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17 December 2019

**Effectively protect LGBTI\* from attempts at “conversion”**

**Legal and socio-political requirements for state action**

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**1 Preliminary remarks**

The relationship of lesbian women, gay men, trans\* and intersex persons toward medicine is fraught with difficulty, both historically and at present, and is characterized by hubris and pathologization on the one hand, and painful experience and distrust on the other. So-called “conversion” or “reparative” therapies, the subject of this commission’s work, are further grounds for this distrust.

The LSVD welcomes the initiative of the Federal Ministry of Health as well as the Bundesrat[[1]](#footnote-1) initiative of the states of Hesse, Berlin, Bremen, Saarland and Schleswig-Holstein. It is positive that their motion, following debate at the committee stage, last Friday resulted in an unequivocal recommendation to the Bundesrat to adopt the resolution. This is testament to the consensus that now exists in the political arena across party lines concerning the rights of lesbians, gay men and bisexuals, as well as transgender and intersexual people. This was not the case a few years ago, when a similar proposal failed.

Nevertheless, it must be said that political action on this issue is long overdue. The LSVD has been demanding effective political intervention against so-called conversion therapies not just for years now but for decades – especially for protection of homosexual, bisexual, trans\* and inter\*sex minors!

**2 Legal classification**

According to international human rights standards, sexual orientation and gender identity are at the core of a person’s personality and are an inseparable element of human dignity. The Federal Constitutional Court has repeatedly emphasized this in a large number of highly differentiated rulings. “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” Far from being an empty phrase, Article 1 of our Constitution is the expression of a conscious commitment to inviolable and inalienable human rights as a non-negotiable foundation for societal coexistence in this country.

On this basis, lesbians, gays, bisexuals, trans\* and inter\*sex persons have a right to protection against discrimination. This right includes the protection of their physical and mental integrity and, above all, protection from attempts to change their sexual orientation or gender identity.

Any attempt to change sexual orientation or gender identity through so-called conversion therapies is – and this must be said very clearly – nothing less than a violation of human rights.

**3 Medical classification**

Attempts by advocates and providers to justify such therapies in medical terms have long since been thoroughly debunked by science. On this issue, at least, it must be stated that parts of the world of medical science are ahead of the politicians.

It is now over a quarter of a century since the World Health Organization (WHO) removed homosexuality from the list of mental illnesses. In the latest edition of the International Diagnostic Code for Diseases ICD 11, published in June 2018, transsexuality is finally no longer classified as a gender identity disorder and mental illness. As early as 1992, the World Health Organization made it very clear that same-sex sexuality is neither a disease nor morally reprehensible, and that attempts to “repair” sociosexual orientation are nothing more than social and religious prejudices dressed up as psychology. All the world’s leading professional associations in psychiatry and psychology dismiss such experiments, falsely termed “therapies”, and classify them as ineffective and potentially dangerous for those seeking help and advice.

In 2013, on the initiative of the German Medical Association and the Society for Psychiatry and Psychotherapy, Psychosomatics and Neurology (DGPPPN) and their British and French partner organisations, the World Medical Association clearly distanced itself from any pathologisation of homosexuality and transsexuality and stated that so-called conversion therapies are unethical and in breach of human rights.

The professional organisations thus made it clear – with an unambiguity that is highly positive – that physicians and psychologists who offer so-called conversion therapies are acting way outside the accepted position of all relevant professional associations, the German Medical Association and the World Medical Association.

However, despite the findings described above, there are still doctors, therapists and associations who hold the view that homosexuality bisexuality and transsexuality are psychological disorders or pathologies that can be “cured” or “changed” through appropriate interventions. Openly or covertly, questionable institutions in medical and religious contexts continue to advertise, offer and conduct conversion or repair therapies.

The use of the term “therapy”, however, is misleading. Rather, it is an attempt by therapists, those involved in social work or representatives of religions – both self-proclaimed and officially accredited – to change the homosexuality of clients into asexual or heterosexual behaviour. These offers are primarily aimed at people from conservative-religious environments who find themselves at conflict with their sexual or gender identity as a result of experiences of discrimination and exclusion. They are therefore particularly vulnerable and susceptible to apparent offers of help that promise a change in identity and pretend they can bring about a supposedly “normal” state.

These individuals often experience their own feelings as being in contradiction with their religious convictions; due to internalized homophobia or transphobia, they hope such therapies can bring about a change. Instead of being encouraged to accept themselves as they are, however, people are given false hopes. Guilt, self-hatred and shame are encouraged – with serious consequences for health.

