NATIONAL LITIGATION STRATEGY ON GENDER REASSIGNMENT FOR TRANS/INTERSEX PEOPLE

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1. Introduction

This paper presents research on gender reassignment in Bulgaria and assessment of the laws and legal regulations that have relevance to gender reassignment, as well as an assessment of their application by the domestic courts. The assessment is based on an analysis of both international law and legal standards on that issue in a number of countries. The research is based on an analysis of the effective legislation and interviews with persons who applied for a gender rectification procedure, judges, prosecutors, medical experts and attorneys-at-law and, as well as on domestic case law.[1]

The present research results in two main conclusions. First, the case law concerning transsexuals evolves in a liberal direction, whereby the judges consider as a factor of prime significance the psychological gender of the transsexual person and not the physiological sexual characteristics. There is no case law concerning intersexual conditions, however, and strategic case needs to be brought in that respect. Second, the legislation concerning the court proceedings for gender change recognition is extremely scarce and a draft law needs to be elaborated, with more detailed formulation of the essential criteria for such recognition, excluding as a prerequisite a gender reassignment surgery.

The importance of recognition of gender identity in accordance with self-defined sexual orientation has been first recognized by international human rights experts in the Yogyakarta Principles (2006).[2] One of these principles provides that "everyone has the right to

[1] The research is based on 13 judgments on gender reassignment, received from four different courts in the country and in depth interviews of applicants and professionals involved in the proceedings. Requests for such judgments have been sent to 30 district courts in Bulgaria, for relevant judgments, for the period 2002-2012.

[2] In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation

recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity."

Lately, the issue has also received increased attention by the Council of Europe and the European Union. In September 2011 the Commissioner for Human Rights of the Council of Europe published a report on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the 47 member states of the Council of Europe. The Commissioner for Human Rights made special recommendations towards authorities in Council of Europe member states with respect to the gender recognition and the right to privacy. More specifically, the Commissioner recommended that authorities should grant legal recognition for the preferred gender of transgender persons and develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, civil registers, identity cards, passports, educational certificates and other similar documents. Further, they should abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person's preferred gender. The authorities should also remove the requirement of being unmarried, or divorce for already married persons, as a necessary condition for the legal recognition of a transgender person's preferred gender.[3]

In March 2010, the Council of Europe Committee of Ministers adopted a resolution setting out clear measures to combat discrimination on the grounds of sexual orientation and gender identity. This resolution is the first comprehensive intergovernmental agreement on the rights of LGBT people, and addresses, inter alia, the right to respect for private life. While these recommendations are not directly enforceable, they are considered to be soft law and include an implementation review process (to be held in 2013).

2. Terms and Definitions

As the public discussion of gender reassignment is still in its early stages, we are starting this paper with some definitions of the basic terms that are used in it.

Gender dysphoria refers to discomfort that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth and the associated gender role and/or primary and secondary sex characteristics. The process of alleviating gender dysphoria may or may not involve a change in gender expression or body modifications. Medical treatment options include, for example, feminization or masculinization of the body through hormone

and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply.

[3] "Discrimination on grounds of sexual orientation and gender identity in Europe", Council of Europe, September 2011.

therapy and/or surgery, which are effective in alleviating gender dysphoria and are medically necessary for many people. Gender identities and expressions are diverse, and hormones and surgery are just two of many options available to assist people with achieving comfort with self and identity. Gender dysphoria can in large part be alleviated through treatment. **Gender identity disorder** is the formal diagnosis used by psychologists and physicians to describe persons who experience significant gender dysphoria, such as transsexualism.

Transsexual people are those who establish a permanent identity with the gender that is not typically associated with their biological sex, identified at birth. The International Statistical Classification of Diseases and Related Health Problems incorporates *transsexualism*, *dual role transvestism* and *gender identity disorder of childhood* into its gender identity disorder category, and defines transsexualism as "[a] desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex." The current diagnosis for transsexual people who present themselves for psychological treatment is "gender identity disorder".

Intersex is the presence of intermediate or atypical combinations of physical features that usually distinguish female from male. This is usually understood to be congenital, involving chromosomal, morphologic, genital anomalies, such as diversion from typical XX-female or XY-male presentations, *e.g.*, sex reversal (XY-female, XX-male), genital ambiguity, or sex developmental differences. Intersex people may have biological characteristics of both the male and the female sexes. Their status relates to their biological makeup (genetic, hormonal and physical features) which is neither exclusively male nor exclusively female, but is typical of both at once or not clearly defined as either.

Sex reassignment therapy is an umbrella term for all medical treatments related to sex reassignment of both transgender and intersexual people. In the second half of the 20th century, awareness of the phenomenon of gender dysphoria increased when health professionals began to provide assistance to alleviate gender dysphoria by supporting changes in primary and secondary sex characteristics through hormone therapy and surgery, along with a change in gender role. The initial clinical approach largely focused on identifying who was an appropriate candidate for sex reassignment to facilitate a physical change from male to female or female to male as completely as possible. This approach was extensively evaluated and proved to be highly effective. Satisfaction rates across studies ranged from 87% of MtF patients to 97% of FtM patients, and regrets were extremely rare (1-1.5% of MtF patients and <1% of FtM patients). Indeed, hormone therapy and surgery have been found to be medically necessary to alleviate gender dysphoria in many people. As the field matured, health professionals recognized that while many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither. Often with the help of psychotherapy, some individuals integrate their trans- or cross-gender feelings into the gender role they were assigned at birth and do not feel the need to feminize or masculinize their body. For others, changes in gender role and expression are sufficient to alleviate gender dysphoria. Some patients may need hormones, a possible change in gender role, but not surgery; others may need a change in gender role along with surgery, but not hormones. In other words, treatment

for gender dysphoria has become more individualized.[4]

3. International Legal Standards

The Court of Justice of the European Union

The Court of Justice of the European Union has held that discrimination on the basis of gender reassignment is a form of sex discrimination. It held in three cases, namely *P. v S.* (decided in 1996), *K.B.* (decided in 2004) and *Richards* (decided in 2006), that discrimination against people who intend to undergo, are undergoing and have undergone gender reassignment may amount to sex discrimination.[5] The Court's judgment in the *P. v S.* case does not treat postsurgery transsexual persons as belonging to a category in between men and women. Rather, the Court wisely refused to engage in the highly sensitive debate whether or not transsexuals, especially after gender reassignment, form a "third sex". The Court carefully avoided the use of any gender-specific indicators when referring to P. The significance of this approach lies in the fact that it focused on the transsexual's asserted gender identity, not on his/her biological or legal sex.

