



edited volumes

**CONTEMPORARY
ISSUES AND
PERSPECTIVES
ON GENDER
RESEARCH**

EDITORS

Lilijana Čičkarić
Zorica Mršević

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CONTEMPORARY ISSUES
AND PERSPECTIVES
ON GENDER RESEARCH

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Life in Legal Limbo – Trans* Persons in Serbia

Abstract

In the 21st century, the rights of trans* persons to personal development and physical and moral security, fully enjoyed by other members of the society, cannot be observed as controversial or something that requires a certain amount of time in order to clearly observe their related issues. New policies specifically formed for that purpose throughout the world primarily rely on constitutional provisions regarding the dignity of the human personality and the prohibition of discrimination, on the decisions of the European Court of Human Rights (ECHR) and the authentic experiences of trans* persons. In the Republic of Serbia, the 21st century brought changes that can be interpreted as significant for the position of trans* persons. Thereby, the Health Insurance Act provides insured persons at least 65% of the health service price from the compulsory health insurance fund for medically induced sex reassignment; the Ministry of Health of the Republic of Serbia formed a Commission for Transgender Conditions; the Public Registry Act introduced an option to change sex in the birth register book, and a work group of the Ministry of State Administration and Local Self-Government and the Ministry of Health of the Republic of Serbia passed a Rulebook on the manner of issuing and the form of the certificate issued by a competent healthcare institution concerning sex reassignment. This paper analyses the significance that these legal novelties hold for the very position of the trans* community in Serbia, and whether and to what extent they actually contributed to the improvement of their position in everyday life. *Keywords:* trans* persons, discrimination, sex change in birth register book, public registry.

Introductory notes

■ In the past 30 years, more and more countries have shown a tendency to offer full legal recognition to trans* persons.¹ Significant advancements in terms of their status have been largely achieved through European Courts' jurisprudence. Therefore, for example, the question of the status of transgender persons has been placed before the European Court of Human Rights several times since 1979, and until 2002 the Court found that the issue fell within the jurisdiction of each country individually (Simić, 2012: 313). Then, in 2002, the Grand Chamber of the European Court of Human Rights changed the direction of decision-making in terms of legal recognition of transgender persons' new sex in a precedent verdict in *Goodwin vs. The United Kingdom*, when it was unanimously concluded that Art. 8 (right to respect of private and family life) and Art. 12 (right to marriage) had been violated in the case (*Christine Goodwin v. The United Kingdom*, ECHR, App. No. 28957/95 from 11.07.2002). This decision was passed based on the growing European and international consensus regarding the legal recognition of transgender persons' new sex. Such a trend continues to date. Namely, at its 72nd session in end-May 2019, the World Health Organization voted out the 11th version of the International Classification of Diseases (ICD-11), removing transgender-related categories from the Chapter on Mental and Behavioural Disorders, which indicates that trans* identities have been formally depsychopathologized (World Health Assembly Update, New release, 2019).² New transgender-related categories have been added to Chapter 17 on Conditions Related to Sexual Health, which is one of the five new chapters in ICD-11. New transgender-related categories are: Gender Incongruence in Adolescence and Adulthood; and Gender Incongruence in Childhood (*Joint Statement on ICD-11 process for*

¹ In March 2010, 47 member countries of the Council of Europe agreed to take an array of measures to fight discrimination based on sexual orientation and gender identity. These measures have been listed in a Council of Europe Recommendation, which represents the first comprehensive intergovernmental agreement on the rights of LGBT persons.

² World Health Assembly Update, 25 May 2019, New release available here: <https://www.who.int/news-room/detail/25-05-2019-world-health-assembly-update> , (30/05/2019.)

trans & gender diverse people, 2019).³ Before ICD-11 formally enters into force, there will be a period of implementation until Jan. 1, 2022, when the new classification of diseases will officially come into effect, which actually means the United Nations member countries will be responsible for the implementation of the new version at the national level.⁴ *Such a solution was passed by the World Health Organization at the moment when the society, medicine and law increasingly acknowledge that gender is a socially-developed category, and that it is not necessarily fixed and stable.*

During that time, in Serbia, out of a very heterogeneous group of trans* identities, the healthcare system acknowledges only transsexuality as grounds for the recognition of change of legal status. In the ICD-10 system for the classification of mental and behavioural disorders used in Serbia, code F64 contains a group of gender identity disorders, and the F64.0 diagnose refers to transsexualism, i.e. “a person’s wish to live and be accepted as a person of the opposite sex, which is usually accompanied by a sense of discomfort and inadequacy in relation to one’s own anatomical sex, and a desire to undergo a hormonal treatment and surgery in order to bring the body as close as possible to the preferred sex” (International Statistical Classification of Diseases and Related Health Problems, Version 10, 2013:139, 7, 8).⁵ Such a connection of trans* identity to mental disorders frequently leads to strong stigmatization and denial of numerous civil rights to these persons (inability to get employment;

