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The Moment of Mobilization: The Legislative Consequences of Trans Rights Mobilization in Sweden, Norway, and Finland

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ABSTRACT

Trans rights defenders have mobilized legally and politically to change oppressive laws and practices since at least the early 2010s. Both global and Nordic, this trend remains underexplored by scholars. The article at hand compares the legislative outcomes of such mobilization with reference to Sweden, Norway, and Finland. By examining legal gender recognition and trans legal parenthood through legal doctrinal, legal mobilization, and comparative modes of analysis, I argue that in the Nordic region three key aspects determine whether legislation is passed that respects trans people's personal integrity and their right to private and family life. The first aspect is the timing of mobilization in relation to the available supranational and transnational rights norms, with later mobilization benefiting from more developed rights frameworks. The second is how trans rights have been politicized in the countries under comparison; politicization can either promote or hinder legislative change. The third is the form of mobilization, particularly the use of strategic mobilization by some trans rights defenders. In this respect, it appears that legislation created in the aftermath of strategic litigation has been less comprehensive than legislation advanced mainly through political mobilization.

KEYWORDS

trans rights; mobilization; strategic litigation; legal gender recognition; trans legal parenthood

1 Introduction

Sweden's Gender Recognition Act is outdated and prolongs waiting times in gender-affirming care. The formulation of the law is from 1972, when Sweden was the first country in the world to give trans people the right to amend their legal gender and to undergo genital surgery. Sweden is now the last among the Nordic countries to give trans people the right to self-determine their legal gender.¹

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¹RFSL, 'Varför behövs en ny lag om könstillhörighet? [Why Is a New Act on Legal Gender Recognition Needed?]' (1 December 2023) <www.rfsl.se/verksamhet/trans/konstillhorighetslagen/> accessed 7 January 2025. Translated from Swedish by the author.

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Published by the Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (RFSL), this is the introduction to a 2023 text on the need to reform the recently abolished Swedish 1972 Gender Recognition Act. How did Sweden transform from a global vanguard on trans rights to the last Nordic country attached to a medicalized model of legal gender recognition—even after a legislative revision in 2024?² To explore that transformation, this article investigates legal developments in Sweden, Norway, and Finland from 2010 to 2024 pertaining to the regulation of legal gender recognition³ and trans legal parenthood,⁴ focusing on the outcomes of trans rights defenders’ political and legal mobilization.⁵

Drawing on legal doctrine, legal mobilization, and comparative modes of analysis, and informed by primary sources such as case law and legislation as well as secondary sources, I argue that three aspects have determined whether legislation is passed that is respectful of trans people’s personal integrity and right to private and family life. The first aspect is the timing of mobilization in relation to available supranational and transnational rights norms, with later mobilization benefiting from more developed frameworks. The second is the way in which trans rights have been politicized in the countries of comparison, which at times promote and at times prevent legislative change. The third is the form of mobilization, particularly the use of strategic litigation by some trans rights defenders. In this respect, it appears that legislation created in the aftermath of strategic litigation has been less comprehensive than legislation advanced mainly through political mobilization.

The article explores the findings of earlier work by myself and others in a new context,⁶ with a comparative focus on the legislative consequences of trans rights mobilization.⁷ Trans mobilization⁸ and rights developments concerning trans people⁹ are both

²On different models of legal gender recognition, see Stefano Osella and Ruth Rubio-Marín, ‘Gender Recognition at the Crossroads: Four Models and the Compass of Comparative Law’ (2023) 21 *International Journal of Constitutional Law* 574.

³Here, ‘legal gender recognition’ means the possibility of being legally (formally) registered in line with one’s gender identity—for example in one’s passport and identity documents. ‘Gender’ is used both for ‘sex’ and ‘gender’ because I consider these concepts interdependent and in Swedish, Norwegian, and Finnish, one word (*kön, kjønn, sukupuoli*) is used for both.

⁴This article refers to ‘trans legal parenthood’ to address the recognition of trans parents in line with—or contrary to—their legal gender and gender identities.

⁵In this article, ‘trans people’ is used to refer to people who do not identify with the gender assigned them at birth. ‘Cis’ is used to refer to people who identify with the gender assigned them at birth. ‘Trans rights defenders’ is used for trans or cis people who mobilize to defend trans rights. ‘Mobilization’ is generally understood as using political, legal, and cultural means to improve the position of an individual or a group.

⁶The earlier studies cited are, most importantly, Daniela Alaattinoğlu, *Grievance Formation, Rights and Remedies: Involuntary Sterilisation and Castration in the Nordics, 1930s–2020s* (CUP 2023), 97–102; Daniela Alaattinoğlu and Ruth Rubio-Marín, ‘Redress for Involuntarily Sterilised Trans People in Sweden against Evolving Human Rights Standards: A Critical Appraisal’ (2019) 19 *Human Rights Law Review* 705; Daniela Alaattinoğlu and Alice Margaria, ‘Trans Parents and the Gendered Law: Critical Reflections on the Swedish Regulation’ (2023) 21 *International Journal of Constitutional Law* 603.

⁷I thus take a broader perspective than focusing on whether individual cases of strategic litigation were lost or won. One example of such contextual perspectives is Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (University of Chicago Press 1994).

⁸See, for example, Adrian Jjuuko, *Strategic Litigation and the Struggle for Lesbian, Gay and Bisexual Equality in Africa* (Daraja Press 2020); Anthony J Nownes, *Organizing for Transgender Rights: Collective Action, Group Development, and the Rise of a New Social Movement* (SUNY Press 2019); Lynette J Chua, ‘The Vernacular Mobilization of Human Rights in Myanmar’s Sexual Orientation and Gender Identity Movement’ (2015) 49 *Law & Society Review* 299; Raquel Platero, ‘The Narratives of Transgender Rights Mobilization in Spain’ (2011) 14 *Sexualities* 597.

⁹See, for example, Peter Dunne, ‘Framing Equality: Debating Protected Grounds in the Field of Trans and Non-Binary Rights’ in Eva Brems, Pieter Canoot and Toon Moonen (eds), *Protecting Trans Rights in the Age of Gender Self-Determination* (Intersentia 2020); Peter Dunne, ‘Transgender Sterilisation Requirements in Europe’ (2017) 25 *Medical Law Review* 554; Holning Lau, ‘Gender Recognition as a Human Right’ in Andreas von Arnould, Kerstin von der Decken

topics of recent scholarly interest. Yet few investigations or comparisons of the struggles on the ground in Sweden, Norway, and Finland exist.¹⁰ This article is the first to comparatively analyse the mobilization around and regulation of legal gender recognition and trans legal parenthood in the three countries. I chose these two focal thematic areas because they have been central to trans rights mobilization in the region. I chose the countries based on the ‘most similar case’ model of comparison,¹¹ as the three relatively similar Nordic countries manifest three different models when it comes to regulation of legal gender recognition and trans legal parenthood.¹² My findings here can inform future comparative studies on modes of mobilization, particularly strategic litigation, and legislative outcomes,¹³ but should not be generalized outside of the context at hand. Due to length restrictions, the article is limited to focusing on the legislative results of mobilization, and does not, for example, analyse the reasons behind trans rights defenders’ choice of mobilization strategies.¹⁴

Nordic trans rights defenders’ move to engage in strategic litigation in the past decade should be seen as part of a more general trend among regional civil society to turn to the courts.¹⁵ Another necessary context to this move consists of supranational and transnational legal and policy developments—particularly in Europe—pertaining to legal gender recognition and trans legal parenthood during the 2010s and 2020s.¹⁶ These developments have been initiated by trans rights defenders, who have presented their claims and grievances before supranational institutions.

