

Gender identities and the expression of gendered self in the context of European law: the case of trans people.

Gamba Dimitra

Aristotle University of Thessaloniki

Prompted by the movie "Boys Don't Cry", which was screened for the course "Law and Cinema" and which deals with the true story of Bradon Teena ftm trans', this paper will deal with the institutionalization of equal treatment and human rights in the European law and, in particular, the treatment of trans people by the case law and the laws against discrimination.

In the beginning, we will try to define the term trans as well as the concepts of gender, gender identity and expression of gendered self. Then, we will examine the historical and social context in which trans people suffer discriminatory treatment, they are forced to get involved on a system of fierce medicalization of their bodies, they are categorized amongst people with mental disorders, they often become victims of hate crimes and transphobia, and, finally, we will make an attempt to trace the reasons for all the above happening.

Then, we will continue with a reference to laws of the European law system tackling discrimination against trans people and a more systematic analysis of specific articles concerning areas such as marriage, custody of children, labor relations and bureaucratic recognition of the chosen gender, before and after the operation etc.

After that, we will continue with a reference to jurisprudential examples from the European Court of Human Rights the ICC but also from national courts of EU countries. We will analyse in greater detail two jurisprudential decisions which were the key to the foundation of the rights of trans people and recognising them as potential victims of discrimination.

Finally, we will conclude with a review on the law against discrimination and the jurisprudential addressing trans people as

victims of gender discrimination, the partiality of protection that it is able to provide and some conclusions on the consideration of gender identity.

Trans people in conditions of heteronormativity

By the term "trans" we mean any person who has chosen to live and to express their gendered subjectivity in a different way from that which the biological sex with which they were born regulatorily demands. So, this category does not only include individuals who have undergone a sex reassignment surgery, but also those who are in the process of receiving hormones, who are crossdressers, meaning that they are dressed with clothes that are usually worn by people with the opposite of the sex they were born with, androgynous,, queer and generally individuals who express gender in a way other than the dipole male/female, masculinity/femininity.¹

These individuals who do not belong in the above system of gender identities have come to shake the foundations of the so-called heteronormativity, meaning the system that divides people to men and women with specific biological features, specific performances of gendered self and concrete expressions of sexuality, which always operate in a dividing, opposing and heterodeterminating way.² This system as the dominant nowadays, at least in the western world, despite the tentative steps towards a direction of acceptance of homosexuality, is strongly hostile towards any subjectivity that refuses to perform the gender in the regulatory predetermined way³.

1 Trans and intersex people Discrimination on the grounds of sex, gender identity and gender expression European Network of Legal Experts in the non-discrimination, Silvan Agius & Christa Tobler Supervised by Migration Policy Group European Commission Directorate-General for Justice, June 2011

2Heteronormativity, definition by the urban dictionary,
<http://www.urbandictionary.com/define.php?term=heteronormativity>

3 Transphobic Hate Crime in the European Union Transphobic Dr Lewis Turner
Professor Stephen Whittle Ryan Combs May 2009

Due to this reason, trans individuals face a great amount of difficulties in existence and coexistence in a society that has been taught to be self-defined gendered by very specific and restricting characteristics. The threat to this system as a system of relations, power and profit is crucial because because it proves that the gender is not what the science of biology is trying to present. It is not, in other words, a combination of hormones, chromosomes, genitalia but a social construction which is culturally defined as a dipole of gendered identities and as heterosexuality.⁴ The purposes being served are many and, unfortunately, they cannot be analysed in the context of this paper, but we may restrictively refer to the control, discipline and surveillance that can be more easily set on the human bodies during the process of their integration into predetermined molds, in the economic importance of the biological family as a core player in reproduction, in the presentation of sexual relationships as totally connected with childbearing etc.

So, in relation to the cultural construction of gender which has already emerged by the feminists in the 50's⁵, our interest lies in the possibility of intervention in this field and of production of political fermentation and competitive speech, which would not now be excluded by the indisputable authority of the science.⁶

As, Battler says, imaginable gendered subject is only that which has continuity between biological sex, gender and sexual desire. That's why the integration in this mold is anything but an easy process. The brutality with which the bodies are sculpted to match what a man or woman is considered to be is daily and continuous.⁷

4 Butler Judith, Gender trouble, feminism and the subversion of identity, translation: Giorgos Karamelas, Alexandria 2009.