³ See the entire info *Joint Statement on ICD-11 process for trans & gender diverse people* on the “Gate” website: <https://transactivists.org/icd-11-trans-process/> (30/05/2019)

⁴ ICD -11 was released on June 18, 2018. See the ICD-11: The 11th Revision of the International Classification of Diseases, available here: <https://ec.europa.eu/cefdigital/wiki/display/EHSEMANTIC/ICD-11%3A+The+11th+Revision+of+the+International+Classification+of+Diseases> (30/05/2019.)

⁵ Classification of diseases represents a system of categories awarded to certain diseases according to defined criteria. The 10th revision of the International Statistical Classification of Diseases and Related Health Problems, was released in 1992 and has been in use to this day. ICD-10 now offers five diagnoses for Gender Identity Disorders (F64): Transsexualism (F64.0); Dual-Role Transvestism (F64.1); Gender Identity Disorder in Childhood (F64.2); Other Gender Identity Disorders (F64.8); Gender Identity Disorder, Unspecified (F64.9).

denial of rights to plan a family and adopt children; narrowing the range of the right to access to healthcare, etc.).

That is precisely why the new classification of diseases for trans* persons in Serbia represents hope for a major change affirmed by the World Health Organization itself through its decision that being a trans* or gender-different person does not mean the person suffers from a mental disorder. That is why in light of this decision by the World Health Organization it is important to point to the status of this specific group of persons who do not fit into any of the two existing binary categories of gender and sex – what is the legal position of trans* persons in Serbia? When referring to trans* persons in this paper (trans with asterisk), that implies a roof term that covers all the persons with a difference between sex at birth and their own perception of gender identity, and it includes transsexual, transgender, gender-queer and gender-fluid persons, transvestites/cross-dressers, bigender and agender persons, etc.

The Notion of Trans* Persons

Who are trans persons?* Unlike gay men, lesbians and bisexuals, whose sexual orientation differs from heterosexual, the keywords for trans* persons are gender identity and gender expression. Trans* persons are characterized by a disharmony between the intrinsic feeling of belonging to a certain gender identity, and the biological sex at birth and the stereotypical gender role expected from that sex. All the subgroups that fall into the category of trans* population (transsexual, transgender, gender-queer and gender-fluid persons, transvestites/cross-dressers, bigender and agender persons, etc.) are not treated equally by the justice system in Serbia; i.e. of all these trans* identities, Serbia legally recognizes only transsexual persons.

Transsexual persons are those whose gender identity differs from the sex at birth and who have an explicit need to bring their body as closely to the desired gender using hormonal therapy or surgery, i.e. to undergo “sex change”. Such a medical intervention, aiming at adapting the external sex characteristics to a person’s psychological gender “adaptation – sex reassignment” brings

significant legal consequences. After a transsexual person is done with the surgery, successfully adapting their body to the desired sex and gender, it is necessary to adjust the actual state with the legal state of matters, i.e. it is necessary to change all the personal data indicating their biological sex at birth and adjust them to the actual state of matters. Of course, this issue arises even before the surgeries, at the stage of hormonal therapy treatment. The body already undergoes intense changes at that stage, so the person finds themselves in some sort of a legal vacuum – their personal ID contains data referring to their primary sex, sex at birth, while their physical appearance significantly differs from it, which makes the person's daily functioning difficult, exposing them to various types of discrimination and violence.

A legal recognition of the desired gender identity in Serbia, i.e. the recognition of the change of a legal status, depends on a number of medical procedures, such as undergoing different medical examinations and processes (psychiatric, endocrinological, surgical, etc.), all of which begins when a person is diagnosed with a mental disorder, diagnose F64.0 which refers to transsexualism, and transgenderism (ICD-10, 2013:193).⁶ In Serbia, persons who fall under all the remaining subgroups from the range of trans* identities cannot have their legal status changed if they do not want to undergo medical treatments or if they only want to achieve partial modification of their body through hormonal therapy.⁷

⁶ In ICD-10, a system for the classification of mental and behavioural disorders used in Serbia, code F64 contains a group of sexual identity disorders, while diagnosis F64.0 refers to transsexualism.

