



Ministry of Education, Culture and
Science

> Return address PO Box 16375 2500 BJ The Hague

To the Speaker of the Dutch House of Representatives
PO Box 20018
2500 EH THE HAGUE

50 Rijnstraat
PO Box 16375
2500 BJ The Hague
www.minocw.nl

Contact person
E. Veenis

T +31-70-412 3360
e.veenis@minocw.nl
IPC 5500

Our reference
DE/153374

Date 1 October 2009
Re Transgender policy

In my position as coordinating minister for emancipation, including emancipation for lesbians, gays, bisexuals and transgenders, I wish to take the opportunity in this letter to outline to the House of Representatives how I wish to stimulate the further development of a transgender policy. By doing so, I am responding to the wishes of the House of Representatives, which has asked for attention to be given to the theme during Parliamentary questions and in debates about gay and lesbian emancipation as well as the recommendations and the recent framework provided by the Council of Europe for the development of transgender policy. The policy touches on a variety of policy areas and is therefore within the remit of a number of different departments, which are themselves responsible and accountable for their activities, comparable to their position in the area of emancipation policy for women, gays and lesbians.

Firstly I will set out the background to and current situation with the transgender policy, and then go on to consider the directives of the Council of Europe. I will end by outlining my ideas for the future

Background

"There is little known in our country about the specific problems encountered by the cautiously estimated 30,000 to 100,000 transgender persons – people who fall outside the traditional division into two sexes. The government wants to raise the visibility of this problem. The Transgender Netwerk Nederland will receive a contribution for a project which aims to remove the widespread ignorance of this theme in general, and among social workers in particular" (Memorandum "Simply gay", LGBT emancipation policy 2008-2010, p. 24).

This passage in the government memorandum entitled '*Gewoon homo zijn*' ('Simply gay') and the support arising from it for a multi-year project (€ 200,000 for four years) provided the Transgender Netwerk Nederland (TNN) with the opportunity to bring the specific position of transgender people more to the attention of politicians, policymakers and others. This coincided with growing international attention for the

theme, partly through the contribution made by the Ministry of Foreign Affairs.¹ On 31 March 2009, an EU report was published on discrimination in the member states based on sexual orientation and gender identity² and recently (29 July 2009) the Council of Europe's Commissioner for human rights, Mr Hammarberg, published a paper on the position of transgenders, with twelve policy recommendations for the member states.³

Date

Onze referentie
DE/153374

A number of issues became clear in these reports:

- The difficult position and discrimination of transgenders in many areas (safety, healthcare, work, education), both in regulations and facilities as well as social acceptance. Policy to strengthen the position of transgenders is still in the very early stages of development;
- The areas of overlap, but also the differences between discrimination against homosexuals and discrimination against transgenders. The policy being developed usually takes place within the frameworks of gay and lesbian emancipation policy, and falls between regulations for equal treatment on the grounds of gender and those on the grounds of sexual orientation. There is virtually no separate attention given to transgenders;
- The diversity within the group of transgenders. This is a relatively small group of people, but there are considerable differences between them. It includes transsexuals who want or have undergone sex reassignment therapy (m->f or f->m), as well as those who only want partial therapy or no therapy at all.⁴ The policy that has been developed still does little justice to these differences between transgenders.

Current situation

Since 1985 in the Netherlands it has been possible to change one's gender legally through changing the gender designation in the birth certificate.⁵ The condition is that the person concerned has undergone sex reassignment therapy, which involves a complete change to the external appearance, in so far as the medical and psychological condition of the patient permits. In order to submit a request for a legal change of gender, a statement from experts must be submitted. A further official requirement is that the person concerned will never be able again to father or bear children⁶. The costs of the treatment will be partially reimbursed.

¹ See also the memorandum '*Naar een menswaardig bestaan*' (Human dignity for all) (2007) p. 58/59 by the Ministry of Foreign Affairs (KST 31 263, no. 6).