5 De Beauvoir Simon, The Second sex, translation: Jenny Kostantinou ,Metexmio, 2009

6 Xalkia Alexandra , Gendered violence, power,discourse, subjectivities Alexandria 2011

7 Butler Judith, Bodies that matter, translation:_Pelagia Marketou Ekremes, 2008

It becomes particularly obvious in the case of intersex persons, for whom it takes the form of very serious surgeries at a very young age, hormone therapy, desperate attempts to hide the "wrong" features and showing off of the right ones, those that match the selected (by doctors or parents) sex.⁸ The brutality is a further proof of the haste of the bipolar system of heteronormativity to safeguard its corollaries. People who do not live up to what has been defined as a natural, normal, possible to exist may have to be reformed so as not to threaten it by their existence, they must choose their gender so they can be managed as identifiable subjects, only the options is dramatically limited.

In such a context, the trans people come to overthrow the naturalness and the doctrine of biological status of gender, either refusing to join either one of the two categories or choosing to exist in the private or public place with the characteristics usually associated with the individuals of the opposite sex. We can therefore even without some personal or a close person's experience to understand the practical difficulties which a trans person has to cope with and the frequency in which it is a victim of discriminations. One of the major issues that arise and involve both the essence of gender as a social construction and the medicalization used as an effective control tool, is the homothetic requirement in most jurisdictions, medical interventions and changes of the genital organs. This requirement confirms the necessary continuity, posed by Battler, between biological, gender and sexual orientation, in other words an identification of identity and desire. Just imagine the treatment a trans person who would choose to express their gender identity in the workplace, would have, or the difficulties in, simple for most people, issues such as inclusion of sex in public documents, difficulties in interpersonal relationships, legal impasses in marriage and adoption of children, etc. We will deal with these issues and their imprinting at law and court decisions in the next part of this paper.

Legal framework: Gender recast directive.

In 2006, the European Union (EU) adopted a Directive aimed at consolidating the existing provisions on the implementation of the principle of equal treatment between men and women and providing a simplified legal framework on the area of sex discrimination.⁹ This Directive, referred to as the "Gender Recast Directive", required all 25 Member States, plus Bulgaria and Romania which joined the Union in 2007, to implement its provisions by 15 August 2008. Additionally, it was incorporated into the European Economic Area Agreement and is thus also applicable to Iceland, Liechtenstein and Norway. The introduction of the Gender Recast Directive in effect replaced a series of EU Directives introduced and implemented by Member States over the previous three decades, and that constituted the foundation of the framework for equal treatment of men and women of the European Union. significantly, Recital 3 of the Preamble of this Directive introduced an explicit reference in relation to discrimination based on 'gender reassignment' for the first time in EU law .

The legal framework on equal treatment between men and women has developed since the 1970s. In the space of four years the following Directives were introduced:

Directive 75/117/EEC5 which established a framework for the implementation of the principle of equal pay between men and women;

Directive 76/207/EEC6, which prohibited direct and indirect discrimination based on sex in employment, vocational training and promotion, and working conditions; and

Directive 79/7/EEC7, which extended equal treatment to social security, including pensions, other benefits related to sickness, invalidity, unemployment, and social assistance.

This general framework was further refined in the 1980s and the 1990s through the adoption of other Directives, among which:

Directive 86/378/EEC8, which defined the occupational social security schemes that fall under the scope of European legislation (further elaborating what was established in Directive 79/7/EEC); and

Directive 86/613/EEC9, which extended the equal treatment framework to activities in a self- employed capacity.

This legal framework, together with political measures undertaken

⁹ Stefano Fabeni Silvan Agius TRANSGENDER PEOPLE AND THE GENDER RECAST DIRECTIVE - IMPLEMENTATION GUIDELINES.

by European institutions to implement social policies in the field of gender equality, radically transformed the scope of the principle of equal treatment between men and women and the anti-discrimination framework. In 1997, the Treaty of Amsterdam brought significant change in anti-discrimination legislation as five additional grounds of anti-discrimination were introduced in EU law, namely, race or ethnic origin, religion or belief, age, disability and sexual orientation. Three years later, the EU adopted the so-called Race Equality Directive (2000/43/EC), and the Employment Framework Directive (2000/78/EC) providing legal protection against discrimination on these new grounds.