⁷ Based on their approach to solving the issue of recognition of change of transsexual persons' legal status, the EU member states can be split into three groups. The first one contains countries in which a hormonal therapy or surgery is not required to obtain a legal recognition of a new sex: Malta, Denmark, Spain, Hungary, Finland, the UK and Portugal. The second group consists of the countries which require hormonal therapy and/or surgery to legally recognize a new sex: Belgium, Bulgaria, the Czech Republic, Estonia, France, Italy, the Netherlands, Austria and Poland. The third group involves member states which have no provisions regarding this matter. The Danish Parliament in 2014 adopted a law which enables a full recognition of gender identity to trans* persons without any psychological evaluation and/or psychiatric diagnosis. See how certain countries regulated the process of legal recognition of gender in: Agius (et.al). 2011. Human Rights and Gender Identity, Best Practice Catalogue, pp.19-22.

An interesting piece of information is that the Belgrade Team for Sexual Identity was informally founded in Belgrade in 1989, and that so-called sex-reassignment surgeries have been performed in Belgrade ever since (Vujović, 2009: 1018–1023). Today, 30 years later, Serbia has four centres specializing in this type of surgeries, it is globally known as one of the centres for education of professionals engaging in sex-reassignment surgeries, and numerous foreign citizens visit Serbia precisely for this kind of medical interventions. Unfortunately, 30-years' experience in work with transsexual persons did not lead to a significant improvement of their position or the position of persons from any of the subgroups from the range of trans* identities, both from the legal aspect or within the healthcare system. The position of trans* persons in Serbia is extremely bad, insufficiently legally regulated, and featuring numerous serious unresolved issues within the healthcare system.

Trans* Persons and Serbia's Healthcare System

In Serbia, the 2011 changes and amendments of the Law on Health Insurance introduced a legally recognized possibility that „when realising rights to healthcare based on compulsory health insurance, insured persons shall receive at least 65% of the price of a medical service from the compulsory health insurance fund for the purpose of sex reassignment for medical reasons“⁸. This way, Serbia has enabled the right to sex adjustment partly at the state's expense. Practice indicates that the state finances 65% while the remaining 35% is to be provided by the patient. Then, the *Republic Expert Commission for Treatment of Transgender Disorders in Serbia* was formed in March 2012. The very name of this Commission was not adequate because it accentuated the existence of a *disorder* in transgender persons despite the fact that gender disharmony is a

⁸ Art45, par. 4 of the Law on Health Insurance, “Official Gazette of the Republic of Serbia” no. 107/2005, 109/2005 – corr., 57/2011, 110/2012 – Constitutional Court decision, 119/2012, 99/2014, 123/2014, 126/2014 – Constitutional Court decision, 106/2015 and 10/2016 – st. law. See also Art. 131. par. 1, point 4, indent 3 of the new Law on Health Insurance, “Official Gazette of the Republic of Serbia” no.25/2019.

phenomenon of human diversity which must not be condemned as something pathological or negative. Contrary to the attitude of our Commission, more and more European and other countries completely depathologizes persons with trans* identity, enabling them to live freely and express their gender identities, including the selection of marking in personal documents without any medical prerequisites (Simić, 2012:303). In September 2017, after years of advocacy by Gayten LGBT NGO which deals with the rights of trans* persons in Serbia, and with the help of the Ombudsman, this commission changed its name to the *Republic Commission for Transgender Conditions* (in further text: Commission).⁹ The members of the Commission changed on that occasion and the minister ordered to pass a Rules of Procedure for the Commission.

The Rules of Procedure regulate the Commission's work and decision-making processes, setting the following tasks for it: (1) to establish professional-methodological and doctrine stands in relation to transgender disorders in order to harmonize expert suggestions and positions of reference healthcare institutions, expert i.e. professional associations, higher education institutions, as well as renowned experts in terms of the provision of healthcare in the domain of transgender disorders; (2) to monitor and analyse the work of medical institutions that provide healthcare in the domain of transgender disorders and to suggest measures to improve the work of medical institutions, i.e. healthcare professionals and associates; (3) to suggest good practice guidelines in the process of healthcare provision in the domain of transgender disorders; (4) to establish standards for healthcare provided from the compulsory health insurance funds for a sex reassignment procedure which is considered medically necessary; (5) to suggest professional training of healthcare professionals and associates to appropriate higher education institutions in the domain of transgender disorders; (6) to monitor the development of science in the domain of transgender disorders and cooperate with reference international institutions in this domain; and other affairs of significance for

⁹ For more info visit website Transserbia: <https://www.transserbia.org/vesti/1304-obelesen-dan-akcije-za-depatologizaciju-trans-osoba-republicka-komisija-za-transrodne-poremecaje-najzad-promenila-ime> (30/05/2019).

treatment of transgender disorders.¹⁰ As is notable in the quoted provisions of the Commission's Rules of Procedure, the term "transgender disorders" is still in use in the text instead of "transgender conditions", which can be considered as a serious amateurism in the Commission members' work.