² 'Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II - The Social Situation. European Union Agency for Fundamental Rights, 2009.

³ 'Human Rights and Gender Identity' Issue paper, Commissioner for Human Rights, Council of Europe, 2009

⁴ Factsheet Movisie, 2007: 0.5% of the population feels psychologically to have more of the other sex than the one stated in the original birth certificate (16,300 - 49,000 men and 16,000- 48,000 women between 19 and 69 years), 5% feel psychologically as much a man as a woman (219,000-321,000 persons). About 150 persons apply each year to the gender team at the Vrije Universiteit, about 100 of whom begin therapy.

⁵ Section 28 of Book 1 of the Dutch Civil Code.

⁶ By doing so, the legislator wished to prevent an as yet unborn child from having two mothers or two fathers, an aspect that since the introduction of same-sex marriages and the adoption of children by such couples has lost its importance. See, for example, Graven & Van den Brink,

With regard to legal options and assistance, the Netherlands has been one of the forerunners in Europe, with two specialist centres (VU Medical Centre Amsterdam and the University Medical Centre Groningen). Now other countries such as Spain, England, Austria and Germany are benefiting from advancing insights in this area. Their more recent regulations allow scope for not undergoing full treatment (such as abolishing the requirement of absolute infertility), the options for reimbursement have become more flexible and more attention is given at a policy level to transgenders.⁷

Date

Onze referentie
DE/153374

In the Netherlands the situation is ambivalent. On the one hand, we are leading the way in the help we give to young transgenders and the attention given to transgenders in the media⁸, while on the other hand regulations are in need of reform and there are problem areas in care (waiting lists, psycho-social assistance, reimbursement). With increasing attention being given to gay and lesbian emancipation, transgender policy is attracting more interest: the COC (Dutch association for the integration of homosexuality) is an important collaborative partner of the Transgender Netwerk Nederland, projects such as that of the workfloor alliance of the FNV (Dutch Trade Union Federation) and Company Pride explicitly devote attention to the position of transgenders. At an international level too there are good contacts between the gay movement (such as ILGA-Europe) and transgender organisations (such as Transgender-Europe) and the Netherlands is leading the way in putting the position of transgenders on the agenda.⁹ The Netherlands is also one of the few countries that support a self-help organisation for transgenders.

In concrete terms, since the publication of the LGBT emancipation memorandum entitled 'Just being gay' the following activities have been pursued in the last few years:

- The Ministry of Justice is working on a legislative amendment whereby the requirement of absolute infertility before changing the gender designation in the birth certificate will be abolished (Section 28 of Book 1). The aim is to present this legislative proposal to organisations such as TNN for consultation this year;¹⁰
- The State Secretary of Health, Welfare and Sport, following the ending of the subsidy by the Humanitas Association, will grant a subsidy for one year (October 2009 to October 2010) for the work with children and young people carried out by Transvisie, the centre for gender diversity. Transvisie will use this subsidy in particular to seek a more structural embedding of assistance to children and young people with gender dysphoria in regular social work;
- The Ministry of Health, Welfare and Sport has had discussions with the Transgender Netwerk Nederland about reimbursement for sex reassignment

Equal Treatment Commission, *Trans m/f, Gender diversity, sexual equality and law, Tijdschrift voor Genderstudies*, issue 11, 2008, no. 2.

⁷ In England, for example, the Gender Recognition Act was only introduced in 2004. See ILGA-Europe, 2005.

⁸ Transvisie, subsidised by the Ministry of Health, Welfare and Sport and the Humanitas Association.

⁹ Ministry of the Interior and Kingdom Relations, Hivos.