With the introduction of the two above-mentioned Directives, the legal framework on equal treatment between men and women became obsolete and required a number of adjustments. As a result, in 2002 the EU approved Directive 2002/73/EC¹⁰ (amending Directive 76/207/EC) to bring it up to the substantive standards of the Race Equality Directive, with the exception of its scope of application (that was still limited to employment, vocational training and promotion, and working conditions). Directive 2004/113/EC does not mention trans people in its text, the Council of the European Union and the Commission referred to the ECJ case-law for the first time and indicated that trans people are to be protected under the scope this Directive 2004/113/EC. Indeed, in the minutes of the 2606th meeting of the Council of the European Union, the Joint Council and Commission state that: "Concerning Article 3 and its application to transsexuals, the Council and Commission recall the jurisprudence of the Court of Justice in case C-13/94 P v S and Cornwall County Council, where the Court held that the right not to be discriminated against on grounds of sex cannot be confined simply to discrimination based on the fact that a person is of one or other sex, and may include discrimination arising from the gender reassignment of a person."

The Gender Recast Directive is the first European Union piece of legislation that includes an express reference to trans people in its text. While not going as far as to explicitly recognise 'gender identity' as a distinct ground of anti-discrimination, the Directive codifies the P. v S. judgement in its Preamble by stating that: "The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person."

In EU Directives, the Preamble is not legally binding as it is meant to shed light on how the provisions of the Directive are to be interpreted. However, in this specific case, the Recital makes reference to the interpretation consistently delivered by the European Court of Justice which is legally binding for domestic judges. Therefore, the interpretation of the Gender Recast Directive on the matter of gender reassignment is unquestionable. The first implication of the inclusion of Recital 3 in the Directive is that any individual who is allegedly a victim of discrimination on grounds of his/her gender reassignment may refer to any conciliation, administrative or judicial procedure established to redress discrimination on grounds of sex. Since 15 August 2008, domestic legislation in EU Member States should incorporate the provisions of the Directive in their national law. This means that, regardless of the status of implementation of the Directive in a country since that date, the domestic judge is

obliged to interpret the existing law in accordance with the content of the Directive itself.

Following the overview of the European Union gender equality legislation, we will now look at the Gender Recast Directive and its significance to trans people.

The material scope of application of the Gender Recast Directive includes: access to employment, self employment and occupation, including promotion; vocational training and retraining; employment, including promotion and dismissal; membership of, and involvement in an organisation of workers or employers, or other professional organisations; working conditions, including pay; occupational social security schemes, including pensions, sickness, invalidity, industrial accidents and professional diseases, and unemployment benefits. The provisions of the Directive apply to all workers in both the public and private sectors. The Directive includes a broad definition of discrimination, which includes direct and indirect discrimination¹⁰; as well as harassment, including sexual harassment, and instruction to discriminate, while establishing the possibility for Member States to maintain or adopt positive action measures. Several procedural measures are established to make the principle of equal treatment effective by offering efficient remedies against discrimination, including: availability of conciliation procedures as well as of judicial and administrative procedures that also ensure dissuasive and

10 European Union Agency for Fundamental Rights (FRA), Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States

proportionate compensation and reparation against the damage caused by discrimination (Articles 17(1) and 18); establishment of effective, proportionate and dissuasive penalties in case of infringement of the prohibition of discrimination (Article 25); legal standing in any judicial or administrative procedure on behalf of or in support of the complainant for any organisation or association bearing a legitimate interest in making sure that the provisions of the Directive are implemented (Article 17(2)); shift of the burden of proof onto the respondent when the complainant has established facts from which the occurrence of discrimination may be presumed (Article 19); availability of domestic provisions to protect employees against retaliation (Article 25). The Gender Recast Directive requires Member States to establish equality bodies at domestic level "for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex" (Article 20), and indicates that such bodies should have a degree of independence such as to provide independent assistance to the victims of discrimination, conduct independent surveys, publish independent reports and recommendations, and exchange information with other similar European bodies. Finally, the Directive encourages social dialogue, dialogue with non-governmental organisations and dissemination of information at the domestic level to ensure the effective implementation of the principle of equal treatment. ¹¹

Jurisprudential cases: ECJ decisions on trans people

In this part of the essay we shall deal with the role of the jurisprudence in the foundation of the protection of trans people from discriminations and the unequal treatment. Specifically, we shall deal with the foundation of these discriminations as gender discriminations and the corresponding protection of EU law. There will be examined three examples from the jurisprudential practice of the ECJ, which have been of critical importance and have served as guidelines for the mode of application of the EU law by the different national legal systems towards a direction of the incorporation of trans people in the protective frame of equal access and enjoyment of goods and services

P. v. S. and Cornwall County Council ¹²

11 Silvan Agius Richard Köhler Sophie Aujean Julia Ehrt, human Rights and Gender Identity Best Practice Catalogue December 201