One of the Commission's most important tasks is to provide an expert opinion on the fulfilment of conditions for the inclusion of an insured person into the process of sex reassignment for medical reasons. The Rulebook on the way and procedure of realizing rights from compulsory health insurance describes that procedure.¹¹ The Commission forms an expert opinion based on an insured person's medical documentation, and it is valid throughout six months since the decision date. The Commission determines whether the criteria and standards for sex reassignment for medical reasons have been met based on an insured person's medical documentation. If the Commission's decision is positive, the selected doctor sends the insured person to an appropriate tertiary medical institution for sex reassignment for medical reasons.¹² If an insured person is sent to a medical institution outside their "parent" healthcare system subsidiary for sex reassignment for medical reasons, a first-instance medical commission provides an opinion about sending the insured person to treatment outside their "parent" healthcare system subsidiary.

The conditions and documentation necessary for sex reassignment for medical reasons include:¹³

¹⁰ A decision on the formation of the Republic Expert Commission for Transgender Conditions of the Ministry of Health of the Republic of Serbia, no. 119-01-482/2017-02 dated Sept 1, 2017.

¹¹ Art. 42a. of the Rulebook on the way and procedure of realizing rights from compulsory health insurance, "Official Gazette of the Republic of Serbia", no. 10/2010, 18/2010 -corr., 46/2010, 52/2010 -corr., 80/2010, 60/2011 –a decision by the Constitutional Court, 1/2013 and 108/2017.

¹² Art 42b. of the Rulebook on the way and procedure of realizing rights from compulsory health insurance

¹³ A brochure of the Republic Fund for Health Insurance, Sex Reassignment for Medical Reasons, available here: <https://rfzo.rs/download/brosura/Brosura-promena%20pola.pdf> (30/05/ 2019). See also: The Status and Position of Trans Persons in the Republic of Serbia, Gayten LGBT, Belgrade, 2012, p.11. Available here: <https://transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaj%20i%20predlog%20pravnog%20reenja.pdf> (30/05/ 2019).

1. that a person over 18 submitted an application with personal information and a copy of their healthcare ID card;
2. two letters of recommendation, not older than a year, from psychiatrists who treat gender identity disorders;
3. a written confirmation, not older than a year, from an endocrinologist who treats this specific group of patients about conducting the recommended hormonal therapy, its results and check-ups;
4. if a confirmation from an endocrinologist does not contain this, laboratory analyses are required, as well as karyotype and hormonal analyses;¹⁴
5. HbsAg, HCV, HIV serological analysis;
6. for “woman to man” persons, a full gynaecological examination and mammography if necessary, not older than six months;
7. for “man to woman” persons, a full urological examination, not older than six months;
8. for persons who have already initiated a surgical transformation of genitals – insight into complete medical documentation for previous surgical treatments and additional previously mentioned analyses that are either missing or whose results are older than six months.

According to the Commission data, in the period between 1988 and 2006, 147 persons underwent the so-called sex-adjustment procedure,¹⁵ while certain sources state that over 300 persons from Serbia and former Yugoslavia underwent this process precisely in Belgrade.¹⁶

In agreement with the patients, the Commission should make a plan and program of surgical procedures, and approve

¹⁴ For a specific list of laboratory and hormonal analyses, see the same document, point 4.

¹⁵ Politika daily newspaper from May 13, 2013. Available here: <http://www.politika.rs/scc/clanak/257642/Nijedna-promena-pola-nije-uradena-o-trosku-drzave> (30/05/ 2019).

¹⁶ Politika daily newspaper from May 18, 2017. Available here: <http://www.politika.rs/scc/clanak/380905/U-Srbiji-se-niko-nije-pokajao-zbog-operacije-promene-pola> (30/05/ 2019).