¹⁰ Letter from the Minister of Justice to the Lower House, 2008-2009, 27017, no. 53.

therapies, for both primary and secondary gender characteristics. The operations needed to modify the sexual organs within the framework of sex reassignment, other than purely cosmetic operations, will be covered by healthcare insurance, where these involve modifying the primary gender characteristics. To modify the secondary gender characteristics, the healthcare insurer will determine on a case-by-case basis whether there is any physical functional disorder or mutilation. It is possible to lodge an appeal with the Health Insurance Complaints and Disputes Board (SKGZ). TNN does not agree with the way in which the reimbursement for modifying secondary gender characteristics is dealt with. Further discussions will be held between the Ministry, TNN and the Healthcare Insurance Board.

- Partly through the actions of TNN in tackling hate crimes, special attention is being given to violence against transgenders. Incidents can be reports locally and nationally on the police website www.hatecrimes.nl.

Date

Onze referentie
DE/153374

Council of Europe framework

The issue paper of the Council of Europe provides a clear picture of the difficult position of transgenders (high suicide figures, many serious and less serious victims of hate crimes, high unemployment figures) and argues for a broad approach, both at a European level and in each individual member state. The paper shifts attention for sex change as a medical and legal issue to a case of gender identity and human rights. This results in twelve recommendations for transgender policy in Europe and the member states:

1. Take the Yogyakarta (human rights) principles as the starting point¹¹;
2. Tackle transphobic hate crimes;
3. Ensure clear and fast procedures for legal change of gender;
4. Abolish the requirement of absolute infertility;
5. Ensure good care (medical and socio-psychological) and insurance;
6. Abolish forced divorce (does not apply in the Netherlands);
7. Tackle discrimination at work, in education and healthcare;
8. Involve transgender organisations in policy decisions;
9. Promote the human rights of transgenders;
10. Provide training for social workers;
11. Ensure attention for transgenders among organisations such as the Equal Treatment Commission, and
12. Carry out more research into the position of transgenders.

Outline for the future

¹¹ www.yogyakarta.com. Principle 3: No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

It is my ambition during the present government's term of office to give a further impetus to the development of transgender policy. To do so, not only must transgenders and their problems be more visible and this knowledge disseminated, but also that the spotlight be focused more on the policy itself. The problem areas, dilemmas and opportunities for the policy that affects transgenders must be highlighted more, so that opportunities for improvement can be sought. This concerns regulations and equal treatment as well as assistance and social acceptance. In this ambition, I regard the framework of the Council of Europe as a guideline.

Date

Onze referentie
DE/153374

This means in concrete terms:

- I will screen the current projects and activities within the framework of the LGBT emancipation policy regarding their attention to transgenders and options for intensification;
- Transgender policy will be a permanent item on the agenda of the Interdepartmental Working Group on Government Policy and Homosexuality;
- Transgender policy will continue to receive extra attention in international policy. I would like in this respect to draw your attention to the LGBT expert group which at the request of the Committee of Ministers is preparing recommendations on how to tackle discrimination on the basis of sexual orientation and gender identity. The Netherlands is taking an active part in this group;
- An interdepartmental expert meeting will be organised in 2010 to discuss problem areas, dilemmas and opportunities for transgender policy;
- If necessary, I will discuss with my colleague ministers whether progress is being made in transgender policy in their area;
- The Transgender Netwerk Nederland will receive a structural subsidy, in the form of an institutional subsidy of up to EUR 100,000 maximum per annum, to enable it to put these issues on the agenda and act as a driving force. In order to tackle discrimination and violence successfully, improve the care given and amend legislation, a commitment from many parties is needed, from the government and expert groups (such as Movisie) to public organisations (social workers, insurers, police, schools, social partners etc). The institutional subsidy will also enable TNN to combine its knowledge and enter into targeted alliances with relevant organisations.

The results of these efforts will then be reviewed in 2011, partly in the light of the Council of Europe's recommendations. Has the Netherlands made enough progress on these points, and where are extra efforts needed? The results of this could form a guideline for a new government for the way in which transgender policy can be further developed and embedded.

The Minister of Education, Culture and Science

Dr. Ronald H.A. Plasterk