

NATIONAL LITIGATION STRATEGY ON GENDER REASSIGNMENT FOR TRANS/INTERSEX PEOPLE

Natasha Dobreva, Attorney-at-Law



bilitis

BULGARIAN LITIGATION STRATEGY ON GENDER REASSIGNMENT FOR TRANS/INTERSEX PEOPLE

by Natasha Dobрева, attorney

1. Introduction

This paper will present research on the legal gender recognition in Bulgaria and assess the laws and legal regulations that have relevance to gender reassignment, as well as an assessment of their application by the domestic courts. The research is based on analysis of the effective legislation and domestic case law¹. It is also based on interviews with individuals who have applied for the gender reassignment procedure, judges, prosecutors, medical experts and attorneys.

The present research results in two main conclusions. First, the case law concerning trans individuals evolves in a liberal direction, whereby the judges consider as a factor of prime significance the gender identity of the trans person and not the primary sex characteristics. There is no case law concerning intersex conditions, however, strategic case needs to be brought in that respect. Second, the legislation concerning the court proceedings for legal gender 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 sex reassignment surgery.

The importance of recognition of gender identity in accordance with self-determination 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 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, sterilization 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

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 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.

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 the authorities in the 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 trans individuals (LGR Procedure) and develop expeditious and transparent procedures for changing the name and legal gender of a trans person on birth certificates, civil registers, identity cards, passports, educational certificates and other similar documents. Further, they should abolish sterilization 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 trans person's preferred gender. The authorities should also remove the requirement of being unmarried, or divorced (for already married persons), as a necessary condition for the legal recognition of a trans 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).

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

2. Terms and Definitions

As the public discussion about the legal gender recognition in Bulgaria 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. Gender affirming therapy include, for example, feminization or masculinization of the body through hormone 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*.

Trans (*transgender/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 10th revision of the International Statistical Classification of Diseases 10th revision 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 trans 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 or **Gender affirming therapy** is an umbrella term for all medical treatments related to sex reassignment of both trans and intersex 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 (Gender affirming therapy) 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

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

3. Bulgarian legal system

In Bulgaria there is no special legislation about gender change in birth certificates of trans/intersex persons. The general Civil Registration Act is applicable, as it contains a legal ground to initiate such proceedings. However, it does not contain any criteria whatsoever for allowing or refusing an application for legal gender recognition. 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 body injury". Intersex 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 where a trans woman, 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 gender.⁵ The claim was unsuccessful, because the court, although accepting that her transsexual diagnosis could qualify as "important circumstance", found that no recognition of her gender had been previously allowed. The constant domestic case law is that the gender marker 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.⁶

In any case, striving to change only the name seems pointless as all Bulgarian identity documents – identity card, driving license, 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

⁵ Judgment of the Stara Zagora District Court of 20/12/2007 in case 469/2007.

⁶ Judgment of Pazardjik District Court of 15/06/2011 in case No. 343/2011; judgment of the Plovdiv District Court of 12/07/2011.

identifies her/himself.⁷ This ruling, however, does not imply *trans condition* but applies, for example, to stage-names or maiden names.

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.⁸

Legal Gender Recognition

Essential part of the integration of trans and intersex persons in society is the recognition of their gender by court. The court proceedings have as consequences the issuing of a new birth certificate, a change of the unique identification number and the issuing of new identity card, driving license and passport. 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.⁹

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/sex 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 changing the gender marker and gender related data 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.¹⁰ 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 legal gender recognition 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

⁷ Judgment № 19 of the Supreme Court of Cassation of 8/02/2012 in case № 486/2011.

⁸ 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.

⁹ Article 23 of the 2005 Legal Aid Act.