In the context of the Council of Europe and the European Union, soft supranational rights standards are more comprehensive; on trans rights and hard supranational legal norms are narrower. When it comes to trans legal parenthood, policy documents have supported recognition of trans parents in line with their legal gender in order to eliminate

and Mart Susi (eds), *The Cambridge Handbook on New Human Rights: Recognition, Novelty, Rhetoric* (CUP 2020); Osella and Rubio-Marín (n 2); Daniela Alaattinoğlu, Lars Arnesen and Anniken Sørli, ‘Retten til kjønnsidentitet og juridisk registrering av kjønn: utviklingslinjer fra menneskerettsdomstolens praksis og norsk rett [The Right to Gender Identity and Legal Gender Recognition: Developments in the European Court of Human Rights and Norwegian Law]’ in Anne Hellum and Anniken Sørli (eds), *Frihet, likhet og mangfold: Kjønnsidentitet og seksuell orientering i rettslig, medisinsk og samfunnsvitenskapelig kontekst* (Gyldendal 2021).

¹⁰Exceptions include Alaattinoğlu and Rubio-Marín (n 6); Daniela Alaattinoğlu, ‘Ersättning och gottgörelse för kastrering och sterilisering av transpersoner i Sverige och Norge [Compensation and Remedies for Castration and Sterilisation of Trans People in Sweden and Norway]’ in Anne Hellum and Anniken Sørli (eds), *Frihet, likhet og mangfold [Freedom, Equality and Diversity]* (Gyldendal 2021); Anniken Sørli, ‘The Right to Trans-specific Healthcare in Norway: Understanding the Health Needs of Transgender People’ (2019) 27 *Medical Law Review* 295.

¹¹Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (OUP 2014), 245–253.

¹²The Nordic countries Denmark and Iceland were excluded from the comparison. Denmark because its legislative regulation model can be described as a mix between the Finnish and Norwegian models, and as such its inclusion would not add much to the analysis. Iceland because its much smaller population and more closely knit societal structure have affected national mobilization there and its outcomes.

¹³As such, it adds findings to scholarship on the consequences of social movements. See Lorenzo Bosi, Marco Giugni and Katrin Uba (eds), *The Consequences of Social Movements* (CUP 2016); David A Snow, Sarah A Soule, Hanspeter Kriesi and Holly J McCammon (eds), *The Wiley Blackwell Companion to Social Movements* (Wiley Blackwell 2018), 447–514.

¹⁴Such themes have been investigated, for example, in Alaattinoğlu (n 6).

¹⁵This phenomenon has been explored in Johan Karlsson Schaffer, Malcolm Langford and Mikael Rask Madsen, ‘An Unlikely Rights Revolution: Legal Mobilization in Scandinavia Since the 1970s’ (2024) 42 *Nordic Journal of Human Rights* 11. There is also a general global increase in strategic litigation, see Sonja Buckel, Maximilian Pichl and Carolina A Vestena, ‘Legal Struggles: A Social Theory Perspective on Strategic Litigation and Legal Mobilisation’ 33 *Social & Legal Studies* 3.

¹⁶Comparative studies on trans people’s rights in Europe include, for example, Jens M Scherpe (ed), *The Legal Status of Transsexual and Transgender Persons* (Intersentia 2017); Marjolein van den Brink and Peter Dunne, *Trans and Intersex Equality Rights in Europe – A Comparative Analysis* (EU 2018); Laurence Hérault, *État civil de demain et transidentité, Mission de recherche droit et justice [Civil Status of Tomorrow and Transidentity, Research Mission on Law and Justice]* (Mission de recherche Droit et Justice 2018).

discrimination against their families.¹⁷ Human rights policy recommendations have also bolstered legal gender recognition based on self-determination, clearly framing it as a right rather than a conditional model.¹⁸ However, the European Court of Human Rights (ECtHR or the Court) has been more cautious in its assessment of trans legal parenthood and legal gender recognition and set more conservative standards under the European Convention on Human Rights (ECHR or the Convention).¹⁹ In the cases *OH and GH v Germany* and *AH and Others v Germany* from 2023, the Court did not find that misrecognizing trans parents in line with their birth-registered gender and under their dead names amounted to a violation of the right to private and family life, protected under Article 8 ECHR.²⁰

In terms of legal gender recognition, in the case *AP, Garçon and Nicot v France* (2017), the Court ruled that sterilization preconditions for legal gender recognition violate the right to physical and moral integrity as protected by Article 8 ECHR.²¹ In *X and Y v Romania* (2021), the ECtHR also found that requirements to undergo gender-affirming surgery violate Article 8.²² Yet, it has not considered other relatively common preconditions for legal gender recognition, such as divorce or specific medical diagnoses, as violations of the Convention.²³

This article progresses in five parts. Section 2 shows how Swedish trans rights defenders have successfully resorted to strategic litigation to advance certain issues, but that the Swedish law on legal gender recognition still does not fully build on self-determination. Section 3 analyses the establishment of the Norwegian 2016 Act on Amendment of Legal Gender and the contrast it creates to national regulation on trans legal parenthood. Section 4 explores Finnish mobilization for new laws on legal gender recognition and trans legal parenthood, which were established in 2023. Section 5 compares the different legislative landscapes, discussing the timing of mobilization in relation to the available rights framework, the politicization of trans rights, and the form of mobilization. Section 6 briefly reflects on the findings of the article.

¹⁷Important examples are The Parliamentary Assembly of the Council of Europe, Resolution 2239 (2018) 'Private and family life: achieving equality regardless of sexual orientation'; European Parliament, 'Resolution on LGBTIQ rights in the EU' 2021/2679(RSP).

¹⁸This is referred to as a 'right to self-determined gender identity' in the report Council of Europe, 'Thematic Report on Legal Gender Recognition in Europe' (2022), 14. See also The Committee of Ministers of the Council of Europe, 'Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity' CM/Rec(2010)5; The Council of Europe Commissioner for Human Rights, 'Human Rights and Gender Identity', CommDH/IssuePaper(2009)2; The Parliamentary Assembly of the Council of Europe, Resolution 2048 (2015) 'Discrimination against transgender people in Europe'. However, it can be questioned whether any legal model which builds on a gender assigned by medical staff at birth is truly 'self-determined'.

¹⁹The development of the right to gender identity under Article 8 has been depicted in Alaattinoğlu, Arnesen and Sørle (n 9).

²⁰*OH and GH v Germany* App nos 53568/18 and 54741/18 (ECHR, 4 April 2023); *AH and Others v Germany* App no 7246/20 (ECHR, 4 April 2023).

²¹*AP, Garçon and Nicot v France* App nos 79885/12, 52471/13 and 52596/13 (ECHR, 6 April 2017).

²²*X and Y v Romania* App nos 2145/16 and 20607/16 (ECHR, 19 January 2021).

²³*Hämäläinen v Finland* App nos 37359/09 (ECHR, 16 July 2014); *AP, Garçon and Nicot v France* App nos 79885/12, 52471/13 and 52596/13 (ECHR, 6 April 2017). Contrastingly, in the case *G v Australia*, the United Nations Human Rights Committee found that divorce requirements violate the rights to privacy and family, as well as non-discrimination, under the International Covenant on Civil and Political Rights. *G v Australia* Com no 2172/2012 (CCPR, 28 June 2017).