surgical treatment for eight to ten patients from the waiting list every year. However, things are different in practice. Previous practice indicates that the Commission engages solely in providing expert opinion about the fulfilment of the conditions for the inclusion of a person into the process of sex adjustment for medical reasons. It is impossible to find any official reports of the Commission about its previous work, there is no dedicated page on the Ministry of Health website where the Commission's work could be followed, there are no published acts on which the Commission bases its decisions, the waiting lists are not published, there are no recommended good practice guidelines, there is no information about any professional training programs for healthcare professionals and associates in the domain of transgender conditions. In short, it can be concluded that the work of the Commission is neither transparent nor coordinated with Serbia's trans* community. Even after seven years of existence, the Commission fails to provide answers to extremely important questions concerning transsexual persons' access to healthcare. Some of them are: the fact that not the entire triad therapy is covered by the regular health insurance; the question what triad therapy includes (endocrinological treatment, voice training, permanent epilation and similar procedures that are often an essential part of the adjustment process for trans* persons) and which part of it is covered by health insurance; the question of compulsory sterilization; the beginning of a therapy for underage transsexual persons; the issue of lack of information, attitudes and treatment of trans* persons by healthcare professionals; the inability to get a second opinion when it comes to hormonal therapy, extremely expensive consultations with endocrinologists in private practice and the inability to reach them during their regular working hours in state-owned medical institutions (for example, only one endocrinologist in Serbia works with transsexual persons and only once a week), very frequently unethical behaviour of certain doctors, especially endocrinologists; constant shortages of hormones used by trans women, which are covered by health insurance, etc.

Another extremely important aspect is present in the discourse of Serbian medical experts for transgender conditions. Despite specialized centres and decades of practice in developing and

perfecting these extremely complicated medical treatments of transsexual persons, domestic medical expert suggest and practice surgical anatomic correction as the only option for an individual who exceeds the dichotomous categories of sex and gender, turning a blind eye to the problems of those trans* persons who do not seek surgical sex reassignment and who would like to be socially accepted and culturally categorized precisely in their permanent intermediary status. In addition to undoubtedly important, often fascinating insights and results of modern medicine, parallel to them, medical discourse on transsexuality, intersexuality and sexuality in general often hides layers of unquestionable and self-understanding assumptions, as well as cultural-historical stereotypes masked as scientific “principles” (Šarčević, 2015:21). However, with all the flaws of the existing system of access to healthcare, it is evident that the Republic of Serbia has provided a coverage of a part of necessary costs for one part of the medical treatment for transsexual citizens from the health insurance fund. That, however, is not enough. The process of recognition transsexual persons’ legal subjectivity ends only after new personal ID documents are issued.

Importance of Change of Documents

Relevant international documents require establishing fast, transparent and clear procedures for legal recognition of gender identity.¹⁷ The lack of clear procedures in this domain in Serbia places trans* persons into a legal and life vacuum, directly jeopardizing their socio-economic stability. Due to a disharmony between visible sex markings of a transsexual person who has entered the process

¹⁷ Out of international documents focusing on gender identity and trans* persons, the most important in the author’s opinion are: the Yogyakarta principles, the UN Declaration on Sexual Orientation and Gender Identity, recommendations of the Council of Europe Commissioner for Human Rights, and recommendations of the Council of Europe Ministerial Committee. The Yogyakarta principles plus 10 (YP+10) include nine new principles and 112 additional obligations for the states, in terms of development in the international human rights law and changes in the society in relation to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC). For more information visit: [http://www.yogyakartaprinciples.org/principles-en/yp10/\(30/05/2019\)](http://www.yogyakartaprinciples.org/principles-en/yp10/(30/05/2019)).

of transition and personal data in their documents, the possibility to realize rights in the domain of work and employment, education, social protection and healthcare, as well as various activities – being in a public area, socialization, travelling – is either seriously threatened or completely disabled until the end of a long, complicated and legally insufficiently regulated process of change of the information.

The existence of procedures and the possibility to change personal ID documents and other documents (personal ID, passports, driver's license, birth/marriage certificates, diplomas on acquired education, work booklets, etc.) hold vital importance for transsexual persons so they can live in line with the desired sex and gender. A decade-long fight to prescribe by law the procedures for change of sex marking in birth certificates finally became effective in June 20, 2018, when the Serbian Assembly passed the Law on Changes and Amendments of the Law on Civil Records.¹⁸

1. Law on Civil Records

By passing the Law on Changes and Amendments of the Law on Civil Records (in further text LCR), Serbia has enabled recording sex reassignment in birth registers. According to Art 45b of the amended LCR, recording a change requires a decision of municipal or city administration, i.e. the City Administration of Belgrade, which are in charge of running civil records and decision-making concerning civil records in first-instance administrative procedures.¹⁹ The Law prescribes passing a decision about registry based on a prescribed certificate from a competent medical institution, which needs to report sex reassignment to a responsible administration within 15 days from the date of sex reassignment procedure. The certificate is to be submitted electronically, and via post without delay. Art. 45b, par. 4 prescribes the content of the certificate and the necessary information it needs to include. The law establishes an obligation of the competent minister and the minister

¹⁸ Law on Changes and Amendments of the Law on Civil Records "Official Gazette of the Republic of Serbia", no. 47/2018 (in further text LCR)

¹⁹ Art. 6 of the LCR

of health affairs to agree and prescribe the manner of issuing and the form of sex reassignment certificate from a medical institution.