Doctors can also find it difficult to engage with issues around trans\* children in paediatrics; there are unfortunately professional articles and textbooks still taking the position that role-compliant behaviour can be promoted by sanctioning deviations, and that a “reconciliation” with the birth sex can be achieved by waiting for puberty. With parents who are already insecure enough, it is ultimately the children who bear the brunt of such attitudes – which have no basis in science – and who, in contrast to older adolescents, are often denied the right to have their say in what happens.

There is therefore an urgent need for action, because therapeutic interventions aimed at changing sexual orientation or gender identity are not only unsuccessful – they are proven to be harmful and dangerous for those affected. Especially in children and adolescents, such interventions lead to severe psychological issues such as depression, anxiety disorders and an increased risk of suicide. This is all the more alarming given that young LGBTI\*, due to experiences of discrimination, already have a threefold higher suicide risk than other young people of their age.

The scientific foundations that not only legitimize political action but also make it imperative have been known for many years.

**4 Necessary legal measures**

There is a legal and – as will be explained later – socio-political need for action. It is the responsibility of the state to ensure the mental and physical well-being of LGBTI\* and to protect them from harm through conversion therapies.

**4.1 Consenting adults**

Conversion therapies on consenting adults must be assessed according to the usual principles of law pertaining to medicine. Every medical treatment must already meet a number of several requirements under current law. A medical treatment requires:

1. a diagnosis

2. a therapeutic objective

3. an indicated treatment which is suitable to achieve the therapeutic objective and

4. informed consent of the person concerned following comprehensive information.

Conversion therapies do not fulfil any of these requirements! Since neither same-sex sexual orientation nor trans\* or inter\*sexuality falls into the category of a disease, they fail at the first hurdle, the requirement of diagnosis.

Owing to the character of sexual orientation and gender identity as part of an individual’s personality, changing it is not a permissible treatment objective. In addition, from a scientific point of view, the given goal cannot be achieved with the treatment. Finally, effective consent will regularly be lacking, even in the case of adults who are basically capable of consenting, since effective consent requires comprehensive information about the achievability of the treatment goals and the possible harmful side effects. So-called conversion therapy can therefore never be indicated as a medical treatment and effective consent is regularly lacking.

Doctors, psychotherapists and non-medical practitioners who carry out these treatments are liable to prosecution for personal injury, grievous bodily harm or – in the case of suicide caused by conversion therapy – wrongful death. As the law now stands, affected persons can already assert claims for damages and compensation for personal suffering. This shows that educating people about the inadmissibility of such therapies is of particular importance for enabling those affected to exercise their rights.

At the same time, any member of the above-mentioned professional groups who conducts so-called conversion therapies is violating professional rules. For these therapies to be prohibited, however, it is necessary for the professional associations themselves also to provide information and to apply the sanctions available to them.

However, the sanctioning of therapy offers by pastoral workers, advisers without formal qualifications and other laypersons remains problematic; it is also extremely difficult to pin down in legal terms. One approach that could be pursued is the idea proposed by the Federal Association of Psychotherapists: to include provisions in anti-discrimination law (the “AGG”) that would protect against intervention in sexual orientation by psychology laypersons.

**4.2 Minors**

Particular focus must be placed on the protection of minors: this requires explicit prohibition of conversion therapies, with penalties under criminal law. This is mandated by the special duty of care of the state concerning child welfare, especially since the practice of conversion therapies on adolescents regularly takes place with involvement of their parents. The ban should cover not only the conducting of such therapies but also brokering contacts and advertising.

Special attention must also be paid to trans\* children. They are in a special situation because they are even more dependent than other young people. They already experience conversion attempts when early attempts to change roles are prevented and sanctioned by parents, paediatricians and other actors in their environment. On this issue, urgent action is required – alongside a ban – to establish and sustain suitable counselling services for children and parents.

A ban on conversion attempts on LGBTI\* children and adolescents also needs to be embedded in family law, essentially that parental care should exclude the granting of consent to conversion attempts. Other particularly vulnerable groups should also be covered by such provisions, notably adolescents and people with mental illnesses. For people with mental health challenges, it might be conceivable to have a provision in the law governing care which basically excludes consent to conversion therapy.