2 Sweden: advancing trans rights through strategic litigation

Trans rights defenders in Sweden, most prominently the RFSL and the Uppsala Anti-Discrimination Agency,²⁴ advanced certain trans rights through strategic litigation in the middle of the 2010s. The requirement of sterilization for legal gender recognition was removed, trans parents were to be recognized according to their gender identities, and the question of compensation for harms caused by past sterilization policies was addressed.²⁵ In line with the aims of this article, here I focus on the abolition of sterilization requirements and on legal gender recognition, issues which both gained resonance and were won before the courts.²⁶

2.1 Sterilization as a requirement for legal gender recognition

The first significant case of relevant strategic litigation was the 2012 legal challenge against the legislative requirement for sterilization, or infertility through other means, as a precondition for amending legally registered gender, i.e., for trans people's legal gender recognition. The infertility precondition had been part of the 1972 Gender Recognition Act since its establishment as the first gender recognition legislation in the world—together with the preconditions that the applicant was at least 18 years old, a Swedish citizen, unmarried, acting in line with the gender identity they claimed, and presumed to have a stable gender identity.²⁷ The official reason for the precondition at the time was, among others, to 'completely eliminate the risk of confusion in family relations'²⁸ and to prevent situations whereby 'one who officially has the male gender becomes a mother and one who officially has the female gender becomes a father'.²⁹

As the legal precondition which can be said to most obviously infringe on trans people's bodily and personal integrity, the infertility precondition had been criticized by trans rights defenders in particular since the beginning of the 2010s.³⁰ Political campaigns against the precondition thus coincided with some political support for a change of the law when the case of a plaintiff who wanted to amend their legal gender but not be sterilized came before the national administrative courts in 2012.³¹ The case was advanced as strategic litigation in order to accelerate a legal amendment, which the government was delaying.³²

²⁴Also supported by other national trans rights defenders, such as RFSL Youth, KIM, and FPES.

²⁵While the question of why these matters were advanced and not others is beyond the scope of this article, it can be said that suitable litigants were found and these were the issues prioritized by leading trans rights actors (particularly the RFSL). The RFSL benefitted in particular from the legal expertise of Kerstin Burman. See Alaattinoğlu (n 6).

²⁶It is worth mentioning that the question of compensation for past sterilization practices was never presented before general courts; the Chancellor of Justice decided that the applicants were not entitled to compensation according to Swedish rules on public liability. See JK, Decision No. 4243-13-40 et al (2014). The Swedish Government subsequently decided to establish a compensation scheme in the form of legislation, as approved by the Swedish Parliament in 2018. See Lag om statlig ersättning till personer som har fått ändrad könstillhörighet fastställd i vissa fall [Act on State Compensation for People who Have Obtained Legal Gender Recognition under Certain Circumstances] (2018:162); Alaattinoğlu (n 6), 97–102; Alaattinoğlu and Rubio-Marín (n 6).

²⁷Lag om fastställande av könstillhörighet i vissa fall [Act on Legal Gender Recognition under Certain Circumstances] (1972:119), Sections 1, 3.

²⁸Swedish Government Bill Prop. 1972:6, 50.

²⁹Ibid, 49. For more extensive discussion of the reasons for the precondition, see Alaattinoğlu (n 6), 79–80.

³⁰Alaattinoğlu (n 6), 85–87. In this context, the new standards set within the framework of the Council of Europe have been particularly important.

³¹Ibid, 87–88.

³²Ibid.

The administrative courts of first and second instances both considered the infertility requirement a violation of constitutional and international human rights.³³ The final judgment was issued by the Stockholm Administrative Court of Appeal in December 2012. It found the requirement unjustified and coercive, since it was used as a condition for accessing other rights, specifically targeting trans people, and ultimately in violation of the right to respect for private and family life in Article 8 ECHR, the constitutional prohibition of forced physical interventions,³⁴ and the prohibition of discrimination in Article 14 ECHR.³⁵ From the perspective of the trans rights defenders pushing for legal change, not only did the individual plaintiff win the case but the finding of rights violations also led to the amendment of the Gender Recognition Act to eliminate the sterilization requirement.³⁶

2.2 Legal recognition of trans parenthood

The Swedish Government considered the amendment to the 1972 Gender Recognition Act abolishing the sterilization requirement to also apply to trans legal parenthood,³⁷ but did not make any further changes to the 1949 Children and Parents Code.³⁸ The Swedish Tax Agency interpreted the lack of specific regulation in a cisnormative manner,³⁹ as it started registering trans parents according to how their children had been conceived and delivered, rather than according to their legal gender.⁴⁰ A trans man with legal male gender who gave birth could not, according to the Tax Agency, be registered as ‘father’ but only as ‘mother’.⁴¹

The mismatch between legal gender and parental status led to problems in practice for trans parents and their families, such as other people expressing suspicion about their familial bonds and/or outing their gender history. Facing little comprehension from the tax authorities, civil society decided to effectively change the Tax Agency’s practice through strategic litigation. Between 2013 and 2015, two plaintiffs presented their cases before the administrative courts in Stockholm and Gothenburg with the support of the abovementioned civil society organization RFSL.⁴² The applicants were two trans fathers who had given birth, one before amending his legal gender and one after. This difference did not seem to impact the courts’ consideration, since all courts ruled similarly in both cases.⁴³ Specifically, the courts found the right to legal recognition for trans people and their families (as protected by Article 8 ECHR), the right to non-

³³Förvaltningsrätten i Stockholm [Stockholm Administrative Court of First Instance], 45723-10 (2012); Kammarrätten i Stockholm [Stockholm Administrative Court of Appeal], 1968-12 (2012).

³⁴Regeringsformen [Government Act] (1974:152), Chapter 2 Section 6.

³⁵Kammarrätten i Stockholm [Stockholm Administrative Court of Appeal], 1968-12 (2012); Alaattinoğlu (n 6), 88.

³⁶Swedish Government Bill Prop. 2012/13:107; SFS 2013:405; Alaattinoğlu (n 6), 88.

³⁷Swedish Government Bill Prop. 2012/13:107, 19–20.

³⁸Föräldrabalk [Children and Parents Code] (1949:381).

³⁹‘Cisnormativity’ is here understood in line with the Cambridge Dictionary, as ‘the idea that cisgender people (= people whose gender matches the body they were born with) are normal or right and all other people are not’. Cambridge Dictionary, ‘Cisnormativity’ <dictionary.cambridge.org/dictionary/english/cisnormativity> accessed 7 January 2025.

⁴⁰Alaattinoğlu and Margaria (n 6), 610.

⁴¹*ibid.*

⁴²*ibid.*, 610–613.

