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Research Note

Legal Aspects of Gender Reassignment Surgery in Turkey: A Case Report[1]

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Abstract

The gender reassignment process has ethical, social and legal dimensions. However, European Union countries have recommended certain principles for such reassignment. The lack of special legislation regulating legal conditions and effects of gender reassignment creates a difficult situation for transsexuals. A new civil law was implemented in 2001 in Turkey recognising gender identity reassignment which has set new standards for procedures. According to the law, court permission is

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compulsory for gender reassignment surgery. Courts require expert analyses in a health council report which must include a psychiatric examination of the individual, who must also be permanently unreproductive as defined by the law. Although the new Civil Law arranges new standards for gender reassignment surgery procedures, there are several problems in reassigning the civil status of transsexuals in Turkey.

Keywords

Gender reassignment, civil status of transsexuals, legislation

Introduction

In the latter half of the 20th century clinicians noticed transsexualism as a condition in which an individual's psychological gender is the opposite of his or her anatomical sex (Danilo and Arthur, 2005; Green, 1996; The Harry Benjamin International Gender Dysphoria Association's [HBIGDA] Standards of Care for Gender Identity Disorders, 2001; Witten et al., 2003). Magnus Hirschfield reported the first gender reassignment surgery having taken place in Berlin in 1912. The introduction of sex-reassignment surgery in 1966 legitimised this treatment (Benjamin, 1999, 2001; Pfaefflin, 1997). Although it was stated that the prevalence of transsexualism is 1/37,000 for males and 1/107,000 for females, discrepant ratios were reported from different countries and regions (Cuypere et al., 2006; Harish and Sharma, 2003; Loue, 1996; Veale, 2008; Witten et al., 2003). Male-to-female transsexualism was reported more often than female-to-male transsexualism (Gromb, Chanseau and Lazarini, 1997; Harish and Sharma, 2003; Loue, 1996; Louis, 1997; Rogers, 1993).

The state of being 'transgendered or transsexual' is classified by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV-TR) and in International Classification of Diseases-10 (ICD-10) as a psychiatric disorder, and is termed as Gender Identity Disorder (GID) (American Psychiatric Association, 2000; World Health Organisation, 1992). HBIGDA's Standards of Care for Gender Identity Disorders, including the criteria for diagnosis, hormonal and surgical gender

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reassignment and the post-operative services to be provided, were accepted widely in the world (American Psychiatric Association, 2000; Benjamin, 1999, 2001; Danilo and Arthur, 2005; WHO, 1992). The management of transsexualism requires the collaboration of behavioural, endocrinologic, genetic and surgical specialists (Benjamin, 2001; Danilo and Arthur, 2005; Harish and Sharma, 2003; Sohn and Bosinksi, 2007; Weyers et al., 2009). Furthermore this management needs specified legislation on the subject. The problem of changing the civil status of transsexuals seems to be more complex (Benjamin, 2001; Danilo and Arthur, 2005; Harish and Sharma, 2003; Kraemer et al., 2008; Landen and Innala, 2000; Loue, 1996; Louis, 1997; Prasad, 2009; Witten et al., 2003).

The prevalence of adult transsexualism is affected by culture, socio-demographic variables (for example, sex ratios), the attitudes of physicians and the public and legislation regimes in different countries and regions (Cuypere et al., 2006; Weyers et al., 2009). In Singapore a very high prevalence rate is reported: 35.2/100,000 (Cuypere et al., 2006). Male-to-female transsexualism was reported more often than female-to-male transsexualism (Benjamin, 2001; Gromb et al., 1997; Harish and Sharma, 2003; Loue, 1996; Louis, 1997; Rogers, 1993). Parents report cross-gender acts before the age of three years and are better aware of boys' behaviour than girls'—this may show a fear of stigma resulting in reporting mostly boys' cross-gender behaviour.