¹⁰ Haskovo, Razgrad, Ihtiman, Veliko Tarnovo, Blagoevgrad, Svilengrad, Pernik, Vratza, Botevgrad, Vidin, Sandanski, Dobrich, Gotze Delchev, Pleven, Montana, Shumen, Yambol, Kyustendil and Sliven.

court found that it was in her interest to change her “civil” and, afterwards, her primary sex traits. The court relied on two medical expert reports, appointed within the proceedings – sexological one, according to which there was a complete disparity between 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 recognition case where he ruled to the detriment of the applicant. The judge reasoned that the interests of other persons who might have intimate 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 recognition, 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 legal gender recognition. One was decided in favor of the applicant and the other one is pending. The cases were brought by trans claimants who were undergoing a hormone treatment, but have not undergone gender reassignment surgery. In both cases, the court summoned the Sofia District Prosecution Office and the Sofia Municipality, as interested parties. The court also required an expert medical opinion 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.¹¹ 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 planned sex reassignment surgery in future. 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 person’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 recognition. The Supreme Court did not share the reasons 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 their 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 recognition.¹²

Relevant case law was found not only in Sofia, but also in other big regional cities, such as Pazardjik, Plovdiv, Stara Zagora and Varna. The courts’ case law in these cities developed quickly

¹¹ The aim of the medical report is, above all, to exclude any psychotic motives for the requested gender recognition. It would be an extremely rare case for a non-trans 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 intersex or trans.

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

during the last five years, in a direction favorable for the trans 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 recognition. 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 recognition” and, thus, declared the claim inadmissible, ruling only on the request for a name change.¹³

In judgments of 2007 the Varna District Court and the Plovdiv District Court held that gender recognition could not be allowed if the applicants have not undergone castration. The courts even noted that the information in the birth certificate should reflect the physiological sex.¹⁴ 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 sex 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 recognition, holding that the male gender identity of the applicant /born female/ is the fact that should be prioritized.¹⁵ 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 gender justifies the gender change in *her* birth certificate, which would complete *her* socialization as a man.¹⁶ These two judgments were based on psychological expert examination, appointed by the court, witness testimony regarding the gender role adopted in life and a hospital certificate confirming engagement to perform sex 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 trans persons. The Pazardjik District Court held that “*the combination of physical and psychological features of the applicant [born male], including self-determination, definitely predominate the ones that characterize him as a female.*”¹⁷ 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 as female anymore. There is also a change in **her** psychological sex characteristics, whereby **she** accepts herself as a male.*”¹⁸ In both cases the courts allowed the gender and the name changes.

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 by the Bulgarian courts. Above all, there is not a unanimous answer to the question what the significance of a sex reassignment surgery in the gender recognition proceedings is. 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 legal gender recognition, the judges in small towns find the issue of gender recognition too complicated

¹³ Decision of the Stara Zagora District Court of 02/05/2007 in case 469/2007.

¹⁴ 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.

¹⁵ Judgment of the Varna District Court of 27/05/2009 in case No. 9012/2007.

¹⁶ Judgment of the Varna District Court of 06/04/2010 in case No. 10044/2009.

¹⁷ Judgment of Pazardjik District Court of 15/06/2011 in case No. 343/2011.

¹⁸ Judgment of the Plovdiv District Court of 12/07/2011.

and refuse the application without going in depth of the issues raised. Instead of appealing the refusals of the first-level courts, the claimants prefer to change their address registration and submit a fresh application before the competent court in another (bigger) town.

Enforcement of the judgment

When delivering the judgment, the judge instructs the court's registry to send a copy of it to the municipality, ordering them to issue a new birth certificate and change the unique identification number of the person.

An 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 “dead” gender could not be hidden from third persons who might require from the trans person 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 the 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 person's unique identification number. 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 male and an odd number for a female.¹⁹

Under the law, the unique identification number shall be changed in cases when there is a contradiction between the person's gender marker, 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.²⁰

Criminal responsibility for causing reproductive inability

The largely accepted international position of the medical experts is that the gender (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 sexes. In that respect, the requirement in some of the older judgments for a hospital certificate for planned or even already performed sex reassignment surgery, prior to the legal gender recognition, 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 sex reassignment surgery because, according to Article 128 of the Criminal Code, it harms 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

¹⁹ 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 функциониране на Единната система за гражданска регистрация, Издадена от министъра на регионалното развитие и благоустройството).