⁴³Förvaltningsrätten i Stockholm [The Stockholm Administrative Court of First Instance], 24685-13 (2014); Kammarrätten i Stockholm [The Stockholm Administrative Court of Appeal], 3201-14 (2015); Förvaltningsrätten i Göteborg [The Gothenburg Administrative Court of First Instance], 11453-13 (2014); Kammarrätten i Göteborg [The Gothenburg Administrative Court of Appeal], 6186-14 (2015).

discrimination (as protected by Article 14 ECHR), and the legal obligation to protect the best interest of the child (as protected by Articles 3 and 4 in the 1989 Convention on the Rights of the Child) to outweigh the public interest of civil registries registering one mother for every child.⁴⁴ The cases created an obligation for the Tax Agency to officially register the applicants as fathers of their children.⁴⁵

Like the case of legal gender recognition, the cases concerning trans legal parenthood were successful both on the individual level and, as strategic litigation, on the more general level, since they highlighted a legislative gap and initiated a legislative reform of the 1949 Children and Parents Code in 2018.⁴⁶ According to the post-litigation regulation, trans legal parenthood is nominally registered in line with legal gender (i.e., a legal man who becomes a parent is registered as a father), but certain provisions pertain to trans parents and not their cis counterparts.⁴⁷

2.3 The dragging reform process of the Swedish Gender Recognition Act

A more complete reform of the Swedish legislation entered the political agenda after the removal of the sterilization requirement from the Gender Recognition Act, and came to be continuously requested by trans rights defenders.⁴⁸ This was because the Swedish law was still firmly based on a medicalized model, requiring, for instance, a medical diagnosis from applicants seeking legal gender recognition. Between 2013 and 2024, moreover, all other Nordic countries abandoned earlier models for legal gender recognition based on medicalization and authority decision-making to embrace models based primarily on self-determination.⁴⁹

After more than a decade of campaigns and political initiatives to change the Swedish Gender Recognition Act to base recognition on applicants' self-determination,⁵⁰ as well as several drafts being prepared by different governments,⁵¹ a new law was established in

⁴⁴ibid. Article 14 ECHR was only referred to in the Gothenburg case. A full discussion of the cases is included in Alaattinoğlu and Margaria (n 6), 609–613.

⁴⁵ibid.

⁴⁶SFS 2018:1279. The rules were amended in 2021 to also allow for the presumption of fatherhood in cases involving trans parents.

⁴⁷See Föräldrabalk [Children and Parents Code] (1949:381), Chapter 1 Sections 10–14. The changes are discussed in depth in the article Alaattinoğlu and Margaria (n 6).

⁴⁸See RFSL (n 1).

⁴⁹There are some national variations in the requirements. See LBK nr 1010 af 23/06/2023, Bekendtgørelse af lov om Det Centrale Personregister [Promulgation of the Act on the Central Personal Registry], Section 3(7); Lov om ending av juridisk kjønn [Act on the Amendment of Legal Gender] (2016); Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 1; Lög um kynrænt sjálfræði [Act on Gender Autonomy] 80/2019, Article 4.

⁵⁰A recent example is an open letter to the Swedish Prime Minister by the RFSL, RFSL Youth and Amnesty International. Anna Johansson, Peter Sidlund Ponkala and Elias Fjellander, 'Öppet brev till statsminister Ulf Kristersson om behovet av en ny könstillhörighetslag [Open letter to Prime Minister Ulf Kristersson concerning the Need for a New Gender Recognition Act]' (RFSL, 11 April 2023), <www.rfsl.se/verksamhet/trans/oppet-brev-till-statsministern-om-behovet-av-en-ny-konstillhorighetslag/> accessed 7 January 2025. Several bills have also been presented by members and groups in the Parliament. Parliamentary Bill Motion 2022/23:2281, 'En ny könstillhörighetslag [A New Gender Recognition Act]' (2022); Parliamentary Bill Motion 2023/24:1881, 'En ny könstillhörighetslag, ett tredje juridiskt kön och könsmarkören X i pass [A New Gender Recognition Act, a Third Legal Gender and the Gender Marker X in Passports]'.

⁵¹See, e.g., Regeringskansliet [The Government Offices of Sweden], 'Ändring av det kön som framgår av folkbokföringen [The Amendment of Gender in the Population Registry]' (2018) Ds 2018:17; Socialdepartementet [The Swedish Ministry of Health and Social Affairs], 'Utkast till lagrådsremiss: Vissa kirurgiska ingrepp i könsorganen och ändring av det kön som framgår av folkbokföringen [Draft Referral for the Swedish Council on Legislation: Certain Genital Surgical Interventions and Amending the Gender Appearing in the Population Registry]' (2021) S2021/07285; Socialdepartementet [The Swedish Ministry of Health and Social Affairs], 'Lagrådsremiss: Förbättrade möjligheter att ändra kön [Referral for the Swedish Council on Legislation: Improved Possibilities for Sex Reassignment]' (2022).

2024 and will enter into force in 2025. According to the new Gender Recognition Act, people above the age of 16 can amend their gender registration in the population registry if they are: 1) registered residents of Sweden or Swedish citizens, or former Swedish residents or citizens with an identification number, 2) not in a registered partnership, 3) if the gender recorded in the population register does not correspond with their gender identity, and 4) it can be assumed that they will live in accordance with this gender identity for the foreseeable future.⁵² Applications for legal gender recognition have to be written and submitted to the decision-making authority, namely the Swedish Board of Health and Welfare.⁵³ The law is a step towards separating legal gender recognition from medical interventions, and incorporates elements of self-determination, yet in comparative legal terms it can be described as modest. This is because it still contains many elements of the old law, which built on an entangled medical and legal ‘transition process’, including the same medical decision-making authority—not leaving the ultimate decision to the applicant.

The length of the reform was determined in part by trans rights becoming an increasingly politicized topic in Sweden during the 2020s.⁵⁴ Among the political parties currently holding seats in the Swedish Parliament, both the Christian Democrats, who are included in the sitting conservative-coalition government, and the far-right Sweden Democrats⁵⁵ voted against the reform and loudly voiced concerns about legal gender recognition.⁵⁶

To summarize, the removal of the former sterilization requirement (1972–2013) and the recognition of trans legal parenthood advanced relatively swiftly through strategic litigation on behalf of trans rights defenders in Sweden (2012–15), while the reform of the Gender Recognition Act (2013–24) proved a lengthy process. The outcome of the uneven pace of reform is a patchwork legal solution: Sweden’s regulation of trans legal parenthood is comparatively inclusive, also pushing supranational human rights standards (perhaps most importantly the ECtHR’s case law);⁵⁷ yet, while fulfilling the minimum requirements of current ECtHR standards in terms of legal gender recognition, Sweden does not clearly separate medical procedures from legal gender as the other Nordic countries do.

3 Norway: introducing legislation for the first time

Norwegian trans rights defenders have used strategic litigation to a more limited extent than their Swedish counterparts.⁵⁸ The most visible legal and political mobilization campaigns happened during 2010–15, which culminated in the establishment of the 2016 Act on Amendment of Legal Gender. The Act represents global human rights best practice in the field, but the regulation of legal parenthood in Norway is still not trans-inclusive.

⁵²Lag om fastställande av kön i vissa fall [Act on Legal Gender Recognition under Certain Circumstances] (2024:238), Section 2.

⁵³*ibid*, Section 5.

⁵⁴As elsewhere, trans rights have also divided feminist movements in Sweden, seen in recent discussions.

⁵⁵See Miranda Olsson and Linda Berglund, ‘Regeringen splittrad – M och L söker stöd i riksdagen [The Government is Divided – M and L Seek Support in the Parliament]’ (*Altinget*, 15 September 2023) <www.altinget.se/artikel/regeringen-splittrad-m-och-l-soker-stod-i-riksdagen> accessed 7 January 2025.

⁵⁶This question was, for example, addressed in Justitiekottet [The Swedish Parliamentary Committee on Justice], Statement 2023/24:JuU2y.