12 Judgment of the Court of 30 April 1996. - P v S and Cornwall County

The first jurisprudential case with which we shall deal with is the P. v. S. case. In this case P., a trans person, while born with male genitalia and chromosomes, felt like a woman and decided to have a sex reassignment surgery. During this change P. was fired from the educational institution where she was working. Specifically and even though they had made her remarks during the course of hormonal therapies and change appearance, the final dismissal took place after the surgery. P. addressed to the British courts, since she regarded that this dismissal consisted a gender discriminating treatment and violation of equality. During the trial, the british court regarded that the reason of the dismissal had not been P.'s gender, but the sex change in which she had proceeded. Thus, she asked the ECJ (then CJEC) for a preliminary ruling about in what extent the dismissal for that reason consists violation of the direction 76/207.63 and specifically of the art. 5 which consisted the basis of equality between men and women in the labor relations. That is to say, in what extent the discrimination against trans people can be regarded as a gender discrimination and comes under the protection of the aforementioned directive.

The response of the ECJ had been positive and consisted a milestone in the treatment of the discriminations against trans people, as for the first time these kind of discriminations were regarded as based on gender and were able to found a correspondend legal protection on people that, until then, faced a legal vacuum. Specifically, the CJEC supported that the aforementioned directive had been enacted for the foundation and the protection of equality among all people regardless their gender in the labor market, and thus it can certainly protect a person that has chosen sex change as an expression of their personality. And due to, as it is known, the equal and the discriminatory treatment being confirmed through comparison, the CJEC set as a benchmark for the proof of any discriminating behavior the male/female worker of the same gender the trans person had before the sex change, thus in this particular case a male worker.

K.B. v. National Health Service Pensions Agency ¹³

The second case with which we are about to deal with is the one of

Council. - Reference for a preliminary ruling: Industrial Tribunal, Truro - United Kingdom. - Equal treatment for men and women - Dismissal of a transsexual. - Case C-13/94.

13K.B.v NHS Pensions Agency , Case C-117/01, 7 January 2004

K.B. This case has to do with a female worker in a hospital of the NHS in Britain who was companion of a ftm man. As the national legislation prohibited the enrollment of a person that has had sex change in the status records, with the new gender that she had chosen and the marriage between homosexual people, the couple did not have the capability to proceed to a marriage contract. For that reason, representatives of the hospital informed the worker that in case she dies, her husband will not be able to receive the pension that she was entitled to, as it applied to the rest of the male/female married/single workers that retired from this certain public hospital.

The worker and her partner regarded that this particular discrimination consists a gender discrimination and as such is illegal as contrary to the principles of equality and equal treatment. Thus she resorted to the national judicial authorities for her protection. During this trial, the ECJ was asked whether the discriminatory treatment of married than non-married persons constitutes gender discrimination. ECJ's response was negative as it regarded that the return of privileges to married people can not be regarded as gender discrimination. But it went on saying that, even though the present situation does not directly exclude the enjoyment of the right, it excludes the possibility of fulfilling the conditions for the enjoyment of this right which is the ability to marry. Specifically, it referred to a previous jurisprudence of the UCHR, which founds the right of trans persons to marriage, as well as the contradiction of this prohibition to the Community law and specifically to the provision 157 TFEU as founded after the Treaty of Lisbon. However, it added that it is the responsibility of States to establish the conditions and the context in which trans people will be able to enjoy the right to marriage (eg necessary prior surgery).

Sarah Margaret Richards v. Secretary of State for Work and Pensions ¹⁴

The Richards case deals with a ftm trans in Britain who decided to retire in the age of 60, a possibility provided by the law for the female workers contrary to male workers who had to be over 65 years if born before 4/1/1950.

Due to the denial of this allowance, Richards turned to the courts claiming to have suffered gender discrimination, which is illegal as contrary to EU directives on equality and equal treatment. The ECJ in this case was in favor of the plaintiff saying that this provision consists discrimination and is contrary to Directive 79/7 and especially Article 4 for gender equality. It said that

¹⁴ Sarah Margaret Richards v Secretary of State for Work and Pensions (Case C-423/04) ECJ 27-04-06

"Contrary to women whose gender is not a result of gender reassignment surgery and who have the possibility to receive pension in the age of 60, Ms Richards does not have the possibility to fulfill all the conditions for the allowance of the pension and specifically the requisite age. Thus, the unequal treatment comes from Ms Richard's sex change and for that it has to be regarded as contrary to Article 4 of the Directive 79/7".