The male-to-female (MF) prevalence rate was 1/12,900 and female-to-male (FM) 1/33,800 above the age of 15 years in Belgium (Cuypere et al., 2006). In Germany, it was 1/42,000 for MF and 1/104,000 for FM (Weitze and Osburg, 1996). In a study conducted in Belgium, the mean age for MF transsexuals was found to be 32.65 and 28.48 for FM transsexuals at their first medical application (ibid.). These ages increase until sex reassignment surgery; it was also reported that FM transsexuals applied to a doctor earlier than MF transsexuals. In the same study, 60 per cent of the transsexuals did not have a partner and two-thirds of them did not have a child at the time of their reassignment application (ibid.).

It was reported that the desire for gender reassignment surgery occurs in less than 10 per cent of transsexuals, 70–80 per cent of whom have benefited from such reassignment. Surgeons have indicated that gender

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reassignment surgeries exceed one per day in Europe and the USA (Green, 1996; Gromb et al., 1997; Loue, 1996; Pfaefflin, 1997). We have insufficient data on these lines in Turkey.

Our aim in this note is to initiate a discussion on the legal aspects of adult gender reassignment under the civil law by considering legislations in different countries. We would like to present three adult cases of transsexualism referred by the courts for gender reassignment surgery to our department. Here, three cases of males are presented who had shown symptoms of transsexualism and a strong and persistent cross-gender identification since early childhood, and who requested gender reassignment surgery. In all the three cases, courts required expert opinion on whether gender reassignment surgery was necessary for the patients' mental health and whether it was medically possible or not.

Case 1

A 30-year-old healthy man had been taking hormonal therapy for 13 years since his first consultation. He had breast shaping mammoplasty three years ago and cosmetic nasoplasty five years ago, respectively. A psychiatric examination held in our department revealed that he had no disturbance of consciousness, was normal in orientation, cognitive function and judgement, and reality testing also showed that he was normal. He had a strong and persistent cross-gender identification and preference for cross-dressing from childhood, as also an intense desire to participate in games and pastimes preferred by girls. The individual had no partner from the opposite sex and, has been living with a male partner for six years. He did not meet the criteria of any psychiatric disorder, either currently or in the past except GID. In conclusion, the psychiatric report stated that the case met the transsexualism criteria in DSM-IV, and gender reassignment surgery was held necessary for the mental health of the individual.

In the plastic surgery consultation report it was stated that the physical appearance of the individual was that of a female, the voice had changed but that the external genitalia seemed male. In conclusion, it was noted that gender reassignment surgery was medically possible, and there was no medical contraindication for surgery.

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Case 2

A 37-year-old man had shown a strong and persistent cross-gender identification since adolescence. He had a history of receiving hormonal therapy for 17 years, and had had cosmetic nasoplasty and breast shaping mammoplasty five years ago. After a psychiatric examination he was judged normal on all parameters (cognitive functions and judgement and reality testing were normal). Both the psychiatrist and the plastic surgeon reported that there was no medical objection to gender reassignment surgery.

Case 3

A 27-year-old man lived for six years as a woman, receiving hormonal therapy for 17 years; he too had a history of cosmetic nasoplasty and breast shaping mammoplasty. In this case, the court asked additional questions as to whether the individual was permanently unreproductive or not. Based on the evaluations of consultants in psychiatry, plastic surgery, gynaecology and endocrinology, it was declared that there was no obstacle to gender reassignment surgery. He had no other physical or psychiatric disorders. The urology report stated that the patient had varicocoele (type 1) and that the patient had refused to give any sperm sample (there was no history of erection since the post-pubertal period) for the fertility test.

All three cases had had hormone therapy and cosmetic surgery before the new legislation was enacted. No psychiatric evaluation had been done before being referred to us by the court. In all of the three cases, based on the opinion of experts, we reported that the diagnosis met the criteria for transsexualism, and that gender reassignment surgery was necessary for the mental health of the individuals and it was medically feasible.

Discussion

Turkey is an Islamic country with secular laws and institutions. In Islam, as in other monotheistic religions, sexuality, other than heterosexuality, is considered shameful and sinful. Because of this, transsexual persons

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run into difficulties in their daily life; and are usually stigmatised and isolated in Turkish society. However, one study found that families of transsexuals did not totally reject them and were more tolerant of them, considering the general attitude in Turkey (Polat, Yüksel, Dişçigil and Meteris, 2005).