⁵⁷See Alaattinoğlu and Margaria (n 6).

⁵⁸However, strategic litigation has been used to gain access to remedies for trans victims of former sterilization and castration practices. See Alaattinoğlu (n 6), 138–142.

3.1 Legal recognition based on self-determination: the introduction of the 2016 Act

The possibility to amend legally registered gender was introduced in 1979 in Norwegian legislation, but without specifying the preconditions for such an amendment.⁵⁹ In practice, the only way to access legal gender recognition nationally was through the Oslo University Hospital, which accepted people identified by its medical team as ‘transsexual’.⁶⁰ As such, access to legal gender recognition was completely decided by medical experts and involved a fixed set of gender-affirming treatments, referred to as ‘real sex reassignment’, which included surgical removal of reproductive organs.⁶¹

This legally unregulated practice, which involved fundamental rights being severely restricted in a manner never approved by the Norwegian Parliament, became the subject of public criticism in the 2010s. Since 2010, trans rights defenders—particularly the LGBTIQ+ organizations LLH (later FRI), Skeiv Ungdom, and FTPN, together with Amnesty International—criticized the surgical preconditions to access legal gender recognition.⁶² In 2014, after comparative legal developments such as the Swedish removal of the sterilization requirement, Amnesty International included Norway in a report on trans people’s human rights. This coincided with a ‘write for rights’ campaign around a prominent national trans rights activist who wanted legal gender recognition without undergoing genital surgery and castration.⁶³ That year the activist brought their case before the Norwegian Equality and Anti-Discrimination Ombud as a form of strategic litigation, and the Ombud found that Norway’s legal gender-recognition practices constituted discrimination according to national law.⁶⁴

The outcome of the case added to the political and legal sense of urgency around the matter. A working group tasked with formulating a report that could form the basis for legislation presented their findings in 2015.⁶⁵ To push for change from the criticized legislatively unregulated practices, the report clearly separated gender-affirming medical treatment from legal gender recognition.⁶⁶ Supported by the Norwegian Government

⁵⁹Alaattinoğlu (n 6), 118. See Lov om folkeregistrering [Act on Population Registration, No. 1, 16 January 1970, Section 4. See Forskrifter om føringen og ordningen av folkeregistrene [Decree on the Administration of the Population Registration], No. 9, 1979; Forskrift om folkeregistrering [Decree on Population Registration], No. 161, 1994; Foreskrift om folkeregistrering [Decree on Population Registration], No. 1268, 2007. See Anniken Sørli, ‘Legal Gender Meets Reality: A Socio-Legal Children’s Perspective’ (2015) 33 Nordic Journal of Human Rights 353, 360.

⁶⁰See Anniken Sørli, ‘Retten til kjønnsidentitet som menneskerettighet: Kan norsk forvaltningspraksis’ krav om irreversibel sterilisering ved endring av fødselsnummer forsvares? [The Right to Gender Identity as a Human Right: Can the Requirement in Norwegian Administrative Practice of Irreversible Sterilisation when Changing Personal Identity Number be Defended?]' (LLM thesis, University of Oslo, Kvinnerettslig skriftserie no. 90, 2013); Amnesty International, ‘The State Decides Who I Am’ (4 February 2014) <www.amnesty.org/en/documents/eur01/001/2014/en/> accessed 7 January 2025, 71. In 2013, moreover, the Norwegian Directorate of Health took over the task of recognizing the legal gender of people who had undergone privately financed gender confirming surgeries abroad. See Alaattinoğlu (n 6), 118.

⁶¹Alaattinoğlu (n 6), 118; Amnesty International (n 60), 71–74.

⁶²Alaattinoğlu (n 6), 123–124.

⁶³ibid., 125.

⁶⁴Likestillings- og diskrimineringsombudet [The Norwegian Equality and Anti-discrimination Ombud], Decision No. 14/840 (2014); Lov om forbud mot diskriminering på grunn av seksuell orientering, kjønnsidentitet og kjønnsuttrykk [Act on Prohibition of Discrimination on the Grounds of Sexual Orientation, Gender Identity and Gender Expression], No. 58, 2013, Section 5. Alaattinoğlu (n 6), 126.

⁶⁵Helsedirektoratet [The Norwegian Directorate of Health] *Rett till rett kjønn - helse till alle kjønn [Right to the Right Gender - Health to All Genders]* (2015), 70–78. The report referred to the Norwegian Constitution, Sections 98 and 102; ECHR Articles 8 and 14; ICCPR Articles 2(1), 17 and 26; ICESCR Article 12; and CRC Article 2(1). Alaattinoğlu (n 6), 127.

⁶⁶Helsedirektoratet [The Norwegian Directorate of Health] (n 65).

and Parliament, it found a pressing need to establish legislation on legal gender recognition. It recommended legislation based on self-ascription,⁶⁷ a model endorsed by the following Government Bill and established in the final 2016 Act on Amendment of Legal Gender.⁶⁸ The political decision-makers considered the rights at stake for trans people particularly important and expressed pride that they were establishing internationally cutting-edge legislation.⁶⁹

The 2016 Act, which is still in force, regulates legal gender recognition as a right. This right applies to people ‘who experience belonging to a gender other than the one they are registered with in the population registry’.⁷⁰ The procedure to amend legal gender for people aged above 16 years is done through a written application to the Norwegian Tax Administration.⁷¹ Younger children can also amend their legally registered gender, but special rules and procedures apply.⁷²

In brief, strategic litigation in Norway raised political and legal consciousness regarding legal gender recognition, particularly the absence of national legislation. In comparison to Sweden, where strategic litigation was used to challenge a particular requirement of long-established legal gender recognition regulation, the Norwegian context presented a chance to introduce legislation and to break with earlier, legally unregulated practices.

3.2 Trans legal parenthood: misrecognizing gender identity

The Act on Amendment of Legal Gender did not change how legal parenthood is recognized in Norway. As such, parenthood forms an exception to the general rule that ‘legal gender shall be used as a basis for the application of other laws and regulations’.⁷³ The exception means that the gender registered at birth is used ‘as a basis’ ‘to establish parenthood and parental responsibility according to the Children Act’.⁷⁴ The Act specifies that ‘a person who amends their legal gender retains the rights and obligations’ of the legal parental relationship they would have had according to the gender assigned to them at birth.⁷⁵ Accordingly, ‘[r]ules that apply to a woman who gives birth to a child apply in the same way to a person who gives birth to a child after amending their legal gender’.⁷⁶ In line with the current Norwegian legislation, a trans man who gives birth is registered as ‘mother’ rather than ‘father’.⁷⁷

By exempting legal parenthood from the sphere of gender self-determination, the Norwegian Government and legislator chose a different route to their Swedish

⁶⁷ *ibid.*

⁶⁸ Norwegian Government Bill Prop. 74 L (2015–2016); Lov om endring av juridisk kjønn [Act on the Amendment of Legal Gender] (2016).

⁶⁹ A telling example of this consists of the debates in the Norwegian Parliament at the time, which generally highlighted the importance of the law.

⁷⁰ Lov om endring av juridisk kjønn [Act on the Amendment of Legal Gender] (2016), Section 2.

⁷¹ *ibid.*, Section 5(1).

⁷² *ibid.*, Sections 4–5.

⁷³ *ibid.*, Section 6(1).

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*, Section 6(2).