Jurisprudential cases: ECHR decisions

Since 1992, the European Court of Human Rights has ruled positively on a series of cases brought forward by transsexual people. These decisions concern: the right to gender recognition of post-operative transsexuals (B v France); the right to marry in accordance with the acquired gender (Goodwin and I. v UK) the right to fair and proportionate requirements related to gender reassignment (van Kück v Germany); the right to a pension in accordance with the acquired gender (Grant v United Kingdom); and the right to adequate and clear gender recognition procedure for change of name and legal gender (L v Lithuania). While the ECtHR has been instrumental in advancing the recognition that trans rights are human rights, it is unfortunate that no cases of trans people who are not transsexual have yet reached the Court.

Goodwin and I. v UK¹⁵

The applicant, Christine Goodwin, a United Kingdom national born in 1937, is a post-operative male to female transsexual. The applicant claimed that she had problems and faced sexual harassment at work during and following her gender re-assignment. Most recently, she experienced difficulties concerning her national insurance (NI) contributions. As legally she is still a man, she has to continue to pay NI contributions until the age of 65. If she had been recognised as a woman, she would have ceased to be liable at the age of 60 in April 1997. She has had to make special arrangements to continue paying her NI contributions directly herself to avoid questions being raised by her employers about the anomaly. She also alleged that the fact that she keeps the same NI number has meant that her employer has been able to discover that she previously worked for them under another name and gender, with resulting embarrassment and humiliation.

The applicant complained about the lack of legal recognition of

¹⁵ CHRISTINE GOODWIN v. THE UNITED KINGDOM (Application no. [28957/95](#))

her post-operative sex and about the legal status of transsexuals in the United Kingdom. She complained, in particular, about her treatment in relation to employment, social security and pensions and her inability to marry. She relied on Articles 8, 12, 13 and 14 of the Convention.

Van Kück v Germany¹⁶

The applicant, Ms Van Kück, who lives in Berlin, was born male in 1948. She changed her first names to Carola Brenda in December 1991. The following year she sued a health-insurance company for reimbursement of the cost of hormone treatment and a declaration that the company was liable to reimburse 50% of the cost of gender re-assignment surgery. Her claim was rejected by the Regional Court on the ground that this could not reasonably be considered as necessary medical treatment: it had not been conclusively shown that it would relieve her condition and she should have tried extensive psychotherapy first. The Court of Appeal upheld that decision and added that Ms Van Kück was not entitled to reimbursement because she had caused the disease herself. In that respect it referred to the fact that she had started to take female hormones, without medical advice, only after discovering that as a man she was sterile. In the meantime Ms Van Kück underwent gender re-assignment surgery. Her subsequent appeal to the Constitutional Court was unsuccessful.

She complained, under Article 6 § 1 (right to a fair hearing) of the Convention, that the German court proceedings had been unfair. She also complained of a breach of Article 8 (right to respect for private life) and of Article 14 (prohibition of discrimination) combined with Articles 6 § 1 and 8.

The central issue with regard to Ms Van Kück's complaint under Article 8 was the courts' application of the criteria for reimbursement of the medical costs of gender re-assignment surgery and not the legitimacy of such measures in general. Furthermore, what mattered was not the entitlement to reimbursement as such, but the impact of the court decisions on the applicant's right to respect for her sexual self-determination. Without hearing further expert medical evidence, both the Regional Court and the Court of Appeal had questioned the medical necessity of gender re-assignment and the Court of Appeal had additionally, on the basis of general assumptions as to male and female behaviour, concluded that the applicant had deliberately caused her condition of transsexuality. Since gender identity was one of the most intimate

¹⁶ European Court of Human Rights (2003) *van Kück v. Germany*, no. 35968/97.

aspects of a person's private life, it appeared disproportionate to require Ms Van Kück to prove the medical necessity of the treatment. No fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.