**4.3 Other areas of law**

From the viewpoint of the LSVD, effectively prohibiting conversion therapies for minors will take a comprehensive package of measures in addition to an outright ban:

It should be self-evident that statutory health insurance schemes will not reimburse the cost of such “therapies”, as per Social Code Book V (Sozialgesetzbuch SGB V). However, health insurance companies are additionally required to ensure that costs are not reimbursed indirectly under the guise of a different diagnosis. These provisions must be reinforced by a clear stance on conversion therapies in school education. In contrast to recent practice at primary schools in the state of Saxony, schools may not provide a platform for the activities of fundamentalist Christian groups that are known to promote conversion therapies and mediate contact with practitioners. Lastly, there may be no public funding for institutions that offer or recommend conversion therapies. Nor should organizations that offer, mediate or promote conversion therapies be permitted to hold charitable status. Likewise, the status of an independent provider of youth welfare services is not compatible with advocacy of conversion therapies. In addition, organisations advocating conversion therapies should expect to be excluded from welfare associations by means of an incompatibility clause (one organisation has already been excluded from the DPWV, Germany’s Equal Welfare Association).

**5 Homophobia and transphobia**

In addition to the individual measures mentioned above, in the view of the LSVD it is also urgently necessary to address the ideology behind the spread and promotion of so-called conversion therapies, an ideology characterised by pronounced homophobia and transphobia. Conversion therapies are an expression of hostility against particular groups of people.

In this sense, the ideology is not only an attack on LGBTI\*, but is also deeply anti-democratic in nature. Hostility to LGBTI\* is an ideology of inequality, and is all about devaluing people. If the state fails to grant equal rights to lesbians, gays, bisexuals, trans\* and inter\*sex people, this will have the effect of affirming such hostility on an ongoing basis. Policy-making that avows to take decisive action against “homophobia and transphobia” and other forms of hate against people, yet still denies equal rights to LGBTI\*, renders itself untrustworthy.

The vital goal of a credible and effective plan of action to combat hostility against LGBTI\* must therefore be to eliminate all legal and actual discrimination.

This context makes it all the more importance for societal acceptance and real-life respect of LGBTI\*: this is the necessary framework for successful intervention against so-called conversion therapies. The more self-evident acceptance and respect are, the more effective the protections are – and ideologies that advocate conversion therapies under the guise of pseudoscience and religiosity are then on far less firm ground.

The classification of conversion attempts as human rights violations makes clear the importance of combating them collectively, not just as individual cases.

Like sexism, racism, anti-Semitism, Islamophobia or antiziganism, hostility toward lesbians, gays, bisexuals, trans\* and inter\*sex people (LGBTI hostility) cannot be reconciled with the fundamental values that underpin Germany's Basic Law. They stand in open contradiction to the liberal, democratic and social principles of the social order of Germany.

Viewed in this context, it is essential to combat conversion therapies as well as hate crime against LGBTI\*, acts of violence, assaults and hostility, discrimination and disadvantages. Those taking a homophobic and transphobic position deny equal rights and human dignity to lesbians, gays, bisexuals, trans\*, inter\* and queer people. Religious fundamentalists, right-wing populists and right-wing extremists are mounting an energetic and increasingly well-connected fight to deny LGBTI\* equal rights and development opportunities and to push them out of the public space. For example, in many places they use hate language in their opposition to a pedagogy of diversity, and criticise alleged “gender mania” in an anti-feminist way. LGBTI\*-hostile attitudes and actions can be found far beyond this spectrum – even in society’s “middle ground”. Conversion therapies are a further expression of this hostile attitude to democracy and human rights.

It is the task of the state to dismantle existing structural and institutional barriers that continue to stand in the way of the ability of LGBTI\* to participate fully in society and to fully realize their constitutionally guaranteed human rights.

Alongside the specific measures above to prohibit conversion therapies, the introduction of a National Action Plan against Homophobia and Transphobia – still not yet realized – is an important political tool.

**6 Respect work**

To combat hostility against particular groups in society and ensure long-term success of such work, there have to be broad-based efforts to build respect. With the National Action Plan, a sustainable national strategy must be developed that actively promotes respect and acceptance of the diversity of sexual orientations, gender identities and gender expression through appropriate media and materials.

It is to be welcomed that the programme of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) “Living Democracy! Active against Right-Wing Extremism, Violence and Xenophobia” has for the first time also expressly announced model programmes to combat homophobia and transphobia.