The European Court of Human Rights

The European Court of Human Rights started recognising the violation of Convention rights against LGBTI individuals as early as 1980. In thirty years, the Court's case law has seen a considerable evolution. The Court first found unlawful the criminalisation of homosexual acts on grounds of violation of private life, which led it to address incidental issues on grounds of non-discrimination. This led the Court to grant the possibility for transgender individuals to have their sex-change reflected in their official documents, which in turn allowed them to marry accordingly. Finally, the court recognised the LGBTI community as a whole when it found the ban of LGBTI marches contrary to the freedom of assembly and association. The Court has recently recognised transsexuality as a protected stand-alone ground of discrimination.[6] Cases involving discrimination against transsexual people on grounds of the gender reassignment that they have undergone shall be analysed based on a comparison not between men and women, but rather between the post-operative transsexual (e.g. a female-to-male transsexual) and a person of the same sex (i.e. a woman) whose sex is not the result of gender reassignment surgery.

As regards the sex-change in official documents, the Court found that already in 1998 substantial changes had occurred in many member States of the Council of Europe – twenty-three member States (out of thirty-seven surveyed) permitted birth-certificate entries in respect of post-operative transsexuals and only four countries (Albania, Andorra, Ireland and the United Kingdom) expressly prohibitted any change.[7] The Court noted that in these countries change had taken place – whatever its precise form was – in an attempt to alleviate the distress and suffering of the post-operative transsexual and that there existed in Europe a

[4] *„Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*" World Professional Association for Transgender Health, July 2012.

[5] CJEU, Case C-13/94 *P. v S. and Cornwall County Council* [1996] ECR I-2143; CJEU, Case C-117/01 *K.B. v National Health Service Pensions Agency and Secretary of State for Health* [2004] ECR I-541 and CJEU, Case C-423/04 *Sarah Margaret Richards v Secretary of State for Work and Pensions* [2006] ECR I-3585.

[6] *P.V. v. Spain*, 2010.

[7] See Judges Bernhardt, Thor Vilhjalmsson, Spielmann, Palm, Wildhaber, Makarczyk and Voicu dissenting opinion in *Sheffield and Horsham v. the United Kingdom*, judgement of 30 July 1998.

general trend which sought in differing ways to confer recognition on the altered sexual identity.

As of the Court's case law, the fair balance that is inherent in the Convention tilts decisively in favour of protecting the transsexuals' right to privacy. Moreover, it is not a relevant argument to interfere with this right that the scientific community could not agree on the explanation of the causes of transsexualism or that surgery could not – and perhaps will never be able to – lead to a change in the biological sex. Respect for privacy rights should not depend on exact science. The Court has held that the States' margin of appreciation in this area could no longer serve as a defence in respect of policies which lead inevitably to embarrassing and hurtful intrusions into the private lives of transsexuals. The margin of appreciation could come into play in a wider manner as regards the specific choices exercised by the State in conferring legal recognition.

THE UNITED KINGDOM

The Court has dealt with a series of cases concerning the position of transsexuals in the United Kingdom (Rees v. the United Kingdom, 17 October 1986; Cossey v. the United Kingdom, 27 September 1990; X, Y and Z v. the United Kingdom, 22 April 1997; Sheffield and Horsham v. the United Kingdom, 30 July 1998; and, most recently, Christine Goodwin v. the United Kingdom, 11 July 2002, I. v. the United Kingdom, 11 July 2002 and Grant v. the United Kingdom, 23 May 2006).

Under English law, a person is entitled to adopt such first names or surname as s/he wishes. Registration of births is governed by the Births and Deaths Registration Act 1953. The criteria for determining the sex of a child at birth are not defined in the Act. The practice of the Registrar is to use exclusively the biological criteria (chromosomal, gonadal and genital). The 1953 Act provides for the correction by the Registrar of clerical errors or factual errors. The official position is that an amendment may only be made if the error occurred when the birth was registered. The fact that it may become evident later in a person's life that his or her "psychological" sex is in conflict with the biological criteria is not considered to imply that the initial entry at birth was a factual error. No error is accepted to exist in the birth entry of a person who undergoes medical and surgical treatment to enable that person to assume the role of the opposite sex.[8]

The applicants Sheffield and Horsham (1998) were registered at birth as being of the male sex. They are both male-to-female transsexuals who subsequently underwent gender reassignment surgery. Under the law of the United Kingdom they were not recognised as being of the female sex and continued to be treated for many legal purposes as if they were men. The essence of their complaint before the European Court of Human Rights was that in certain situations – for example in taking out insurance, entering into contracts, standing as surety in court proceedings – they were obliged to produce a birth certificate indicating their sex as recorded at birth which is in plain contradiction with their new post-operative appearance after gender reassignment surgery. Such situations caused intense humiliation, distress and embarrassment. Social-security and police data systems also appeared to record their former sex. In addition, for purposes of retirement age and pension entitlements they will continue to be treated by the law as men.

[8] See judgments of the ECtHR in the cases *Sheffield and Horsham v. the United Kingdom*, 30/07/1998, § 28-30 and *Christine Goodwin v. the United Kingdom*, 11/07/2002, § 23-25.

In the earlier cases, the Court held that the refusal of the United Kingdom Government to alter the register of births or to issue birth certificates whose contents and nature differed from those of the original entries concerning the recorded gender of the individual could not be considered as an interference with the right to respect for private life.[9] However, at the same time, the Court was conscious of the serious problems facing transsexuals and on each occasion stressed the importance of keeping the need for appropriate legal measures in this area under review.[10] Following its examination of the Goodwin, I. and Grant's personal circumstances as transsexuals, current medical and scientific considerations, the state of European and international consensus, impact on the birth register and social and domestic law developments, the Court found that the United Kingdom Government could no longer claim that the matter fell within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. As there were no significant factors of public interest to weigh against the interest of these individual applicants in obtaining legal recognition of their gender reassignment, it reached the conclusion that the fair balance that was inherent in the Convention now tilted decisively in favour of the applicants and that there had accordingly been a failure to respect their right to private life in breach of Article 8 of the Convention.