L v Lithuania¹⁷

The case concerned an application brought by a Lithuanian national, Mr L. who lives in Klaipeda (Lithuania). At birth he was registered as a girl, with a name clearly identifiable as female. However, from an early age, he submits that he felt his gender was male rather than female. He has been in a stable relationship with a woman since 1998. On 18 May 1997 the applicant consulted a micro-surgeon about gender reassignment, who recommended that he consult a psychologist. He therefore went to Vilnius Psychiatric Hospital for tests in November 1997, where (it was later confirmed) he was diagnosed as a transsexual. On 16 December 1997 a doctor at Vilnius University Santariskes Hospital also diagnosed the applicant as a transsexual and advised that he consult a psychologist. An entry in the applicant's medical file of 28 January 1998 included a recommendation that he pursue hormone treatment with a view to eventual gender reassignment surgery, following which he was officially prescribed hormone treatment for two months. The applicant submits that in 1999 his doctor refused to prescribe hormone therapy, in view of the legal uncertainty as to whether or not full gender reassignment could be legally carried out. Thereafter the applicant continued the hormone treatment "unofficially". In 1999 the applicant went to Vilnius University, where his request to be registered under his chosen male name was accepted on compassionate grounds. However, his request the same year - that his name on all official documents be changed to reflect his male identity - was refused.

From 3 to 9 May 2000 the applicant underwent "partial gender reassignment surgery", namely a breast removal procedure, in the light of the new Civil Code which was due to be adopted. Article 2.27 § 1 of the Code, which entered into force on 1 July 2003, provides that "an unmarried adult has the right to gender reassignment (pakeisti lyti) in a medical way, if that is medically possible". The second paragraph of the provision stipulates that "the conditions and procedure for gender reassignment shall be established by law". The applicant agreed with the doctors that a further surgical step would be carried out following the adoption of the relevant laws governing those "conditions and procedures". No such laws have as yet been

¹⁷ CASE OF L. v. LITHUANIA (Application no. 27527/03) 11 September 2007

adopted. In 2000, with the assistance of a Lithuanian Member of Parliament, the applicant chose a new name and surname for his birth certificate and passport, which were of Slavic origin, to avoid disclosing his gender; Lithuanian names and surnames are gender-sensitive. However, his personal code on his new birth certificate and passport (and on his Vilnius University diploma) remains unchanged; as it starts with the number four, it identifies his gender as female. The applicant maintained that he faced a vast amount of daily embarrassment and difficulties; for example, he was unable to apply for a job, pay social security contributions, consult a doctor, communicate with the authorities, obtain a bank loan or cross the State border, without his female gender being disclosed. As a consequence, he alleged that he was condemned to social ostracism because he looked masculine but, in official papers, was identified as a woman. That state of affairs had left him in a permanent state of depression with suicidal tendencies.

Relying on Articles 3, 8, 12 (right to marry) and 14 (prohibition of discrimination), Mr L. complained about the lack of legislation allowing him to complete gender reassignment surgery and pursue his life as a person of male gender. He alleged, in particular, that the State's inaction in adopting that legislation was a concession to the negative attitude of the majority of the population towards a transsexual minority.

Conclusions

As we saw in the analysis above, the EU law, after the Directive for the gender equality, as well as the jurisprudential contribution of the two courts served towards the direction of the creation of a grid redress for trans people. Nevertheless, the vacuums that have to be covered and the road to be traveled is still far, so that we can talk about a satisfactory legal and mainly social treatment of the trans people¹⁸. Besides, as we mentioned in the beginning of this essay, the system of the bipolarity gender, patriarchy and heteronormativity dominating in relationships have

18 [Nico J. Bege](#), *Queer Readings of Europe: Gender Identity, Sexual Orientation and the (Im)potency of Rights Politics at the European Court of Justice* University of Amsterdam, Netherlands

very strong foundation and there are required intense contestations and conflicts in the social field. The invisible of the existence of trans people in everyday life and in public discourse and space¹⁹, as well as the denial of the existence as a recognized subject of a person who has undergone surgery and does not identify themselves as male or female²⁰, should trouble us and leave us no doubt for the way the "delinquency" in the field of the gendered relationships and identities²¹.

That is the reason why on one side the developments in the law are not enough, and on the other hand we set ourselves on the side of trans people since we understand that their depreciation is interwoven with ours as women, gay, lesbian, queer as individuals who live and are oppressed more or less from the gendered representations, performativities, relationships, norms.

19 Kantsa Venetia, Visibly invisible/ Invisibly visible: Two faces of lesbian appearance, in *Body, gender, sexuality, lgbt politics in Greece*, Plethron, 2012.

20 Silvan Agius & Christa Tobler Supervised by Migration Policy Group European Commission Directorate-General for Justice , *Trans and intersex people Discrimination on the grounds of sex, gender identity and gender expression* European Network of Legal Experts in the non-discrimination,, June 2011

21 Anna Apostolelli - Performative visibilities and the politic of the closet , in *Body, gender, sexuality, lgbt politics in Greece*, Plethron 2012.