It is essential that federal programmes to promote democracy and combat against group-related hostility be consolidated and further expanded; in particular, that the tasks of combating LGBTI\* hostility and promoting empowerment be explicitly identified as a regular issue to address in all future federal programmes, and that structural funding and resources be made available. The work to combat LGBTI\* hostility at the Federal Agency for Civic Education in Adult Education and Vocational Training should also be intensified.

The Federal Centre for Health Education should inform the public about the dangers of so-called “conversion” or “reparative” therapies, and about their providers from the Christian fundamentalist spectrum.

Furthermore, it is important to support civil society activities in order to effectively counteract hate speech, hate music, agitation against LGBTI\* on social media and online portals, as well as to actively pursue all legal channels to identify perpetrators and hold them accountable.

**7 Religious communities**

Finally, religious communities must be required to take responsibility. The fundamental right to religious freedom is not a carte blanche for discrimination against LGBTI\*. The denial of fundamental rights to LGBTI\* is not covered by religious freedom. All religious communities are called upon to reconsider and evolve their negative attitude towards same-sex relationships and the diversity of gender identities. This means they must make their contribution within society to combating discrimination and LGBTI\* hate crime. In recent years, the Protestant Church in Germany and many of its regional churches have distanced themselves from their earlier exclusion of LGBTI\* and, after often intense internal debates, have opened up to LGBTI\*. Most regional Protestant churches today offer same-sex couples church weddings or at least blessings of their union. Large parts of the Catholic Church, Orthodox churches, Evangelical groups and most Islamic organizations in Germany, on the other hand, reject the practice of homosexuality as a grave sin – even if there are also courageous liberal voices within these communities who have our respect and full support. However, the Catholic Church and Evangelical organizations in Germany in particular have so far fought intensely against every single legal improvement for LGBTI\* and are still doing so today. They bear responsibility for past and ongoing discrimination. It is irresponsible for religious authorities to consistently keep silent about specific cases of discrimination and violence against LGBTI\* or to fail to condemn them unequivocally.

A public distancing of all religious communities – especially the two large institutionalised and influential churches – from conversion therapies is essential. Above all, religious authorities such as the German Bishops' Conference and the Protestant Church in Germany (EKD) must therefore publicly distance themselves from such dangerous pseudo-therapies.

**8 Conclusion**

Finally, I would like to re-iterate that the problem of conversion therapies is not an academic one. It is about people; it is about stolen youth and destroyed lives. And sometimes it is about life and death, when people see no other way out than suicide because of such therapies.

Young LGBTI\* in particular are entitled to protection and safety to develop their personality. Young LGBTI\* need even more empowerment and reinforcement than others to come out and make their way to a self-confident life in a society that is aware of the value of diversity.

To achieve this goal, it would also send out an important message to extend Article 3 (3) of the Basic Law to include a ban on discrimination based on sexual identity – a change that has long been demanded.

**9 Draft law**

On 04.11.2019, the Federal Ministry of Health presented a draft law on protection against treatment to change or suppress sexual orientation or self-declared sexual identity (Sexuelle-Orientierung-und-geschlechtliche-Identität-Schutz-Gesetz, or SOGISchutzG).

In principle, the fact that the Federal Ministry of Health has decided to prohibit and make punishable treatments aimed at changing or suppressing sexual orientation or self-declared gender identity is to be welcomed. It is particularly to be welcomed that self-declared sexual identity is now also a subject of the SOGISchutzG.

However, the following points in particular must be judged critically:

**Regarding Article 2 SOGISchutzG**

The LSVD considers it completely misguided to make an exception for the prohibition on carrying out the treatments pursuant to § 1 (1) SOGISChutzG for persons after the age of 16 who allegedly have the necessary ability to understand the significance and scope of the decision. This exception runs counter to the aim of the law, because it again opens up a way for the key target group of 16 and 17-year-olds to be exposed to the treatments that the law aims to halt.

For most young people, the awareness of sexual orientation begins between the ages of 13 and 16. Awareness of gender identity tends to be earlier, with a broader spread of ages. In the case of gay and lesbian adolescents, it is another two to three years before the person comes out; in the case of trans\* adolescents it is four to five years. The mean coming-out age is 17 years for gay and lesbian adolescents, and somewhat later for trans\* adolescents (all data.): German Youth Institute 2015, https://www.dji.de/fileadmin/user\_upload/bibs2015/DJI\_Coming-out\_Broschuere\_barrierefrei.pdf).