⁷⁷ Lov om barn og foreldre (barnelova) [The Children Act] (1981), Chapter 2 Section 2(1).

counterparts, who did not make such an explicit exception.⁷⁸ The *travaux préparatoires* attribute this exception to a need to avoid ‘doubts about how parenthood is established and to make sure that it is possible to establish parenthood’.⁷⁹ They also state that the purpose was not to ‘regulate how parenthood is to be registered’, but rather to clarify ‘which regulations are to be used to establish parenthood in these cases’, namely the Children Act.⁸⁰ A different registration would therefore necessitate an amendment of the Children Act. This has not yet happened, and there is limited political mobilization to change the law, since other issues, such as the introduction of a third legal gender and the improvement of trans people’s access to gender-affirming care, have been the primary focus of trans rights mobilization in Norway during the last decade.

To summarize, trans rights defenders have utilized strategic litigation to a lesser extent in Norway than in Sweden. In a way, the Norwegian legislative consequences are the opposite of the Swedish, since the Norwegian rules on legal parenthood make no room for the recognition of trans people in line with their legal gender, and thus misgender trans parents.⁸¹ Yet, the legislation on legal gender recognition building on self-determination, even though it only renders possible two genders,⁸² can be considered relatively progressive in a global comparison of legal gender recognition laws.⁸³

4 Finland: civil society mobilization and navigating the political landscape

Trans rights defenders have not generally engaged in strategic litigation in Finland.⁸⁴ Their preferred forms of mobilization, led primarily by the organizations Trasek, Seta, and Trans, have been political—that is, initiating legislation and forming civil society alliances between trans-specific and more general human rights organizations such as Amnesty International and the Finnish League for Human Rights.⁸⁵

4.1 Legal gender recognition: a highly politicized reform

Mobilization to establish legislation on legal gender recognition in Finland started in the late 1980s, but it took until 2002 for the Parliament to adopt the Act on Gender Recognition of Transsexuals.⁸⁶ According to the 2002 Act, the preconditions for legal gender recognition were infertility, medical diagnosis of transsexualism, legal majority (at least 18 years of age), Finnish citizenship or residence, and, if the applicant was married or a registered partner,

⁷⁸However, in terms of the gendered nature of legal principles and rules pertaining to motherhood, fatherhood, and parenthood, the Swedish legislation can be considered a version of the gender ‘misaligning’ model. Alaattinoğlu and Margaria (n 6), 619.

⁷⁹Norwegian Government Bill Prop. 74 L (2015–2016), 31.

⁸⁰*ibid.*, 32.

⁸¹Moreover, the rules on legal gender, parenthood, and assisted reproduction create obstacles for trans parents to access assisted reproduction in Norway. Anniken Sørli, ‘Trans reproduction: Continuity, cis-normativity, and trans inequality in law’ (2023) 21 *International Journal of Constitutional Law* 625.

⁸²See France Rose Hartline, ‘(Trans)gender Outlaws? A Critical Analysis of Norway’s 2016 Gender Self-determination Law’ (2019) 21 *TVGEND* 361.

⁸³This is not to say that the law does not have shortcomings. See, for example, Hartline (n 82). In a Nordic comparison, Iceland also recognizes a ‘third’ gender category (X), apart from ‘male’ and ‘female’. Lög um kynrænt sjálfraði [Act on Gender Autonomy] 80/2019, Article 6.

⁸⁴There are some exceptions to this rule. See Alaattinoğlu (n 6), 161; *Hämäläinen v Finland* App no 37359/09 (ECHR, 16 July 2014).

⁸⁵Alaattinoğlu (n 6), 169–173.

⁸⁶Laki transseksuaalin sukupuolen vahvistamisesta [Act on Gender Recognition of Transsexuals] 563/2002.

the approval of the spouse or registered partner.⁸⁷ Through the infertility requirement and the precondition of a particular diagnosis, legal gender recognition remained firmly rooted in medicalization and approval by medical experts.⁸⁸

Trans rights defenders started mobilizing against the preconditions of the 2002 Act in the 2010s. Inspired by transnational legal developments such as the abovementioned 2012 judgment from the Stockholm Administrative Court of Appeal,⁸⁹ criticism was directed primarily at the law's infertility requirement.⁹⁰ National and supranational human rights actors denounced the requirement throughout the 2010s,⁹¹ alongside several unsuccessful political initiatives to amend the Act.⁹²

The political standstill was caused by a high level of politicization of trans rights in the country and the explicit stance of the conservative government, led by Juha Sipilä (2015–19), against reforming legislation on legal gender recognition in spite of hardening supranational legal norms (particularly ECtHR case law) and transnational legal developments.⁹³ A new centre-left government in 2019 returned the reform of the Act to the political agenda. The process got off to a slow start but was accelerated by the help of a citizens' initiative.⁹⁴ The Parliament approved the new Finnish Gender Recognition Act in early 2023, making Finland the last Nordic country to abolish infertility requirements for legal gender recognition.

Like its Norwegian counterpart, Finland's 2023 Gender Recognition Act clearly assumes the separation of law and medicine and the self-determination of the applicant. Accordingly, to amend their legal gender in the population registry, applicants should report in writing to the Finnish Digital and Population Data Services Agency their permanent belonging to the gender in question. Additionally, applicants must also be legal adults (at least 18 years old), and Finnish citizens or residents.⁹⁵

4.2 Legal parenthood: recognition through application

As a result of the mobilization around and active involvement of trans rights defenders in the legislative preparation phase,⁹⁶ the 2023 Gender Recognition Act introduced a

⁸⁷*ibid.*, Sections 1–2.

⁸⁸This had also been the case before the introduction of the 2002 Act. See Veronica Pimenoff, 'Geschlechtsumwandlung in Finnland 1970–2002: Eine historische und empirische Studie zu Geschlechtsumwandlungen unter den Regelungen des Kastrationsgesetzes bis zur Einführung des finnischen Transsexuellengesetzes [Sex Reassignment in Finland 1970–2002: A Historical and Empirical Study of Sex Reassignments under the Regulation of the Castration Act to the Introduction of the Finnish Transsexual Act]' (MD Dissertation, University of Ulm 2008).

⁸⁹Kammarrätten i Stockholm [Stockholm Administrative Court of Appeal], 1968-12 (2012). Also a similar judgment from the German Constitutional Court should be mentioned in this regard. Bundesverfassungsgericht [German Federal Constitutional Court], 1 BvR 3295/07, Rn. (1-82) (2011).

⁹⁰The requirement also negatively affected trans people's access to fertility treatment. See Alaattinoğlu (n 6), 170.

⁹¹Such actors were, for example, the Finnish Ombudsman for Equality, the Council of Europe Commissioner for Human Rights, the CEDAW Committee and the European Commission. Alaattinoğlu (n 6), 170–171.

⁹²Including one draft law prepared by the Finnish Ministry of Social Affairs and Health and a Parliamentary Bill. See Sosiaali- ja terveystieteiden ministeriö [The Finnish Ministry of Social Affairs and Health], 'Sukupuolen oikeudellisen vahvistamisen edellytykset [The Preconditions for Legal Gender Recognition]'. STM 2015:23; Finnish Parliamentary Bill LA 43/2016; Alaattinoğlu (n 6), 171–172.

⁹³Here, most importantly, the case *AP, Garçon and Nicot v France* App nos 79885/12, 52471/13 and 52596/13 (ECHR, 6 April 2017). See Alaattinoğlu (n 6), 172.