Following these series of cases concerning the position of transsexuals in the United Kingdom, dealt with by the Court, the Parliament adopted on 1 July 2004 the Gender Recognition Act. Under the Act, individuals who satisfy certain criteria are able to apply to a Gender Recognition Panel for a Gender Recognition Certificate. From the date of the grant of such a certificate, which is prospective in effect, an individual is afforded legal recognition in their acquired gender. In particular, social security benefits and the State retirement pension are paid according to the acquired gender. From 4 January 2005, the Secretariat to the Gender Recognition Panel has been in operation and receiving applications. The Panel itself came into legal existence on 4 April 2005, from which date certificates could be issued.[11]

FRANCE

In B. v. France (judgment of 25 March 1992) the Court, while reaffirming its Rees and Cossey judgments, found that the more far-reaching disabilities to which the post-operative transsexual was subject under French law amounted to a violation of Article 8 of the Convention - right to respect for private life.

Miss B. was prescribed in 1963 feminising hormone therapy and underwent a surgical operation in 1972. Wishing to marry her friend, she brought proceedings against the Libourne public prosecutor in 1978, asking the court " to declare that [she was] of female sex; to order rectification of [her] birth certificate; to declare that [she should] henceforth bear the forenames Lyne Antoinette". The Libourne tribunal de grande instance dismissed her action, because "the change of sex was intentionally brought about by artificial processes". The applicant appealed, arguing that "sexual identity is constituted not only by biological components but also by psychological ones, so that by taking a decision without carrying out any investigation of his psychological history it deprived its decision of any legal foundation". However, the Bordeaux Court of Appeal and the Court of Cassation upheld this judgment, stating that the applicant "continued to show the characteristics of a

[9] See Rees, § 35; Cossey, § 36; and Sheffield and Horsham, § 59.

[10] See Rees, § 47; Cossey, § 42; and Sheffield and Horsham, § 60.

[11] See judgment of the ECtHR in the case *Grant v. the United Kingdom*, 32/05/2006, § 30,31.

person of male sex” and that her “present state is not the result of elements which existed before the operation and of surgical intervention required by therapeutic necessities but indicates a deliberate intention on the part of the person concerned”.

According to Article 99 of the Civil Code of France, rectification of civil status documents shall be ordered by court. An application for rectification may be brought by any person concerned or by the procureur de la République.

Miss B. submitted before the European Court of Human Rights that the rejection of her request for rectification of her birth certificate was all the more culpable since France could not claim, as the United Kingdom had done, that there were any major obstacles linked to the system in force. The Court had found, in connection with the English civil status system, that the purpose of the registers was not to define the present identity of an individual but to record a historic fact, and their public character would make the protection of private life illusory if it were possible to make subsequent corrections or additions of this kind. This was not the case in France. Birth certificates were intended to be updated throughout the life of the person concerned, so that it would be perfectly possible to insert a reference to a judgment ordering the amendment of the original sex recorded. Moreover, the only persons who had direct access to them were public officials authorised to do so and persons who had obtained permission from the procureur de la République; their public character was ensured by the issuing of complete copies or extracts. France could therefore uphold the applicant’s claim without amending the legislation; a change in the Court of Cassation’s case-law would suffice.

The Court noted that nothing would have prevented the insertion, once judgment had been given, in Miss B.’s birth certificate, in some form or other, of an annotation whose purpose was to bring the document up to date so as to reflect the applicant’s present position. The applicant’s operation involved the irreversible abandonment of the external marks of Miss B.’s original sex. The Court considered that in the circumstances of the case the applicant’s manifest determination was a factor which was sufficiently significant to be taken into account, together with other factors, with reference to the right to respect for private life.

The applicant further argued that unlike in the United Kingdom, whether she could change her forename, French legislation made this subject to judicial permission and the demonstration of a "legitimate interest" capable of justifying it. Miss B. knew of no decision which had regarded transsexualism as giving rise to such an interest.

The French Government maintained, on the other hand, that there was ample favourable case-law on the point, that merely required that a "neutral" forename such as Claude, Dominique or Camille was chosen; the applicant had, however, requested forenames which were exclusively female.

The Court noted that the door this possibility opened was a very narrow one, as only the few neutral forenames could be chosen. The Court found that French law, by requiring constant revelation of the applicant’s official sex, placed her in a situation that was incompatible with her right to privacy. The Court held that the fair balance which has to be struck between the general interest and the interests of the individual had not been attained in this case, and there had thus been a violation of the right to respect for private life.

4. Relevant legislation in Germany, France, Ireland and Spain

For many trans people, having the right name and gender marker on identification documents is of paramount importance for social, practical and personal reasons. As most legal jurisdictions have at least some recognition of the two traditional genders at the exclusion of other categories, gender nonconformity raises many legal issues and aspects. In many countries, some of the modifications are required for legal recognition. In a few, the legal aspects are directly tied to health care; i.e. the same institutions or doctors decide whether a person can move forward in their treatment, and the subsequent processes automatically incorporate both matters. In some countries, an explicit medical diagnosis of *transsexualism* is (at least formally) necessary. In others, a diagnosis of *gender identity disorder*, or simply the fact that one has established a non-conforming gender role, can be sufficient for some or all of the legal recognition available. A majority of countries in Europe give transsexual people the right to at least change their first name, most of which also provide a way of changing birth certificates.

The **German** Transsexuals Act (Law about the change of first name and determination of gender identity in special cases)[12] of 10 September 1980 was adopted following the decision of 11 October 1978 of the Federal Constitutional Court according to which the refusal to change the sex of a post-operative transsexual in the register of births was an unjustified interference with human dignity and everyone's fundamental right to develop his personality freely.[13] Sections 1 to 7 of the Transsexuals Act govern the conditions, procedures and legal consequences of a change of a transsexual's forenames without gender reassignment surgery. Under section 1, persons may request that their forenames be changed if, on account of their transsexual orientation, they no longer feel they belong to the sex recorded in the register of births, they have been for at least three years under the constraint of living according to these tendencies, and if there is a high probability that they will not change this orientation in the future. The competent civil courts have to obtain two medical expert opinions in order to establish whether the medical conditions are met (section 4).[14]

For the change of legal gender, it was also once required that the person is permanently infertile, and has had surgery through which their outer sexual characteristics are changed to a "significant approximation" to the appearance of their preferred biological sex. Following gender reassignment surgery, section 8 provided for a change of the sex entered in the register of births, if, in addition to the conditions laid down in section 1, the persons concerned were not married and were not able to procreate.[15] These requirements were finally removed in a 2011 revision of the Transsexuals Act. The requirement to be "permanently infertile" is seen as interfering with the right to physical integrity, especially since a simple sterilization is usually not seen as sufficient, but castration is required instead. The requirement for surgery, which is interpreted essentially as a requirement for genital reassignment surgery, is seen as interfering with the right to physical integrity.