A new civil law was implemented in 2001 in Turkey which recognises gender identity reassignment and sets new standards for procedures (No. 4721 of Turkish Civil Law, 2001). According to the law, court permission is compulsory for gender reassignment surgery. Courts require expert analyses in a medical report that must include the results of a psychiatric examination of the individual, who must be adult, single and permanently unreproductive before surgery. After reassignment surgery, the court requires a second health council report before allowing the issuance of a new official identity card for the individual (Turkish Civil Law, 2001).

Although the new Civil Code has some deficiencies regarding gender identity reassignment, this legislation can be considered an important milestone in the struggle for transsexual rights in Turkey. A factor that might have urged the Turkish government to pass the law might have been its desire to improve its chances of being accepted into the European Union (EU). After the approval of her candidacy in 1999, Turkey undertook radical legal reforms to meet EU accession criteria. Also, there has been pressure from several organisations which struggle for the rights of gays, lesbians and transsexuals, such as KaosGL Association, Lambdaistanbul Solidarity Association and The Lesbian, Gay, Bisexual and Transsexual Rights Platform.

It is recognised that the psychiatric component is insufficiently emphasised in the new legislation, contrary to HBIGDA, criteria. It is well known that HBGIDA lays down the minimum eligibility criteria for genital surgeries and recommends that two expert mental health professionals must approve the diagnosis with the help of DSM or ICD before surgery.[2] According to HBGIDA, it is required that the patient should have had a 'successful cross-living test over a one year period, which includes legal, social, and sexual success' for reassignment surgery. Written informed consent is needed before hormonal and surgical treatment (Bafra, 2004; Benjamin, 2001; Cohen-Kettenis and Gooren, 1999; Danilo and Arthur, 2005; Harish and Sharma, 2003; Niveau, Ummel and Harding, 1999; Turkish Civil Law 2001). But the

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new legislation does not include all these requirements; it meets only two criteria: (*i*) that the applicant should have attained the legal age of majority according to his/her national law and (*ii*) should have a psychiatric evaluation.

On the other hand, before the Civil Law (2001) was passed, transsexuals had been evaluated by clinicians from the disciplines of psychiatry, plastic surgery and forensic medicine. However, there is a provision in the Civil Law that would enable transsexuals applying for surgery to benefit from a multidisciplinary approach, as the new law makes it mandatory for a report from a state or university hospital. If these hospitals have sufficient specialists who respect the 'standards for care', it would compensate for lacunae in the law.

The legal aspects of gender identity reassignment present serious problems. How could an individual be deemed to be permanently unreproductive? It is very difficult to establish that a transsexual is permanently infertile. This question arises when the court requires that a transsexual be evaluated as sterile before surgery. But transsexualism does not imply infertility.

Gender reassignment is still not allowed in most countries of the world. Transsexuals seeking gender reassignment either travel to other countries in which such operations are legal or have the operations done secretly in private clinics (American Psychiatric Association, 2000; Harish and Sharma, 2003; Loue, 1996; Niveau et al., 1999; Rogers, 1993). Countries within the European Union (EU) and some states of USA have special legislation regulating the surgical and legal measures required for sex reassignment. Most of the courts have changed their juridical position and do not accept an ordinary medical report as a legal basis for transsexual surgery (Danilo and Arthur, 2005; Harish and Sharma, 2003; Marques and da Silva, 1997). Countries in the EU follow certain principles in the matter of gender identity change. The European Convention of Human Rights has allowed states to grant a new post-operative gender identity to transsexuals. The European Court of Human Rights compelled countries like Germany and France to enact laws on this issue (Harish and Sharma, 2003; Gromb et al., 1997; Levent, 2005; Rogers, 1993). The European Court of Human Rights has held that the governments' failure to alter the birth certificates of transsexual people or to allow them to marry after acquiring a new gender, is a breach of the

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European Convention on Human Rights (violating the right to be free from inhuman or degrading treatment, respect for the private and family life of transsexuals and the right to marry) (Cuypere et al., 2006; Danilo and Arthur, 2005; Harish and Sharma, 2003; Levent, 2005; Louis, 1997; Rogers, 1993).