⁹⁴Citizen's initiative KAA 6/2021; Alaattinoğlu (n 6), 173. The citizens' initiative gathered 68,374 signatures in a little under two months.

⁹⁵Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 1.

⁹⁶Representatives of trans rights civil society organizations took part in the preparation work and several trans rights organizations also made official statements regarding the draft law. The statements are available at Sosiaali- ja

possibility to legally recognize trans parents in line with their legal gender in Finland to avoid discrimination and violation of the privacy of trans parents and their children.⁹⁷ Accordingly, ‘upon application’ a ‘person’s parental title’ can be amended ‘to match their legal gender’.⁹⁸ Moreover, a ‘person can apply to amend the parental title at the same time as applying for legal gender recognition, or after gender recognition’.⁹⁹ In addition, the law states that when ‘the parental title is amended, the Digital and Population Services Agency must send a notification about the amendment to the guardian of the applicant’s minor children’.¹⁰⁰ The option to change parental title entered into force in March 2024, allowing the new administrative procedure a year to be established.¹⁰¹

This recognition of trans parents in line with their legal gender is not automatic. Most tellingly, the 2023 Act and the 2022 Parenthood Act state that ‘the mother of the child is the one who has given birth to the child’.¹⁰² Moreover, a person who has ‘conceived a child’ or ‘whose sperm has been used to impregnate the mother’ ‘and a child has been born as a result’ is registered as the father.¹⁰³ The Finnish legislation thus builds on the cisnormative assumption that all parents who give birth identify as mothers and all parents who provide sperm identify as fathers, but it does make some room for (binary) trans parents by offering the possibility to amend their ‘parental title’ from ‘mother’ to ‘father’ or vice versa.¹⁰⁴ Only in cases of assisted reproduction, when the sperm of an external donor is used, can the parent who is not impregnated but agrees to parent together with the impregnated parent be directly registered in line with their legal gender, without a separate application.¹⁰⁵

For adult trans people who identify as men or women, Finnish law presents both gender legal recognition based on self-determination and parental recognition in line with legal gender, while Sweden and Norway offer only one of the two. The Finnish legislation is a result of many years of civil-society campaigning and consensus building, political mobilization, and astute navigation of the political landscape, specifically in using the opportunity of a government willing to advance trans rights legislatively.¹⁰⁶

terveysministeriö [The Finnish Ministry of Social Affairs and Health], ‘Translaki’ <stm.fi/hanke?tunnus=STM009:00/2021> accessed 29 February 2024.

⁹⁷Finnish Government Bill HE 189/2022 vp, 51.

⁹⁸Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 5(1).

⁹⁹*ibid.*

¹⁰⁰*ibid.*, Section 5(2).

¹⁰¹See Finnish Government Bill HE 189/2022 vp.

¹⁰²Vanhemmuuslaki [Parenthood Act] 775/2022, Section 2; Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 4(2).

¹⁰³Vanhemmuuslaki [Parenthood Act] 775/2022, Section 4(2); Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 4(2).

¹⁰⁴The Finnish legislation does not recognize a third or gender-neutral parental title or role. Moreover, it only allows for an amendment of ‘parental title’, not the legal obligations flowing from mother/fatherhood. This is similar to the Swedish solution and is generally owed to the fact that the legal rights and obligations for mothers and fathers are not the same in these countries. The gendered nature of parental legislation is discussed in Alaattinoğlu and Margaria (n 6).

¹⁰⁵Vanhemmuuslaki [Parenthood Act] 775/2022, Section 4(3); Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023, Section 4(3).

¹⁰⁶As expressed in the Government Programmes of both the Rinne and Marin Governments. See Prime Minister Antti Rinne’s Government, Inclusive and Competent Finland – A Socially, Economically and Ecologically Sustainable Society (6 June 2019), 93; Prime Minister Sanna Marin’s Government, Inclusive and Competent Finland – A Socially, Economically and Ecologically Sustainable Society (10 December 2019), 95.

Table 1. Regulation of legal gender recognition and recognition of trans legal parenthood in Sweden, Norway, and Finland.

	Sweden	Norway	Finland
Legal gender recognition	Medicalized model with elements of self-determination (since 1972, renewed in 2024)	Self-determination model (since 2016)	Self-determination model (since 2023)
Recognition of trans legal parenthood	Nominal legal parenthood in line with legal gender (since 2018)	Misaligning legal gender and legal parenthood	Nominal legal parenthood in line with legal gender upon application (since 2023/2024)

5 Partial amendments or comprehensive reforms?

Comparing the three Nordic countries shows that legislative change to better protect trans people's personal integrity, reproductive rights, and right to private and family life has been the consequence of mobilization. While the claims of trans rights defenders in all countries have been relatively similar, the legislative outcomes of mobilization have been different. Finland is currently providing legal gender recognition according to a self-determination model and legal parenthood in line with legal gender. Norway has also embraced legal gender recognition on self-determination but maintains a parental legal model that misaligns legal gender and legal parenthood. Conversely, Sweden has recently adopted a gender recognition model which can be described as a compromise between a completely medicalized model for legal gender recognition and one based on self-determination, while recognizing legal parenthood in line with legal gender since 2018. While none of the countries' laws are in direct conflict with, for example, the case law of the ECtHR, their level of protection of trans rights clearly varies.

In the following, I discuss three aspects that I have identified as shaping the legislative outcomes of mobilization: the timing of mobilization in relation to the available rights framework, the politicization of trans rights, and the form of mobilization.

5.1 Developing supranational and comparative normative frameworks

One reason for the differences in outcome between the countries relates to the timing of mobilization in the context of national and supranational legal frameworks. Both soft and hard supranational legal norms—most importantly, policy documents by the Council of Europe and the developing case law of the ECtHR—have been used by national trans rights defenders in their mobilization. The legal supranational framework around central trans rights concerns, such as the preconditions for legal gender recognition, developed considerably during the 2010s.¹⁰⁷ During the 2010s and 2020s, several other countries in Europe have also abandoned earlier oppressive preconditions for legal gender recognition, such as sterilization or diagnosis, and are increasingly adopting legislation based on self-determination. During the past decade, moreover, some European countries have established recognition of trans parents in line with legal gender.¹⁰⁸

¹⁰⁷Alaattinoğlu (n 6), 53–65. Important for this development is the case law of the ECtHR, particularly *AP, Garçon and Nicot v France* App nos 79885/12, 52471/13 and 52596/13 (ECHR, 6 April 2017). Important documents are also, for example, the recommendation by The Committee of Ministers of the Council of Europe (n 17), the report by The Council of Europe Commissioner for Human Rights (n 17), and the resolutions by The Parliamentary Assembly of the Council of Europe (n 17; n 16), and the European Parliament (n 16).

¹⁰⁸See, for example, TGEU, 'Trans Rights Map 2024' <transrightsmap.tgeu.org/home/> accessed 7 January 2025.

In the countries compared, more recent reforms have benefited from a more developed supranational and transnational rights framework. This is perhaps most evident in Finland, since the 2023 reform of legal gender recognition also encompassed the recognition of trans legal parenthood; by this time there were already established best practices to draw on. Conversely, at the time of the Swedish abolition of the sterilization requirement (2012/13), simply removing such a precondition was considered a progressive move in the regional and global context, and no country in Europe had yet established a model for legal gender recognition based on self-determination. Furthermore, when the Norwegian self-determination model for legal gender recognition was established (2016), European countries did not recognize trans parents in line with their legal gender. This context is also reflected in the fact that exempting trans parents from legal recognition was not discussed in the *travaux préparatoires* as a matter of rights or possible rights infringements.