Originally, the law stated that neither change of name nor legal gender were available for people under 25 years of age. This condition has been declared void by the courts, and today there is no minimum age.

[12] Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen.
[13] Reports of the Decisions of the Federal Constitutional Court, BVerfGE 49, pp. 286 et seq.
[14] See judgment of the ECtHR in the case *Van Kuck v. Germany*, 12/09/2003, § 29 and 30.
[15] Ibid. § 31.

On 28 January 2011, the Germany Federal Constitutional Court declared unconstitutional the prerequisites for the statutory recognition of transsexuals, which included permanent infertility (sterilisation), and the undergoing of surgery to change external sexual characteristics in order that the person's appearance approach that of the other gender.[16]

Intersex court cases are extremely rare. It appears that so far only two cases have been considered by courts in Europe, both in Germany. In the first case, the complainant sought the introduction of an intersex classification in civil status documents alternative to the male/female binary sex model, while in the second the complainant took a case against the surgeon that had removed female primary sexual characteristics without her consent and sought €100,000 in compensation.[17]

In 2008, the Cologne District Court decided on a case that was taken to court by Christiane Volling against her surgeon who had removed her uterus, tube and ovaries without her consent 30 years before. Ms Volling was born with indeterminate external genitalia and was raised as a boy, however, as a child she identified as a girl. During an appendectomy at age 17, her uterus and womb were discovered, which led to her fully-intact female internal organs being removed the next year, without her being properly informed or consulted. As a result of this operation the complainant was made to live in the "wrong sex" and suffered a urethral reconstruction with a chronic, antibiotic-resistant urinary tract infection, as well as chronic renal disease, and a spasmodic bladder dysfunction with urinary retention. Furthermore her body was masculinised through the administration of testosterone. Ms Volling discovered what had happened to her following an unrelated incident when a questionnaire on intersex issues was passed on to her. In this case, the court found that the doctor had "culpably violated her health and selfdetermination." In 2009, the District Court Cologne in a final judgement ordered the surgeon to pay €100,000 in damages to Ms Volling.

In 2010, the German government commissioned an expert position by the German Ethics Council on the living situations and challenges faced by intersex people. The preliminary findings by the Ethics Council show that: (i) there is agreement on the physical integrity of intersex people and that "irreversible" invasive medical treatment should be postponed as long as possible; (ii) the parental right to decide in the best interest of the child is limited when it comes to medical gender assignment as this touches the core of the person's right to gender identity and sexual sensitivity; and (iii) that *"those persons could not, based on the prohibition of discrimination and the right to self-determination, be forced to assign themselves for one of the binary categories of male or female"*.

In **France** transsexual persons can initiate litigation process where the central evidence is a medical expert appointed by the court, confirming that the applicant has undergone a sex reassignment surgery or a sterilization surgery. The case law is not constant. According to research of the non-governmental organization "Homosexuals and Socialism"[18], in at least five cases gender change in the registries of birth was allowed by court without reassignment surgery:

- Court of Lyon: Dec 1998 (male to female), the judgment was based on medical expert report, psychological report and family members testifying about the new gender role.

[16] Federal Constitutional Court, Press release no. 7/2011 of 28 January 2011.
[17] "Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression", European Commission, June 2011.
[18] "Trans Rights Strategic litigation", Brussels, 10 December 2011, Laura Leprince, HES, www.hes-france.org.

- Court of Nice: Feb 1999 (male to female), the court did not require psychological report, Klinefelter syndrome certificate was presented and a certificate that hormonal treatment was irreversible.
- Court of Rennes: Oct 1999 (male to female), no psychological report was presented, instead, a medical expert report that certified that the applicant had atrophied genitals, had AIDS and was counter indicated for surgery.
- Court of Roanne: Dec 2001 (female to male), the judgment was based on psychological certificate, mamectomy certificate, personal engagement of future phalloplasty and a witness testimony about the applicant's professional life as police officer in the male gender role.
- Court of Brest: April 2005 (male to female), the court heard ten witnesses, accepted psychological report, hormone-therapy certificate along with blood tests proving that the applicant was under a major feminizing "impregnation".

The French Equality Body, Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (HALDE), in 2008 recommended to the Government "the establishment of a legal or regulatory process taking into account the adequacy between physical appearance of transitioning transgender people and their gender status written on official papers, on behalf of their fundamental rights to protect their private life when dealing with civil and state services and on behalf of the principles of non-discrimination at work; the ultimate goal being to harmonize decision practices by civil courts".

The Ministry of Justice has listened to the Equality Body's deliberation and also to numerous civil society calls. It finally decided to take into account such difficulties focusing on the issue of those systematic medical examinations. On 14 May 2010, the "Chancellerie" issued a circular letter towards prosecuting attorneys, requesting to stop demands of medical examinations at the exception of serious doubt that the applicant was genuinely "transsexual". Notwithstanding this circular letter, the public prosecutor keeps systematically demanding those medical examinations, serious doubt being there or not. As a result, expert reports appointed by the court, proving that sex reassignment surgery or sterilization has been undergone, continue to be the most important evidence.

Other activists choose the alternative to lobby for changes in legislation. As stated above, Article 99 of the French Civil Code provides for rectification of civil status documents, ordered by court. A parliamentary working group among socialist MEPs has been set up with the initiative and animation of "Homosexuals and Socialism" in 2009. After two years of audition, seminars, lawyers involvement, on 22 December 2011 the group submitted "PROPOSAL FOR LAW Regarding the Simplification of the Procedure for a Gender Change in Civil Courts".[19] The draft law provides for a change of the gender entered in the registry of births regardless of any mandatory medical treatment. It outlines as a most valuable evidence the testimonies of persons who are close to the applicant and provides that s/he shall bring to the court three witnesses, who are not his/her ascendant or descendant.