2. Rulebook on Way of Issuing and Form of Sex Reassignment Certificate From Competent Medical Institution

The Rulebook on the way of issuing and the form of sex reassignment certificate from a competent medical institution which entered into force only after Jan 1, 2019, prescribes the way of issuing and the form of sex reassignment certificate from a competent medical institution.²⁰ Sex reassignment certificate is issued by a medical institution after 1) conducting an at least 1-year-long hormonal therapy with indication and monitoring of a psychiatry specialist and an endocrinology specialist or 2) after a sex-reassignment surgery.²¹ A medical institution shall issue a sex reassignment certificate for a sex-reassignment procedure conducted abroad based on the medical documentation issued by the foreign medical institution which conducted the sex reassignment procedure and which possesses the evidence of the fact that sex reassignment has been conducted in one of the two previously stated ways envisaged by this Law.²² As per request of the person undergoing sex reassignment, the certificate shall be signed by a psychiatry specialist and an endocrinology specialist in cases when the certificate is issued after conducting an at least 1-year-long hormonal therapy with indication and monitoring of a psychiatry specialist and an endocrinology specialist. In case of a sex reassignment surgery, a surgery specialist signs a sex reassignment certificate.²³ Sex reassignment certificate is a public document based on which a municipal or city administration, i.e. the City Administration of Belgrade (as a competent body) passes a decision that will approve recording the sex reassignment information into the birth register of the person

²⁰ Art. 1 of the Rulebook on the way of issuing and the form of sex reassignment certificate from a competent medical institution, "Official Gazette of the Republic of Serbia", no.103 dated Dec.26, 2018

²¹ Art. 3 of the Rulebook

²² Art. 3, par. 2 of the Rulebook

²³ Art. 3, par. 3 of the Rulebook

who underwent sex reassignment.²⁴ Sex reassignment certificate registers: name and surname, date, place and municipality/city of birth, unique citizens identity number, parents' name and surname, the person who underwent sex reassignment, information about sex reassignment for the person, the name and surname of the doctor who issues the certificate and his/her signature. When recording information into a sex reassignment certificate, the identity of the person who underwent sex reassignment is identified based on personal ID or passport, while other information is collected from the birth register.²⁵

A competent medical institution then submits the sex reassignment certificate to a competent body in charge of the birth register of the person who underwent sex reassignment: after the sex reassignment procedure and at the request of the person who underwent sex reassignment, or in case of a sex reassignment surgery within 15 days since the date of conclusion of the sex reassignment procedure.²⁶ Since Jan. 1, 2020 it will be possible for medical institutions to submit sex reassignment certificates to competent bodies electronically.²⁷

a. Decision by Constitutional Court

It is important to point out a crucial decision by the Constitutional Court of Serbia which served as the only legal grounds for recording change of information regarding sex in birth registers prior to the aforementioned changes of the Law on Civil Records. Namely, the Constitutional Court of Serbia on March 8, 2012 passed a decision no. UŽ - 3238/2011 in which, among other things, it states that:

“Considering the lack of an explicit legal regulation that concerns recording change of information regarding sex in birth registers, the Constitutional Court finds that the provisions of the Law on Civil Records should be interpreted in such a way that recording changes of information regarding sex can be conducted by analogue

²⁴ Art. 2 of the Rulebook

²⁵ Art. 6, par. 2 of the Rulebook

²⁶ Art. 5 of the Rulebook

²⁷ Art. 4, par. 1 and Art. 8 of the Rulebook

implementation of the legal provisions that regulate recording birth and all other types of information, including sex, which is recorded in the register for a person born in a medical institution.

The Constitutional Court assessed in case of the Municipal Administration of the Z. municipality that, failing to engage in meritorious decision-making about the request of the submitter of the constitutional appeal and, should they possess relevant documentation from a competent medical institution, to record the change of information regarding sex into the birth register, it also failed to comply with its “positive obligation” which would harmonize the legal with the factual state and thus enable the submitter of the constitutional appeal to realize the rights guaranteed by the Constitution of the Republic of Serbia and the European Convention after undergoing a surgical sex reassignment procedure. This, according to the Constitutional Court, breached the right of the submitter of the constitutional appeal to dignity and free development of their personality as guaranteed by Art. 23 of the Constitution, and the right to personal life, guaranteed by Art. 8 of the European Convention, which led to the Constitutional Court’s acceptance of the constitutional appeal.” (Už - 3238/2011 dated March 8, 2012).