On the basis of these figures the following biography can be sketched: at the age of 13 or 14, an adolescent finds out that he or she is lesbian or gay or trans\*. For adolescents growing up within structures in which so-called conversion therapies are accepted, the problem is that when they turn 16, they come under threat of being forced by their family and social circle to give their consent. These adolescents, shying away from a conflict that could threaten their existence, will usually not confide in their parents; they are unable to make age-typical progress in development and/or have to live with the fear of being “exposed”. These young people are under threat of unnecessary suffering and a choice of what they consider to be the lesser evil. Numerous studies show there is a drastically increased suicide risk of both groups: young people who have to live in fear of coming out, and young adults who have experienced so-called conversion therapy. Dangerously, the draft bill even reverses its claim to protection. As long as so-called conversion therapies remains on offer for minors, they will remain standard practice in structures in which they are accepted – and it will also remain the expectation for the parents' environment and/or for the parents themselves that young people undergo this procedure. – 3 – At the age of 16, young people in Germany are granted the right to purchase light alcoholic beverages (beer, wine and sparkling wine) and to be at the cinema until midnight without parental (or delegated) supervision. The age of consent to so-called conversion therapy is considered and debated in reference to this. It should be noted that the exclusion of the hitherto younger target group will also result in conversion therapies being adapted – in terms of both content and methods – to the consistently older target group, and will thereby become all the more dangerous.

Overall, the exception to the prohibition under Article 2 paragraph 1, no. 1 SOGISchutzG for persons aged 16 and over is likely to give even more ammunition to the proponents of conversation therapies and at the same time to tighten the content of the therapy. The legislator must therefore without restriction fulfil its duty of care to a group that requires no less protection than the group of under-16s protected by this draft bill.

In addition, the age limit of 18 years is in itself dubious. At least, an age limit of 26 years should be provided, in alignment with Article 7 of Social Code Book VIII (Sozialgesetzbuch SGB VIII). Young people aged between 18 and 26 often have a need for protection that is comparable with that of minors.

**Regarding § 3 SOGISchutzG**

The idea of effective informed consent to treatment within the meaning of Section 1 (1) of the SOGISchutzG in principle already encounters considerable legal reservations. According to medical law principles, such consent would presuppose that comprehensive information has been provided on a diagnosis and a therapeutic objective that is achievable with the planned treatment. Interventions known as conversion therapies never fulfil these prerequisites. Since neither same-sex sexual orientation nor trans\* or inter\*sexuality falls into the category of a disease, the basic requirement of diagnosis is in itself lacking. Owing to the character of sexual orientation and gender identity as part of an individual’s personality, changing it is not a permissible treatment objective. In addition, from a scientific point of view, the given goal cannot be achieved with the treatment. Finally, effective consent will regularly be lacking, even in the case of adults who are basically capable of consenting, since effective consent requires comprehensive information about the achievability of the treatment goals and the possible harmful side effects. So-called conversion therapy can therefore never be indicated as a medical treatment and effective consent is regularly lacking. – 4 – Moreover, these principles of medical law must also lead to the conclusion that the practice of so-called conversion therapies on adults should also be prohibited under law, and that any advertising of such offers and the mediation of such offers to adults, irrespective of the age of the target group, shall be effectively prohibited. Section 3 of the SOGISchutzG must be amended accordingly.

**Regarding § 5 para. 2 SOGISchutzG**

Another misguided element of the draft is the exception of criminal liability for those fulfilling a parental or guardianship duty of care, provided that they do not grossly violate their obligation. This element should be completely removed. It ignores the fact that it is often the parents who push their children into the treatments that are to be ultimately prohibited by this law.

Exempting this group from criminal liability sends out a completely wrong message and is not legally justifiable. Parents have a special duty to protect their children from the treatments in question; a breach of this duty always constitutes a gross breach of parental or guardianship duty.

As explained above, effective consent is not legally conceivable due to the medical law system – not even by persons with custody or guardianship. There is therefore no apparent reason why persons with custody or guardianship should be excluded from the threat of criminal liability.

Rather, in the interest of the welfare of the child it is necessary for the state to take its duty of stewardship over parental custody seriously, and to flank the statutory prohibition of so-called conversion therapies with provisions in family law, and to prohibit parents from consenting to the treatments prohibited by this Act, since these treatments always represent a danger to the welfare of the child. In order to protect minors, it would thus be impossible for parents to legally consent to these treatments.

1. The legislative body in Germany representing federated states at national level. [↑](#footnote-ref-1)