Ireland is one of the only remaining countries in the European Union that has no provision for gender rectification. Fifteen years ago, Dr. Lydia Foy began a lengthy legal battle. Her first case, seeking a new birth certificate, failed in the High Court. Dr. Foy then sought a High Court declaration that the absence of legal recognition for transgender people

19 See http://www.assemblee-nationale.fr/13/propositions/pion4127.asp.

in Ireland contravened the European Convention on Human Rights. In the first such declaration under the Human Rights Act Mr Justice McKechnie ruled in her favour in 2007.[20]

In May 2010, the Minister for Social Protection established the Gender Recognition Advisory Group, to "advise the Minister on the legislation required to provide legal recognition of the changed gender of transsexuals". In July 2011, the Group published a much anticipated report with recommendations for what gender recognition legislation should look like.[21] The Group recommended the following qualification criteria for applicants for gender rectification. The applicant must be over 18, unmarried and show a clear and settled intention to live in the changed gender for the remainder of his/her life. S/he must have lived minimum 2 years full-time in the changed gender**.** One of the following medical criteria must be observed:

- a formal diagnosis of Gender Identity Disorder plus relevant supporting medical evidence, **or**
- medical evidence that the applicant has undergone gender reassignment surgery, **or**
- evidence of the recognition of changed gender in another jurisdiction.

The Group proposed simple proceedings for applying for gender rectification and decision based on examination of documentary evidence (oral hearings if required). Provisions, also exist, relating to setting up of a Gender Recognition Register by the General Register Office, to issue new birth certificates and handle data.

Since 15 March 2007, a new law in **Spain** allows transsexual people to modify their name and legal gender in all public documents and records on the basis of a personal request, regardless of whether they have received genital reassignment surgery or not. On this date, the Act on the Changes in the Registry of the Persons' Gender Record was adopted.[22] The act is dedicated entirely on the court proceedings for altering the gender that has been entered in the birth certificate. It consists of seven articles only, which, however, contain very clear and detailed requirements and criteria that courts should observe in deciding the application.

First of all, diagnosis of gender dysphoria is a prerequisite. It shall be established through a report of doctor or psychologist, registered (or recognized) in Spain, who must refer to the existence of dissonance between the physiological sex initially entered and the psychological sex, as well as the stability and persistency of this dissonance.

Medical (hormonal) treatment for at least two years is also a prerequisite. This fact shall be certified with report of the doctor who monitored the treatment or a specialized forensic doctor. Importantly, it is not necessary for allowing the application that the medical treatment had included gender reassignment surgery. Witness testimonies are not required either. The resolution that allows the change shall take effect after its entry in the Civil Registry. The rectification includes a change in the first name of the person.

5. Bulgarian legal system

In Bulgaria there is no special legislation about gender change in birth certificates of trans/intersexual persons. The general Civil Registration Act is applicable, as it contains a

[20] "Transgender Legislation Pledged", *The Irish Times*, 14 July 2011: http://www.irishtimes.com/newspaper/breaking/2011/0714/breaking50.html

[21] See the Report of the Gender Recognition Advisory Group of 15 July 2011 on http://www.welfare.ie/EN/Policy/Legislation/Documents/gragreportjune11.pdf.

[22] Ley 3/2007 reguladora de la rectificación registral de la mención relativa al sexo de las personas. http://www.boe.es/buscar/doc.php?id=BOE-A-2007-5585.

legal ground to initiate such proceedings. However, it does not contain any criteria whatsoever for allowing or refusing an application for gender rectification. Such criteria are developed in the courts' case law and more specifically, in the courts located in some of the biggest towns in Bulgaria. Specifics of the Bulgarian system are the existence of mandatory male-indicating or female-indicating suffixes of everybody's name and the mandatory entry of the sex in each identity document. Gender reassignment surgeries are extremely expensive and very rare and might bring criminal responsibility for the surgeon, for causing reproductive inability, which is a "heavy bodily injury". Intersexual conditions are treated in childhood through medical interventions, without taking into consideration the opinion of the child.

Name change

In Bulgaria, as a difference from other countries, two types of suffixes exist for fathers' names and surnames, which suggest the persons' gender – "ov"/"ev" for men and "ova"/"eva" for women (Articles 13 and 14 of the 1999 Civil Registration Act, hereafter "the Act"). While the choice of a first name is unlimited, the formulation of the father's name and the surname must observe the statutory requirements for male-indicating or female-indicating suffixes. As the suffixes "ov"/"ev" and "ova"/"eva" automatically follow the person's gender, as recorded in the birth certificate, the only possible way to change them is after a gender rectification.

Generally, the law provides for a change in the first name, father's name or surname (Article 19 of the Act). However, such change is possible if the name is "ridiculous, stigmatizing or unacceptable in the society", as well as when "important circumstances require this". Therefore, the content of the name can be changed, but not the suffixes – they shall always correspond to the gender, as recorded in the birth certificate.

There has been a case when a transsexual, relying on Article 19, claimed before the court that her birth name was ridiculous, stigmatizing and unacceptable in the society because it contradicted with the gender role of a man that she had adopted and to her psychological sex.[23] The claim was unsuccessful, because the court, although accepting that her transsexual diagnosis could qualify as "important circumstance", found that no rectification of her gender had been previously allowed. The constant domestic case law is that the gender rectification in the birth certificate is in itself "important circumstance" in the meaning of Article 19 and it not only shall precede the name change but it makes the change of the father's name and the surname afterwards obligatory.[24]

In any case, striving to change only the name seems pointless as all Bulgarian identity documents – identity card, driving licence, passport etc. – shall contain "gender" as compulsory personal data (Article 16 (1) of the Bulgarian Identity Documents Act). Therefore, having an identity card indicating female name and male gender or vice versa would not achieve the aim pursued, namely, full socialization of the individual concerned.

The Supreme Court of Cassation has held that "important circumstance" in the meaning of Article 19 of the Act is the popularity which a person has in society with a name, with which s/he identifies her/himself.[25] This ruling, however, does not regard transsexualism as giving rise to such an interest but applies, for example, to stage-names or maiden names.

[23] Judgment of the Stara Zagora District Court of 20/12/2007 in case 469/2007.

[24] Judgment of Pazardjik District Court of 15/06/2011 in case No. 343/2011; judgment of the Plovdiv District Court of 12/07/2011.

[25] Judgment № 19 of the Supreme Court of Cassation of 8/02/2012 in case № 486/2011.