However, despite this decision, practice saw cases when after fulfilling medical requirements, transsexual persons were not able to record the change of their sex in birth registers. Arbitrary actions of competent municipal bodies are much more notable in inner Serbian towns and cities. For example, there is a case when a trans woman was sent to an expert witness for a genital examination, even though she had all the necessary medical documentation from a psychiatrist, an endocrinologist and a surgeon, which clearly states that she has undergone sex reassignment, which a surgeon explicitly stated in a patient discharge list (Pavlović, 2012:61). Then, there was also a case when a registrar refused to issue a sex reassignment certificate for several months, until a trans woman agreed to pay the service to a lawyer who is related to the registrar (Pavlović, 2012:62).

This is why it was necessary to regulate by law the entire process of changing the legal status of transsexual persons – and not only them, but persons of other trans* identities, which the Serbian legislator, unfortunately, failed to do in the changes of the Law on Civil Records.

Conclusions

Bearing all this in mind, a difficult job lies ahead for the Serbian legislator. Even though it seems like they are half way through, they are still at the beginning. The last changes to the Law on Civil Records made a major step in improving the position of trans* persons, however, it remains to be seen what the implementation of the adopted legal solutions will look like in practice. A major issue lies in the work of the Commission for Transgender Conditions, which right now presents a major obstacle to a more comprehensive legal regulation of the position of trans* persons because it firmly holds on to the pathologizing approach to trans* identities, which is largely outdated in European and global frameworks.

There is no doubt that the question of the legal position of trans* persons is extremely complex. Precisely that complexity puts an obligation on the responsible bodies in the Republic of Serbia to legally regulate the position of trans* persons by passing a law that would bring a comprehensive solution to the problems of trans* persons.²⁸ This law should cover persons of all trans* identities and guarantee their safety against discrimination, prompt, transparent and clear procedure for change of information in documents and realization of rights in the domain of healthcare, labour and employment, insurance and marital and family life. On the other hand, this does not imply that legal framework represents the source of all problems and solutions. What is necessary is a multi-disciplinary approach and active participation – professional and ethically responsible, of all parties, the trans* community, healthcare professionals and lawyers, so as to avoid the situation that, even when there are “good intentions” to solve a problem, we find (as usual) the absence of a systematic approach to the solution with appalling personal and professional amateurism. In line with the obligations Serbia took upon itself when it inked the Stabilization and Association Agreement and the priorities to acquire European partnership, the Serbian legislator must also bear in mind the

²⁸ In 2013, Gayten-LGBT designed the Model Law on Gender Identity, which regulates and protects the rights of trans* persons. For more information, visit: <https://www.transserbia.org/trans/transeksualnost/543-model-zakona-o-rodnom-identitetu> (May 30, 2019)

European Court of Justice case law, especially in matters of employment, equal wages and social security rights. Last, but not the least, it is crucial that state institutions and civil sector work together to continuously raise awareness among citizens and understanding of the problems that trans* persons face, in order to reduce violence and discrimination these persons are exposed to.

Literature

- Agius Silvan (et.al.). 2011. *Human Rights and Gender Identity, Best Practice Catalogue*, ILGA Europe.
- International Statistical Classification of Diseases and Related Health Problems, Version 10. 2013. Institute for Public Health of Serbia "Dr Milan Jovanović Batut". Available at: <http://www.batut.org.rs/download/MKB102010Knjiga1.pdf> (30/05/2019).
- ICD-11: The 11th Revision of the International Classification of Diseases. 2019. Available at: <https://ec.europa.eu/cefdigital/wiki/display/EHSEMANTIC/ICD-11%3A+The+11th+Revision+of+the+International+Classification+of+Diseases> (30/05/2019).
- Joint Statement on ICD-11 process for trans & gender diverse people* info. 2019. Available on the "Gate" website: <https://transactivists.org/icd-11-trans-process/> (30/05/2019).
- Pavlović, Slavoljupka. 2012. Analysis of Legal Position of Transgender and Transsexual Persons in Republic of Serbia, in: *Model Law on Recognition of Legal Consequences of Sex Reassignment and Establishing Transsexuality, Rights of Trans Persons – from Non-Existence to Creation of Legal Framework*, Gajin Saša (ed.). Belgrade: CUPS.
- Politika daily newspaper from May 13, 2013. Available at: <http://www.politika.rs/scc/clanak/257642/Nijedna-promena-pola-nije-uradena-o-trosku-drzave> (30/05/2019).
- Politika daily newspaper from May 18, 2017. Available at: <http://www.politika.rs/scc/clanak/380905/U-Srbiji-se-niko-nije-pokajao-zbog-operacije-promene-pola> (30/05/2019).
- Simić, Jelena. 2012. Medical-Legal Aspects of Transsexuality – Facing Recognition of Legal Consequences of Sex Reassignment, *Legal Records*, (2) 299-322.
- Transserbia website. 2017. Available info at: <https://www.transserbia.org/vesti/1304-obelesen-dan-akcije-za-depatologizaciju-trans-osoba-republicka-komisija-za-transrodne-poremecaje-najzad-promenila-ime> (30/05/2019).