Timing and supranational and transnational rights frameworks cannot alone explain the differences in outcome between the countries, however. For example, the most recent Swedish reform (2024) had a very different normative landscape to draw on than the 2012/2013 reform, yet the legislator still opted for a compromise rather than establishing international best practice.

5.2 Trans rights mobilization and counter-mobilization

The most recent Swedish reform brings us to the second aspect, namely the political context in which the mobilization and the legislative reforms took place. The varying recognition of and resistance towards rights arguments, particularly by political decision-makers, have depended on the politicization of trans rights. At certain times political, particularly government, support has existed for progressive reforms for trans rights—such as in the Norwegian (2016) and Finnish (2023) reforms—with a perceived need for the state to be an international forerunner in the protection of the rights of sexual and gender minorities.¹⁰⁹

At other times trans rights have been politicized in the opposite direction, with counter-mobilization against legal gender recognition based on self-determination in particular.¹¹⁰ A telling example is the 2024 Swedish reform in the context of the rise of the far-right Sweden Democrats and increasing counter-mobilization against trans rights (particularly by the Sweden Democrats and the Christian Democrats). As is evident in the abundant preparatory documents, including certain arguments used, this counter-mobilizing development caused both the slow pace and the outcome of the Swedish reform. Another example is seen in the Finnish context, in which a conservative government refused to reform the former Finnish legislation on legal gender recognition, despite its obvious rights infringements, during the latter half of the 2010s.

The political context and politicization of trans rights can also be connected to the link between law and medicine particularly when it comes to legal gender recognition. In all the countries compared, law and medicine were intertwined since the latter half

¹⁰⁹Alaattinoğlu (n 6), 204–207.

¹¹⁰This can be considered a part of a global trend. See Clare Hemmings, "'But I thought we'd already won that argument!': 'Anti-gender' Mobilizations, Affect, and Temporality" (2022) 48 *Feminist Studies* 594.

of the 20th century, when gender-affirming medical treatment and legal gender recognition were established,¹¹¹ and were recently separated through legal reforms in Norway (2016) and Finland (2023).¹¹² In Sweden, however, the 2024 Gender Recognition Act still maintains the connection between law and medicine which its 1972 predecessor established. In Norway, the fact that no previous legislation on legal gender recognition existed was used as an opportunity to legislatively separate legal and medical processes and relatively swiftly establish an act on legal gender recognition.¹¹³ In Finland, the separation of legal and medical processes was one of the explicit aims behind the 2023 legislation; separation had majoritarian political support, but was subject to continuous discussion and had some vocal political opponents.¹¹⁴

While the politicization of trans rights and the political context of mobilization explain many of the legislative outcomes compared in this article, they fail to fully comprehend the reasons behind the patchwork legislative outcome in Sweden and Norway and the more comprehensive legislation in Finland. I identify the final determining factor for this outcome to concern the mode of mobilization and particularly the use of strategic mobilization by trans rights defenders.

5.3 *The mode of mobilization*

In all the instances depicted in this article, strategic litigation was successful—leading both to acknowledgements of rights violations in the individual cases investigated and to legislative change.¹¹⁵ In Sweden, owing largely to legal opportunities and use of resources, trans rights defenders have relied on strategic litigation to a larger extent than in the neighbouring Nordic countries. In the Swedish case, the stronger emphasis on strategic litigation led to an earlier advancement of the abolition of the infertility precondition for legal gender recognition (2012/13) and to the establishment of a globally unique legal recognition of trans parents (2018), which inspired other countries to adopt similar legislative solutions.¹¹⁶ Paradoxically, of the three countries Sweden has been the least successful in moving from a medicalized model of legal gender recognition to a model based on self-determination, as embraced by all the other Nordic countries.

In comparison to its neighbours, trans rights defenders in Finland mainly mobilized in ways other than through strategic litigation, for example by presenting a citizens' initiative before the Finnish Parliament. In general, the targets of the mobilization have been the legislator and the government rather than the courts. In this case the process was slow but favoured more comprehensive legislative solutions, reforming both legal gender recognition and recognition of legal parenthood simultaneously and coherently. Furthermore, the strategy of advancing rights through legislation also made the need for

¹¹¹See Alaattinoğlu (n 6).

¹¹²LoV om endring av juridisk kjønn [Act on the Amendment of Legal Gender] (2016); Laki sukupuolen vahvistamisesta [Act on Legal Gender Recognition] 295/2023.

¹¹³Alaattinoğlu (n 6), 123–128.

¹¹⁴There were heated discussions in Parliament when the Bill was discussed, with criticism coming particularly from the Christian Democrats and the far-right The Finns.

¹¹⁵Legislative change has also been the ultimate goal of the strategic litigation in the cases analysed.

¹¹⁶See Alaattinoğlu and Margaria (n 6). Finland is one of the countries inspired by the Swedish legislative model for trans legal parenthood. See Finnish Government Bill HE 189/2022 vp, 79–80.

political support evident—particularly when such support was lacking during the 2010s.¹¹⁷

While Sweden removed the infertility precondition back in 2012/2013 as the result of strategic litigation, in both Norway and Finland its removal was part of broader legislative reforms. In both countries the infertility precondition was a central ground for trans rights defenders to highlight the necessity and urgency of a new law in their mobilization. This begs the question of whether removing the infertility precondition from the 1972 Gender Recognition Act had the unintended effect of decreasing the sense of political and legal urgency for legislative reform in Sweden.

In the cases investigated in this article, strategic litigation has been a way of fast-tracking legislative amendments, particularly when facing opposition from political decision-makers (Sweden) and the medical profession (Norway). It seems that the cases of strategic litigation by trans rights defenders explored here have all had the direct consequence of advancing the questions at stake—i.e., removing the sterilization precondition; establishing recognition for trans legal parenthood; establishing legal gender recognition respectful of (binary) trans people's gender identity. Yet another, less immediate consequence appears to be that single issues have been advanced to the detriment of other trans rights matters, which have not been politically prioritized. With its claims focusing on specific issues of contention, strategic litigation has thus been a way to legally advance some matters more quickly than the legislator would have otherwise allowed or to create political momentum in cases of an immobilized parliament.¹¹⁸ In comparison to legislative reform, however, the legislation created in the aftermath of strategic litigation appears to be a contradictory, non-comprehensive patchwork that simultaneously advances and limits trans rights.

6 A few final words

The analysis in this article is based on mobilization around two legal areas in three countries. While the findings may offer food for thought for comparatists and those interested in mobilization and/or trans rights, they are not, at least as such, generalizable beyond the context investigated. While other factors, such as resource mobilization, may also have played a role in the legislative outcome of mobilization, this article has centred on three aspects which have been important for the differences in legislative outcomes of trans rights mobilization in the three Nordic countries compared: 1) the development of supranational and transnational rights norms, 2) the political context in which trans rights have been advanced by trans rights defenders, and 3) the form of mobilization utilized by trans rights defenders, particularly the role of strategic litigation.

¹¹⁷Alaattinoğlu (n 6), 169–173.

¹¹⁸In these cases, strategic litigation has been a part of a broader mobilization strategy.