Sweden, Germany, Italy, the Netherlands and now Turkey have similar legislation about sex reassignment, but the approaches differ on questions such as whether this should be restricted to citizens and to the unmarried. In Norway, reassignment surgery is funded totally by the government. Additionally, couples do not have to divorce, if one partner undergoes complete hormonal and surgical treatment. In Turkey, if the transsexual person has been married before a change of gender, automatically dissolution of marriage follows. Some authors criticise this as a new form of repudiation by sex change (Cuypere et al., 2006; Harish and Sharma, 2003; Louis, 1997; Rogers, 1993).

Although most of the legislations guarantee 'a right to privacy' and to a 'self image', legal rights of transsexuals after sex reassignment are not certain. After medical interventions is it possible for transsexuals to change their name and gender in the birth register? And can these people marry, or adopt a child? (Bafra, 2004; Cuypere et al., 2006; Danilo and Arthur, 2005; Harish and Sharma, 2003; Louis, 1997; Marques and da Silva, 1997; Niveau et al., 1999). If a transsexual had an illegal surgery without court permission, they would not be permitted to change their name and sex in citizenship documents.

Physicians too are subject to punitive action, if they perform illegal sex reassignment surgeries. They could be sued for malpractice under the Penal Code and for not obeying the Turkish Civil Code. Penal codes, civil laws and medical associations are embroiled in controversies on this issue (Bafra, 2004; Danilo and Arthur, 2005). In countries like Brazil, for example, studies blame the lack of any legal solutions, but laws cannot provide for all situations that can arise after gender reassignment surgery (Danilo and Arthur, 2005). In Turkey, the Supreme Court did not allow change of sex details on citizenship certificates in cases of illegal sex reassignment surgeries. Against this stance, some authors are of the view that there should be a simple birth certificate correction by applying to the Public Registration Office, and that courts should permit assumption of the new identity without any litigation (Bafra, 2004; Marques and da Silva, 1997).

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In some countries, transgendered individuals are forced to apply to special authorities (such as the Portuguese Medical Order in Portugal, Israel Specialised Gender Committee in Israel, the Ukrainian Ministry of Public Health Commission in Ukraine) for gender reassignment. Although these units allow transsexuals to have their new gender identity documented in their citizenship papers, special authorisation allowing extra medical criteria could create new conflicts (Cuypere et al., 2006; Green, 1996; Marques and da Silva, 1997; Witten et al., 2003). Diversity, equality, social justice and human rights seem to be the key words to use for the necessary correction of gender status in citizenship documents, and to prevent discrimination against transsexuals. We are sure that discrimination on the ground of gender reassignment could be prevented with a multidisciplinary medical approach and proper legal enactments. In our view, the establishment of special units (gender clinics as in Japan) in university hospitals in which the departments of psychiatry, genetics, ethics, endocrinology, urology, plastic surgery and gynaecology would be involved in the formation of a thorough expert opinion according to the relevant standards of care, should be mandatory in our country (Ako et al., 2001; Weyers et al., 2009).

The lack of special legislation within the framework of Civil Law to address all legal conditions and effects of gender reassignment causes difficulties for doctors and transsexuals (Biçer, Çolak, Bilgili and Kriton, 1996; Danilo and Arthur, 2005; Levent, 2005; Sharma, 2007). Assuming there is agreement on this issue, we recommend that health professionals must have an accurate medicolegal approach. For this, we require much more specific legislation, including standards and criteria governing gender reassignment according to HBIGDA standards. This could, overall, help self-esteem management among transsexuals in society.

Notes

1. Some part of this study was presented (as a poster presentation) in the Third Congress of the Balcan Academy of Forensic Sciences, 2–5 June 2005 in Constanta, Romania.
2. If these professionals have the credentials required by HBGIDA and work as members of the medical team dealing with gender identity disorders, a letter with two signatures would suffice. However, in the case of mental health professionals working alone, more case support would be necessary. An extensive report

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by a psychiatrist and/or a clinical psychologist with a Ph.D. degree would be required. See Benjamin 2001, http://www.wpath.org/Documents2/socv6.pdf, pp. 1–4, 6–8, 16–18.

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