One of the criteria applied by the Supreme Court of Cassation, in allowing requests for a name change, is whether the requested change is related with an intention to mislead the police, prosecution and other authorities. This view was confirmed by an interviewed prosecutor from the Sofia District Prosecution Office. In this respect, Bulgarian courts value as evidence certificate for previous convictions of the applicant and certificate for pending criminal proceedings.[26]

Gender change

Essential part of the trans/intersexuals' integration in society is the recognition of their psychological gender by court. The court proceedings have as a consequence an issuing of a new birth certificate, a change of the unique identification number and an issuing of new identity card/driving licence or other identification documents. The proceedings can be initiated by the interested person, with written request submitted to the court. The participation of a lawyer is not obligatory. The court can allow the applicant to use free legal aid and appoint him/her an *ex officio* lawyer. The court can allow free legal aid if the applicant does not have financial means to hire a lawyer, wishes to have such and it is in the interest of justice. In that case, the applicant must present evidence regarding his/her earnings, property, family situation, health condition, employment and other relevant circumstances.[27]

The legal ground for initiating such court proceedings is Article 73 of the Act. It shortly provides that:

"Change in the data concerning the persons' civil status in issued certificates for civil status shall be ordered in court or administrative proceedings."

Article 76 (4) of the Act specifies that the name and gender can only be changed in court proceedings. Article 547 of the Civil Proceedings Code ("the CPC") provides that a person has a right to request the court to order correction of errors in his/her birth certificate.

It must be pointed out that the Act does not contain any criteria whatsoever as regards the necessary preconditions to allow such a change or the relevant evidence.

The competent courts that consider applications for gender change in the birth certificate are the courts of the lowest level – the district courts, upon the applicant's address. The authors of this research sent letters with request for copies of relevant judgments to 30 district courts in Bulgaria. 19 courts replied that no requests for gender rectification have been submitted for the last ten years.[28] 4 courts replied positively and sent a total of 13 judgments. These are courts located in administrative capitals of big municipalities in Bulgaria. In the following paragraphs, the case law of the district courts in the capital of the country and 4 other big towns in Bulgaria will be discussed.

In the early 2000, the Sofia District Court considered an application for gender rectification and declared it well-founded. More specifically, the Sofia District Court found that the applicant, born female, was diagnosed "transsexual" which, in view of her age, was irreversible. The court found that it was in her interest to change her "civil" and, afterwards, her "body" gender. The court relied on two medical expert reports, appointed within the proceedings – sexological one, according to which there was a complete disparity between

[26] Idib. Also judgment of the Sofia District Court of 14/12/2000 in case 4566/2000 and judgment of the Plovdiv District Court of 12/07/2011.

[27] Article 23 of the 2005 Legal Aid Act.

[28] Haskovo, Razgrad, Ihtiman, Veliko Tarnovo, Blagoevgrad, Svilengrad, Pernik, Vratza, Botevgrad, Vidin, Sandanski, Dobrich, Gotze Delchev, Pleven, Montana, Shumen, Yambol, Kyustendil and Sliven.

conscious and gender features, and psychological one, according to which the applicant had no psychological disease, she had "isolated gender identity disorder" and fully understood the consequences of the desired change. The court noted that the gender entered in the applicant's identity documents affected negatively her personality and, therefore, the change would represent "a ground for adequate social behavior and an opportunity for full development of the personality".

Other representative of the Sofia District Court, however, did not share this view. Interviewed judge from this court said that before several years he had a gender rectification case which he decided to the detriment of the applicant. The judge reasoned that the interests of other persons who might have love relations with the applicant should be protected. In his view, they could be deceived by the applicant's appearances and, thus, the public interest prevailed in this situation. However, the judge said that his opinion has changed afterwards and now he would allow such application. He thinks that, with or without gender rectification, the third persons can be deceived by one's appearances and, therefore, this is not a strong argument to be further supported.

In 2012, the Sofia District Court considered two cases for gender recognition. One was decided in favor of the applicant and the other one is pending. The cases were brought by transsexuals who were undergoing a hormone treatment, but have not undergone gender reassignment surgery. In both cases, the court summoned a representative of the prosecution Office and a representative of the municipality, as an interested person. The court also required an expert medical report and appointed a specialist in sexology. His task was to determine the "sexological condition" of the applicant, on the basis of the written evidence that he had presented – medical certificates for hormone treatment, genetic analysis of chromosomes, private psychiatric reports etc.[29] In his report, the expert stated that the applicant's physiological characteristics confirmed the transsexual diagnosis and noted that the applicant's self-identification and social role substantiated the application. Notably, the judge, who found the application well-founded, did not require from the applicant to present neither a witness testimony, nor a proof for the performing of future gender reassignment surgery. He accepted fully the medical opinion and the attorney's arguments that the only relevant criterion for the recognition of the new gender is the transsexual's asserted gender identity.

In 2004 the Supreme Court of Cassation in Sofia had the chance to consider appeal against refusal of lower courts to allow gender rectification. The Supreme Court did not join to the arguments of the lower courts that the applicant, born male, did not have female reproductive organs and glands and that the psychological factors were not decisive. The Supreme Court underlined that "the greatest metamorphosis for the person is the change of his social role in life". The Supreme Court held that the ability to give birth to a child was not a decisive factor, moreover, since many women do not have such ability. For these reasons, the Supreme Court allowed the gender rectification.[30]

[29] The aim of the medical report is, above all, to exclude any psychotic (insane) motives for the requested gender rectification. It would be an extremely rare case for a non-transsexual person to wish to change the sex assigned in his/her birth certificate. These are mainly persons in psychotic condition (afflicted with psychosis, mentally ill etc.). The presence of the respective gender features of the body, which are opposite to the existing psychological sex of the examined person, is something that must be written in the report, but its significance is only to clear whether the condition is intersexual or transsexual.

[30] See judgment of the Supreme Court of Cassation of 17/12/2004 in case No. 310/2004.

Relevant case law was found not only in Sofia, but also in other administrative capitals of big municipalities, namely, the cities of Pazardjik, Plovdiv, Stara Zagora and Varna. The courts' case law in these cities developed quickly during the last five years, in a direction favorable for the applicants. The courts made the significant step from emphasizing the "objective" changes in the applicant's body to valuating predominantly his/her "subjective" perceptions.

Five years ago, the case law revealed a conservative and averting approach of the judges, faced with requests for gender rectification. In 2007 the Stara Zagora District Court even found that "*[t]he effective legislation does not contain a provision, regulating the procedure for a gender rectification*" and, thus, declared the claim inadmissible, ruling only on the request for a name change.[31]

In judgments of 2007 the Varna District Court and the Plovdiv District Court held that gender rectification could not be allowed if the applicants have not removed their biological genitals. The courts even noted that the information in the birth certificate should reflect the physiological sex.[32] The Varna District Court openly stated that "*the applicant's subjective thoughts about her gender belonging and self-determination as a person of male gender are irrelevant. It could matter for the respective medical authorities as necessary requirement for surgical intervention for gender reassignment*." This judgment of the Varna District Court was repealed by the higher court as ill-founded and afterwards the case law of the Varna District Court changed.

