



RECOMMENDATIONS FOR GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS ACT







On the 29th day of October 2014, the Gender Identity, Gender Expression and Sex Characteristics Act was presented in Parliament by the Minister for Social Dialogue, Consumer Affairs and Civil Liberties who also launched a public consultation process from the 29th day of October to 30th day of November. Kunsill Studenti Universitarji (KSU) in collaboration with We Are – the University of Malta LGBTQQI Society, held a Consultation Session on Friday the 21st day of November on the University Campus, with the aim of gathering recommendations from the student population.

Ms Gabi Calleja (Coordinator) and Dr. Mark Grech of MGRM, Mr. Silvan Agius (Human Rights Policy Coordinator) and Ruth Baldacchino (also co-Secretary General at ILGA World) from the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, and Ms Romina Tolu (Communications Officer) of IGLYO formed part of our panel whilst Dr. Andrew Azzopardi chaired the discussion. Students were given the opportunity to ask questions to the expert panel but also give their suggestions (articulated hereunder) regarding the Bill at hand.

Subsequent to the Joanne Cassar judgment (23/05/2011) of the Constitutional Court, a bill was piloted in Parliament which sought to eliminate the lacuna that existed in the law. Prior to the introduction of Act VII of 2013, the law solely empowered unmarried persons who had undergone irreversible gender re-assignment surgery to apply to the Civil Court First Hall to have an annotation made to one's Act of Birth and Identity Card. The scope of the law was merely cosmetic rather than offering much of a substantive solution. Act VII of 2013 somewhat normalised the particular situation of a transsexual person who intends to enter into a matrimonial union. The Act passed on the 12th day of July 2013. Today, a declaration made under Article 257B shall be considered for all civil purposes, including the right to marry. Several students believe that such reality merits additional legislation to ensure that persons from all walks of life are guaranteed adequate protection of their fundamental rights.

The recently published European Union lesbian, gay, bisexual, transgender survey states:

“Transgender respondents consistently indicate that they experience an environment that is less tolerant towards them than that experienced by lesbian, gay and bisexual respondents. Transgender respondents are, for example, the most likely of all LGBT subgroups to say that they felt personally discriminated against in the past year because of being LGBT, particularly in the areas of employment and healthcare.”

Thereupon, KSU welcomes the introduction of the Gender Identity, Gender Expression & Sex Characteristics Act and notes that although this may be perceived as a law which only affects a limited number of individuals, in fact it is one that concerns and benefits our entire society. The KSU Social Policy Office has embattled fiercely to fight discrimination. KSU believes that positive measures to promote respect for the human rights of LGBTQQI individuals are needed. Many agree that easier legal procedures for gender reassignment would allow transgender persons to be more comfortable living as such. The Council is against all forms of discrimination, in all areas of life. KSU advocates equal treatment in employment, providing a safe environment for LGBTQQI students at schools, protecting LGBTQQI victims of hate crime and improving rights awareness, amongst others.

1 Gender Identity Issues in Maltese Law, Christopher Bergedahl, GhSL Online Law Journal 2014.

2 European Union lesbian, gay, bisexual, transgender survey, European Union Agency for Fundamental Rights, 2014.

KSU notes that transgender persons appear to be the only group in Europe subject to state-enforced sterilisation. Thereupon, a considerable number of students agree that requests to the Director of Public Registry can be submitted through a notarial deed including a clear and unequivocal declaration by the applicant that one's gender does not correspond to the assigned sex in the act of birth, and one will no longer have to go through gender reassignment surgery. Moreover, KSU believes that the procedure for change of legal gender should not be a detriment to one's fundamental human rights. Any pecuniary obligations must be reasonable.

The Council notes that several students acknowledge Judge Giovanni Bonello's argument:

"...it sounds bizarre to me that an 'under age' child can give an informed consent on something as fundamental as gender identity, but then cannot give a valid consent to consensual sex, or to entering into a simple contract of hire-purchase".

Others claim that there is no direct relationship between gender identity and consent to consensual sex and no relationship at all between the former and a contractual obligation such as hire.

KSU reiterates that the best interest of the child must be safeguarded unconditionally as articulated in the UN Convention on the Rights of the Child.

KSU notes that a significant number of University students are unable to give proper definitions to terms such as 'intersex', 'agender', 'gender identity' and 'gender expression', following a vox pop by Insite Malta – a media organisation on campus. KSU firmly believes that education must go hand in hand with this Bill for it to truly achieve its raison d'être.

KSU believes that it is crucial that primary and secondary school teachers are offered adequate training on how to tackle problems with bullying, political correctness and how to spot early signs of gender identity issues. There must be a strong support system which surrounds young, vulnerable children who are unable to identify with a particular sex.

One particular suggestion put forward by a University student was that the gender marker be entirely removed from identification documents. The most common use of an I.D. card, for example, is to verify that the cardholder is indeed who that person claims to be not to reflect one's gender status. It was argued that the I.D. card does not contain information such as religion, physical attributes or marital status and hence nor should it include one's gender. By including this marker, one is categorising unnecessarily and hence creating a source of anxiety and discrimination for particular individuals.

Alternatively, some students are of the belief that should, should this gender/sex marker be maintained, the option of marking 'X' instead of 'male' or 'female' should be introduced for individuals who are genderless, or agender. KSU notes that there are several countries which apply this mechanism such as New Zealand.

In conclusion, KSU would like to honour the lives lost, and those still harassed, tortured and killed because of who they are.