- The Yogyakarta principles plus 10 (YP+10). Available at: <http://www.yogyakartaprinciples.org/principles-en/yp10/> (30/05/2019).
- The Model Law on Gender Identity. 2013. Available at: <https://www.transserbia.org/trans/trans seksualnost/543-model-zakona-o-rodnom-identitetu> (30/05/2019).
- The Status and Position of Trans Persons in the Republic of Serbia, 2012. Gayten LGBT: Belgrade. Available here: <https://transserbia.org/images/2015/dokumentij/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf> (May 30, 2019).
- Vujović Svetlana, (et al.), 2009. Transsexualism in Serbia: A Twenty-Year Follow-Up Study, *Journal of Sexual Medicine*, (6)1018–1023.
- World Health Assembly Update, 25 May 2019, New release. Available at: <https://www.who.int/news-room/detail/25-05-2019-world-health-assembly-update>, (30.05.2019.).
- Šarčević, Predrag, 2015. *Constructing Transsexuality between Science and Cultural Ideology: Methodological Criticism of Clinical Practice*, Explanation of the topic of PhD thesis. Available here: webserver.rcub.bg.ac.rs/publicFileDownload?idSednicaMaterijal=26185 (30/05/2019).

Legal Sources

- Law on Changes and Amendments of the Law on Civil Records “Official Gazette of the Republic of Serbia”, No. 47/2018.
- Law on Health Insurance, “Official Gazette of the Republic of Serbia” No.25/2019.
- Law on Health Insurance, “Official Gazette of the Republic of Serbia” no. 107/2005, 109/2005 – corr., 57/2011, 110/2012 – Constitutional Court decision, 119/2012, 99/2014, 123/2014, 126/2014 - Constitutional Court decision, 106/2015 and 10/2016 – st. law.
- Rulebook on the way of issuing and the form of sex reassignment certificate from a competent medical institution, “Official Gazette of the Republic of Serbia”, No.103 dated Dec.26, 2018.
- Decision on the formation of the Republic Expert Commission for Transgender Conditions of the Ministry of Health of the Republic of Serbia, no. 119-01-482/2017-02 dated Sept 1, 2017.

List of Cases

- Christine Goodwin v. The United Kingdom*, ECHR, App. No. 28957/95 from 11.07.2002.
- Decision No. Už - 3238/2011 dated March 8, 2012. Available at: <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/6790/?NOLAYOUT=1> (30/05/2019).

Sažetak

U 21. veku pravo trans* osoba na lični razvoj i fizičku i moralnu sigurnost, kakvu u punom smislu uživaju ostali članovi društva, ne može se posmatrati kao nešto što je kontroverzno ili što iziskuje određeni protok vremena da bi pitanja s tim u vezi mogla da se sagledaju u jasnijem svetlu. Nove politike koje se tim povodom formiraju u svetu oslanjaju se primarno na ustavne odredbe o dostojanstvu ličnosti i zabrani diskriminacije, na odluke Evropskog suda za ljudska prava i autentično iskustvo trans* osoba. U Republici Srbiji, 21. vek doneo je promena koje se mogu tumačiti kao značajane za položaj trans* osoba. Tako je Zakonom o zdravstvenom osiguranju obezbeđeno,

osiguranim licima, najmanje 65% od cene zdravstvene usluge iz sredstava obaveznog zdravstvenog osiguranja za promenu pola iz medicinskih razloga; formirana je Komisija za transrodna stanja pri Ministarstvu zdravlja Republike Srbije; Zakon o matičnim knjigama uveo je mogućnost promene oznake pola u matičnoj knjizi rođenih a radna grupa Ministarstva za državnu upravu i lokalnu samoupravu i Ministarstva zdravlja Republike Srbije donela je Pravilnik o načinu izdavanja i obrascu potvrde nadležne zdravstvene ustanove o promeni pola. U ovom radu, analizira se, u kojoj meri su ove zakonske novine značajne za sam položaj trans* zajednice u Srbiji i da li su i u kojoj meri zaista doprinele unapređivanju njihovog položaja u svakodnevnom životu.

Ključne reči: trans* osobe, diskriminacija, promena oznake pola, matične knjige.

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