²⁰ Ibid. Article 114.

loss of reproductive ability because 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 sex reassignment surgery.

It is disturbing that some Bulgarian courts do not consider 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 sex reassignment, no legal ban exists for performing such interventions.”*

Criminal responsibility does not arise if a court has previously recognized the new gender of the person. To remove female reproductive organs 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 recognition is unrealistic. According to the interviewed sexologist, most of the trans 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. Complex sex reassignment surgeries in Bulgaria are extremely rare, because their price is very high and only recently, in some of the most elite clinics such surgeries were performed with satisfying results.

As evident from the above, the fate of the trans/intersex people is stuck in a never-ending cycle – if they want a change in their documents they must undergo medical transition to some extent, but at the same time no endocrinologist will assign them hormonal therapy 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 change in the birth certificate (the change of the legal gender). Thereafter, the trans/intersex person enjoys the right to a free choice of therapeutic intervention, which may or may not include sex reassignment surgery and/or gender affirming therapy. Each trans/intersex person 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 intersex conditions”*.²¹ The court noted that, as a *„difference from the transsexual conditions“*, which were a disorder of the gender identity, the intersex conditions were physiological disorders. In that case, the initial indication of the sex 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 recognition on behalf of intersex 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 sexes. 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 resistance.

²¹ Judgment of the Plovdiv Regional Court of 2007.

As stated at the beginning of the research, intersex persons are born with intermediate combination of physical features of the two sexes. 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 chromosomes and medical diagnosis 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 reproductive organs and all male traits 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 gender strengthened and he suffered a severe trauma.

30 years later, the medical practice in Bulgaria is still the same. According to an interviewed specialist in intersex 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.

4. Recommendations

It can be concluded that the task of the domestic courts in Legal gender recognition 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 this change. In line with this general direction, the following recommendations can be made:

Towards the legislator

I advise a **legal standard** for recognition of gender change that focuses on the trans/intersex persons' asserted gender identity, not on his/her biological traits.

- a. Gender recognition shall be allowed by courts on the grounds of expert statements, 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 intersex conditions shall be recognized as a ground for changing of the legal gender.
- c. 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.
- d. The secondary legislation should contain standards for the professional competences of the experts (sexologists, psychologists, psychiatrists) providing a statement on the case, which are in line with the standards for care, developed by the World Professional Association for Transgender Health²².
- e. The law should include a written procedure for implementing the court decisions for legal gender recognition. This procedure involves sending the court decision by the court administration to the municipality with specific directions to the relevant department to change the gender, name and identity number of the individual on her/his legal documents.

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 recognition. Alternatively, a special Act on the Gender Recognition 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 the trans and intersex applicants and to avoid unnecessary questions, when they enforce court judgments for legal gender

²² http://www.wpath.org/publications_standards.cfm

recognition.²³ These instructions should also focus on cases, in which the person has started gender affirming therapy - hormonal replacement therapy and changed his/her appearance, but not yet changed his/her legal gender.

- **Towards the Ministry of Health**

- a. The Ministry of Health shall adopt special regulation on medical standard for treatment of intersex conditions. This regulation should put an end to mutilating and 'normalising' practices such as genital surgeries, psychological and other medical treatments. It shall provide for refraining from any surgical interventions as much as possible (in case that the intersex condition does not set a risk of health complications). The personal, free, prior, and fully informed consent of the intersex individual should be a compulsory requirement in all medical practices and protocols. In view of ensuring the bodily integrity and health of the intersex child, psycho-social support and non-pathologizing peer support should be provided to parents and/or care providers and the child's immediate family instead of surgical or other medical treatment unless such interventions are life-saving. When surgical intervention is necessary as a life-saving measure, it shall be based on informed consent of the parents, who ought to be informed 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.
- b. The Ministry of Health shall establish consultation centers for free information of trans and intersex persons regarding the procedure for legal gender change: what the first 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 who wish to undertake gender transition. In addition, the hormonal therapy, which trans and intersex people need 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.

November, 2012

²³ 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>