In 2009 the Varna District Court allowed an application for gender rectification, holding that the male gender identity of the applicant /born woman/ is the fact that should be prioritized.[33] In another judgment, of 2010, the Varna District Court held that the factor "biological sex" could not be given superiority and that the applicant's feeling of belonging to the male sex justifies the gender rectification in her birth certificate, which would complete her socialization as a man.[34] These two judgments were based on psychological report, appointed by the court, witness testimony regarding the gender role adopted in life and a hospital certificate confirming engagement to perform gender reassignment surgery after a legal recognition by court of the applicants' new gender.

And, finally, in 2011 the Pazardjik and Plovdiv District Courts considered two cases initiated by post-operative transsexuals. The Pazardjik District Court held that "*the combination of physical and psychological features of the applicant [born man], including self-determination, definitely predominate the ones that characterize him as a person of female gender*."[35] The Plovdiv District Court held that "*with the complete removal of the genitals it can be accepted that the case does not concern a person of female gender anymore. There is also a change in her psychological sex, whereby she accepts herself as a person of male gender*."[36] In both cases the courts allowed the gender rectification and the name change.

As evident from the examples above, as a consequence of the lack of legislative standard the case law is quite diverse and there are no consistent criteria universally applied

[31] Decision of the Stara Zagora District Court of 02/05/2007 in case 469/2007.
[32] Judgment of the Varna District Court of 11/06/2007 in case No. 1953/2007 and judgment of the Plovdiv District Court of 2007 confirmed by judgment of the Plovdiv Regional Court in 2007.
[33] Judgment of the Varna District Court of 27/05/2009 in case No. 9012/2007.
[34] Judgment of the Varna District Court of 06/04/2010 in case No. 10044/2009.
[35] Judgment of Pazardjik District Court of 15/06/2011 in case No. 343/2011.
[36] Judgment of the Plovdiv District Court of 12/07/2011.

by the Bulgarian courts. Above all, there is not a unanimous answer to the question what is the significance of a gender reassignment surgery in the gender rectification proceedings. The case law of the district courts changes throughout the years and differs significantly in small and big towns. In small towns there is hardly any case law. As of interviews with persons who have been through the procedure for gender rectification, the judges in small towns find the issue of gender reassignment too complicated and refuse the application without going in depth of the issues raised. Instead of appealing the refusals of the lower small town courts, the transsexuals prefer to register at another permanent address and to submit a fresh application before another court, in bigger town.

Enforcement of the judgment

In delivering its judgment, the judge orders the court's registry to sent a copy of the judgment to the municipality and orders the passport officials to issue a new birth certificate and to change the unique identification number.

Important legal amendment was adopted in 2011 with respect to the enforcement of the judgments for gender change. Until 2011, after the delivery of the judgment, the passport officials ought to fill in the new personal data in special place in the existing birth certificate provided for this purpose – column "Notes". No issuing of a fresh birth certificate was provided. Therefore, the information about the previous gender could not be hidden from third persons who might require from the transsexual to present his/her birth certificate.

This uncomfortable situation was eliminated with recent legislative amendments. On 20 May 2011 a new article of the Act entered into force (Article 81a). According to this article, the court shall order the passport officials to issue a new birth certificate and to annul the first certificate that was issued („се обезсилва"). They shall write in column "Notes" that a new birth certificate was issued, the number of the court case, the date on which the judgment became final and the name of the court.

After the officials issue the new birth certificate, they must also change the unique identification code. Under national law, each person has a unique identification number, which consists of ten numbers. The ninth number indicates the person's gender – an even number for a man and an odd number for a woman.[37]

Under the law, the unique identification number shall be changed in cases when there is a contradiction between the person's gender, entered in the birth certificate, and the gender contained in the unique identification number. The passport officials shall initiate a case file, containing a "Request for unique identification number" and a copy of the new birth certificate. The passport officials shall destroy the case file after a period of 5 years.[38]

Criminal responsibility for breach of reproductive ability

The largely accepted international position of the experts in sexual medicine is that the psychological sex (the way one lives with her/himself, identifies and defines his/her gender-role belonging) has a priority significance before the physical features of belonging to one of the two genders. In that respect, the requirement in some of the older judgments for a hospital certificate for planned or even already performed gender reassignment surgery, prior to the

[37] Article 104 of the 21 May 2012 Regulation on the Functioning of the System for Civil Registration, (НАРЕДБА № РД-02-20-9 от 21.05.2012 г. за за функциониране на Единната система за гражданска регистрация, Издадена от министъра на регионалното развитие и благоустройството).
[38] Ibid. Article 114.

legal recognition of the gender change, does not comply with these modern standards. Moreover, such requirement is in collision with criminal legislation. Many doctors refuse to take the risk of performing a gender reassignment operation because, according to Article 128 of the Criminal Code, it represents a breach of the reproductive functions and, thus, constitutes the crime "heavy bodily injury" punishable with up to ten years imprisonment. Medical treatment that can lead to a loss of reproductive ability as a result of radical hormone intervention is interpreted in the same way. The opening of the criminal proceedings does not depend on the complaint of the person treated but on the initiative of the prosecution office. It is true, on the other hand, that in practice no doctor has been convicted under Article 128 of the Criminal Code for performing gender reassignment operation.

It is disturbing that some Bulgarian courts do not take into account the criminal responsibility of the doctors and rule that their requirement for court judgment prior surgery does not have any legal basis. For example, in a judgment of 2007 the Plovdiv Regional Court, while refusing a change in the birth certificate, held: "*As to the medical interventions for gender reassignment, no legal ban exists for performing such interventions*."

Criminal responsibility does not arise if a court has previously declared the new gender of the person. To remove female reproductive tissues from a person who is a man, according to his birth certificate, and vice versa, is not a crime.

There is another important reason for which making the surgery a prerequisite for gender rectification is unrealistic. According to the interviewed sexologist, most of the transsexual persons in Bulgaria, even after their new gender has been recognized by court, do not undergo the surgery, but undertake mainly cosmetic interventions and possibly a supporting hormone treatment. The surgical interventions, consisting of removal of reproductive tissues, creation of neo-vagina and neo-phallus, in Bulgaria are extremely rare, because their price is extremely high and only recently and only in some of the most elite clinics such surgeries were performed with satisfying results.

