Court has meanwhile ended some of the legal regulations, some of which represented a massive interference with physical integrity, personal rights and mental health. These included, for example, the obligation to divorce (2008), and to undergo gender reassignment surgery, including sterilisation as a prerequisite for a change of marital status (2011), even if this was not otherwise desired by the person.

¹ Citation:

VLSP e.V. (2018, September). Position and claims of the VLSP* Executive Board on the rehabilitation and compensation of trans* persons. Mannheim, Germany: VLSP*. URL: <https://www.vlsp.de/vlsp/stellungnahmen>

The VLSP* supports the demands of the Bundesvereinigung Trans* (2017) for the establishment of one or more compensation funds that are unbureaucratically accessible to the people harmed by this law with low thresholds for these lasting encroachments on their human rights experienced by trans* persons.

Legal, political and financial recognition of injustice suffered means that a society acknowledges its responsibility for violence and discrimination inflicted on trans* persons. At the same time, it is a signal for the future that a society is striving in a consistently participative process (Wright, Block & Unger 2007) together with trans* persons to shape the future in such a way that trans* persons are seen and recognized as equal citizens* who are entitled to respect for their human dignity just like all other people.

The funds are to be used for the following compensation:

1. The reimbursement of all costs associated with the TSG for court costs and assessments to the trans* persons concerned.
2. Reimbursement of all costs associated with changes of first name and changes of marital status for amending documents, certificates etc. to the trans* persons concerned.
3. The reimbursement of all court costs related to the legal obligation to divorce to the trans* persons concerned.
4. Financial compensation for people affected by the TSG who have undergone one or more medical interventions solely to meet the prerequisite for the change of marital status.
5. Financial compensation for trans* persons who have undergone psychotherapeutic and psychiatric measures that they would not have chosen voluntarily², especially if they have focused on compulsory treatment to change their transidentity ("conversion treatment"), e.g. psychotherapy, psychiatric or inpatient (compulsory) treatment, treatment with psychotropic drugs, electroconvulsive therapy, etc.
6. Financial compensation for all trans* persons whose dignity, right to self-determination, physical integrity or mental health have been violated by institutions of the medical system, e.g. by the Medizinischer Dienst der Krankenkassen [Medical Service of Health Insurance Funds] (MDS, 2009).
7. Financial compensation for the spouses* and children of marriages divorced under past TSG regulations for the disadvantageous effects on their social development and for the psychological burden of forced family separation.
8. A compensation for people affected by the TSG, who have been handicapped and/or disadvantaged in their personal, social, professional development with effects on their mental health due to legal regulations.

² Under the current conditions, we continue to recommend that psychotherapists carry out trans-respectful psychotherapies. In order to qualify, they should participate in specialist events which are organised by trans* persons as experts in their own field. These training courses should be supported by the chambers of psychotherapists.

Financial compensation can only be a first step towards reconciliation, indicating the assumption of responsibility for injustices committed (e.g. Kelman, 2008). From a psychological point of view, processing and reconciliation continue to include naming, documenting and publicly disclosing injustice (cf. e.g. Schauer, Neuner & Ebert, 2011, Bettelheim, 1986; Cienfuegos & Monelli, 1983). These include disputes within the framework of political discussions, inclusion in the curricula of schools, handling in art and films, etc.

In addition, trans*-respectful health care that fully respects patients' rights is essential.

This means that every person who needs health care should be provided with it in a timely, competent, needs-based and non-discriminatory manner. At the same time, this also means paying careful attention to the self-determination of individuals in health care (Beauchamp & Childress 2013). This means that no person may be compelled to undergo any physical intervention that he or she does not expressly desire, unless the intervention is necessary to save his or her life. Trans* persons must not be forced to undergo physical treatment that they do not want in their transition process. Hormone treatment should therefore not be prescribed as a mandatory requirement for gender reassignment surgery, but should be offered to those who wish to undergo it. We also advocate that trans* persons should be able to take advantage of desired physical transition measures without necessarily requiring psychotherapy lasting several months. For those who need psychotherapy and would like to take advantage of it, a trans-respectful psychotherapy should be offered and accessible at a low threshold.

In all areas of life, the participation of trans* persons must also be guaranteed on an equal and non-discriminatory basis through political measures.

This concerns all areas of life, in particular the labour market, all social and educational institutions, the public sphere, the legislative, judicial and executive branches, services and in particular health care.

Even though legislation and political measures have already been implemented (e.g. the participation process of trans* persons by the BMFSFJ (German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth 2016), there is still a long way to go before the equal rights of trans* persons are attained. Until then, the VLSP* as a psychological professional association will support the interests of trans* persons.

References:

- Adamietz, L. & Bager, K. (2016). *Need for regulation and reform for transgender people*. Expert opinion on behalf of the Federal Ministry for Family Affairs, Women, Senior Citizens and Youth. Accompanying material to the Interministerial Working Group on Inter- and Transsexuality - Volume 7 of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Berlin.
- Beauchamp, T. L. & Childress, J. F. (2013). *Principles of Biomedical Ethics*. Oxford: Oxford University Press.
- Bettelheim, B. (1986). *Surviving the Holocaust*. London, UK: Fonana.
- Federal Association Trans* (2016). *Policy Paper Law of the Federal Association Trans*. Paradigm shift to the need to reform the law in relation to Trans**. Berlin.
<http://www.bv-trans.de/wp-content/uploads/2017/03/BVT-Policy-Paper-Recht.pdf> [as at: 21.5.2017]
- Federal Association Trans* (BVT*) (2017). *Election test stones Bundestag election 2017 of the Bundesvereinigung Trans* (BVT*) to people with Trans* background*. https://www.bv-trans.de/wp-content/uploads/2017/04/BVT_Wahlpr%C3%BCfsteine-Trans_2017.pdf [Status: 14.07.2018].
- Federal Ministry of Justice (1980). *Act on changing first names and determining gender affiliation in special cases (Transsexuals Act - TSG)*. www.gesetze-im-internet.de/bundesrecht/tsg/gesamt.pdf [as at: 14.09.2014].
- Cienfuegos, J., & Monelli, c. (1983). The testimony of political repression as a therapeutic instrument. *American Journal of Orthopsychiatry*, 53, 43-51.
- Kelman, H.C. (2008). Reconciliation from a social-psychological perspective. In A. Nadler, T.E. Mallory, & J.D. Fisher (eds.). *The social psychology of intergroup reconciliation*. Oxford and New York: Oxford University Press.
- Medical Service of the Central Association of Health Insurance Funds e.V. (MDS). (2009). *Review Basics - Review Instructions - Gender Balancing Measures in Transsexuality*. URL: http://www.mds-ev.org/media/pdf/RL_Transsex_2009_Anlagen.pdf [Status: 23.03.2015].
- Schauer, M., Neuner F., & Elbert, T. (2011). *Narrative exposure therapy. A short-term treatment for traumatic stress disorders*. 2nd. Ed. Göttingen: Hogrefe Publishing.
- Warning corner, T. (2017). *Victims of paragraph 175. Bundestag decides to rehabilitate gays*. Dailyspiegel 23.06.2017. URL: <https://tagesspiegel.de/berlin/queerspiegel/opfer-des-paragrafen-175-bundestag> [Status: 01.03.2018].
- Wright M, Block M & Unger H. (2007). *Levels of participation in health promotion*. Documentation 13th Federal Congress on Poverty and Health - 30 November/ 1 December (2007). On the Internet: www.armut-und-gesundheit.de/uploads/tx_gbbkongressarchiv/Wright_M..pdf [Status: 0.02.2018].