As evident from the above, the faith of the trans/intersexuals represents a no way out circle – if they want a change in the birth certificate they must undergo the surgery, but at the same time no doctor will perform the surgery without a court judgment. In the international practice, this absurd is eliminated. It is commonly accepted that the first step in providing professional help to persons with such diagnosis is the gender rectification of the birth certificate (the change in the "civil" sex). Thereafter, the trans/intersexual person enjoys the right to a free choice of therapeutic intervention, which may or may not include gender reassignment surgery. Each trans/intersexual has the right to decide freely whether to undergo the surgery and which hormone medicines to take.

Intersex conditions

As mentioned above, Bulgarian law (the Civil Proceedings Code) provides for correction of errors in birth certificates. According to a judgment of the Plovdiv Regional Court, an error in the birth certificate "*in practice could be made only in case of intersexual conditions*".[39] The court noted that, as a difference from the transsexual conditions, which were disorder of the sexual identity, the intersexual conditions were physiological disorders. In that case, the initial indication of the gender in the birth certificate was wrong and should be corrected. However, as of the case law collected for the purposes of the present research, in Bulgaria there has never been submitted an application for gender rectification on behalf of

[39] Judgment of the Plovdiv Regional Court of 2007.

intersexual person. It cannot be asserted that the reasoning of the Plovdiv Regional Court will be confirmed in practice and that the court, faced with such application, would not require a surgery for assignment of one of the two genders. It is also hard to predict what would be the court's reaction if such assignment is no longer possible because the person had undergone irreversible medical interventions in childhood despite his/her non-consent.

As stated at the beginning of the research, intersex persons are born with intermediate combination of physical features of the two genders. In some cases, the intersex condition is not obvious and the diagnosis can be discovered years after birth. In these cases, the persons have already formed their gender identity and for that reason no medical interventions are recommendable.

In reality, that is not what the doctors advise the parents. The personal experience of Mr. P. N. reveals a sad medical practice. He was born female but had a XY-male chromosomal presentations and androgen insensitivity syndrome. He always felt to be different - more a boy than girl but not really a boy either. In the 80's, when he was a teenager, the doctors advised his parents to make him a "real woman" and he went through several surgeries, whereby his male tissues were removed. The surgeries were extremely traumatic, because P. was already conscious of his gender dysphoria and begged the doctors to make him a boy to the extent possible. The doctors did the opposite with the consent of the parents, who were not informed about the possible negative effects which the surgeries could have with respect to P.'s personality. After reaching full age, his identity as a man and his male psychological sex strengthened and he suffered a severe trauma.

30 years later, the medical practice in Bulgarian is still the same. According to an interviewed specialist in intersexual conditions, such conditions represent an urgent medical problem and must be treated with surgery for removal of the male genitals, which are non-functioning. In his opinion, the surgery must be done in the first weeks or months after the birth of the baby, until the first year, because if the surgery is done on a timely manner, gender dysphoria would not arise.

6. Recommendations

It can be concluded that the task of the domestic courts in gender rectification cases is to lay down the necessary lawful basis for a positive change in the life of trans/intersex persons by changing the initially registered gender with the one desired by the respective person. This change has no negative consequences for other persons, does not threaten anyone's interests and in no way represents a public danger. Therefore, it is needless to obstruct, delay and complicate. In line with this general direction, the following recommendations can be made:

- **Towards the legislator**

We advise a **legal standard** for recognition of gender change that focuses on the trans/intersexual's asserted gender identity, not on his/her biological or legal sex.

> a/ Gender rectification shall be allowed by courts on the grounds of <u>diagnosis</u> such as "gender identity disorder", provided by certified sexologists or psychologists, and evidence that psychological counseling has been provided to the applicant for a certain time period preceding the case; that the condition is

irreversible and that the wish to have the gender changed is conscious and constant.

b/ The diagnosis, which gives rise to a gender change, shall be formulated with broad term whereby the possibility of excluding forms of gender dysphoria is eliminated. (Какъв точно е смисълът на тази препоръка? За мен е малко неясен)

c/ The "intersexual condition" shall be recognized as a ground for gender change.

d/ The gender reassignment surgery and the hormonal therapy shall be excluded as relevant factors in the court's assessment whether to recognize the asserted new gender.

This standard shall be implemented in the **Civil Registration Act**. The chapter "Assignments, Complements and Rectifications in Civil Status Certificates" shall be added new articles providing for a detailed description of the proceedings for gender rectification. Alternatively, a special Act on the Gender Rectification in Birth Certificates should be adopted, applying the same legal standard.

- **Towards the courts**
  The recent case law of domestic courts is favorable and positive and should be established as a constant one. All evidence concerning possible gender reassignment surgery in future the courts shall declare irrelevant.

- **Towards the passport officials**
  Passport officials should be instructed to be respectful to applicants with trans/intersex conditions and not to ask unnecessary questions, when they enforce court judgments for gender rectification.[40]

- **Towards the Ministry of Health**
  a/ The Ministry of Health shall adopt special regulation on medical standard for treatment of intersex conditions. It shall provide for refraining from bad-timed and late surgical interventions as much as possible (in case that the intersexual condition does not set a risk of health complications). The medical treatment of children with intersexual condition shall be based on informed consent of the parents, who ought to be warned about the purposes and the nature of the treatment, the rational alternatives, the expected results, the possible risks, related with the advised method of treatment, the possible negative effects, that the interventions might cause on a later stage on the child's psychic, the probability of favorable development and health risk in case of refusal of treatment etc.

  b/ The Ministry of Health shall establish consultation centers for free information of trans and intersexual persons regarding the procedure for gender change: what the first

[40] This recommendation is in line with 2011 changes of the U.S. State Department to its policies on identification documents that affect members of the trans/intersex community. http://www.state.gov/documents/organization/143160.pdf

steps are; contacts with medical specialists; clarifying the legal standard followed by the courts in allowing a request for gender rectification etc.

c/ The Ministry of Health should establish a medical pathway, covered by the National Health Fund, for free psychological counseling of people with intersex or transsexual condition. In addition, the hormonal therapy, which trans and intersex people need to undertake upon gender reassignment, should also be covered by their health insurances.

d/ The Ministry of Health shall publish on its official internet site information in that respect.