Submitted on 19 September 2016 by **TransFúzia**

supported by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)

118th Session of the Human Rights Committee

Review of the fourth periodic report of Slovakia

**Additional information**

**on the List of Issues (CCPR/C/SVK/Q/4)**

**Question No. 12 — Illegal Sterilization**

**Sterilization as a Requirement for Legal Gender Recognition**

**in Slovakia**

“Transgender people appear to be the only group in Europe subject to legally prescribed, state enforced sterilization.”[[1]](#endnote-1)

*Thomas Hammarberg, the Council of Europe Commissioner for Human Rights (2009)*

The List of Issues produced by the Human Rights Committee for the review of the fourth periodic report of Slovakia raises an issue of illegal sterilizations and measures to prevent and investigate them.[[2]](#endnote-2) The Slovak Government in its replies pointed out that the illegal sterilization is a crime under the Penal Code and described the existing legal framework in this regard. There was also noted that the Ministry of Health has not recorded any complaints associated with the sterilisation of women without their consent.[[3]](#endnote-3)

Unfortunately, **illegal sterilization is still rutine reality in Slovakia for both transgender women and transgender men**, and this has been already recognized in 2015 by the CEDAW Committee.

Although the Slovak legislation does not require surgeries or sterilization for change of transgender persons’ documentation, in practice both medical profesionals and civil registry officials compel individuals to undergo sterilization surgeries to obtain legal gender recognition, and this approach is supported by the Slovak ministries. A number of international human rights bodies and medical professional assosiations have already concluded that situations of this kind do not meet informed consent requirements and could violate the rights to be free from inhuman and degrading treatment, to bodily integrity, to personal autonomy and reproductive rights.

This submission describes the problem of illegal sterilization in relation to transgender persons in Slovakia and proposes questions that could be raised by the Human Rights Committee on this issue during a constructive dialogue with the State party, as well as recommendations that would help to solve the problem in the country.

**I. International Human Rights and Medical Standards**

**and Country-Specific Recommendations**

1. In 2015, in its concluding observations on the combined fifth and sixth periodic reports of Slovakia, the CEDAW Committee expressed its concerns about *“reports that, when transgender and intersex women seek to change their legally recognized gender, they are required to undergo medical treatment, which does not respect the freedom to control one’s body”*[[4]](#endnote-4) and recommended that the State party *“review current laws and take measures to ensure that the rights of transgender and intersex women and girls to control their bodies are respected and protected and that they are free from non-consensual medical treatment, including by* ***abolishing the requirement of compulsory sterilization***  *and surgery for transgender women who wish to obtain legal recognition of their gender.”*[[5]](#endnote-5)

2. A number of international human rights bodies, including the UN High Commissioner for Human Rights, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN treaty bodies and agencies, as well as the Council of Europe bodies have repeatedly condemned sterilization requirements to legal gender recognition and urged states to abolish such requirements in laws and practice.[[6]](#endnote-6) At the same time, it has been stressed that no transgender person should be subjected to gender reassignment procedures without that person’s consent.[[7]](#endnote-7)

3. In the same way, medical professionals have widely opposed conditioning of transgender persons’ documentation amendments by medical interventions such as sterilization surgeries, emphasizing instead a crucial importance of a free and informed consent and consideration of specific needs of the transgender persons concerned. A range of statements and standards in this regard have been issued by such professional association as the World Medical Association (WMA), the International Federation of Health and Human Rights Organisations (IFHHRO) and the World Professional Association for Transgender Health (WPATH).[[8]](#endnote-8)

4. Therefore, practice of sterilization requirement for legal gender recognition in Slovakia does not meet international human rights and professional medical standards.

**II. Laws and Practice in Slovakia**

***A. Sterilization as a precondition for legal gender recognition***

5. The Law No. 301/1995 on Birth Number[[9]](#endnote-9) (para. 8, 2b) stipulates that transgender persons in Slovakia can obtain new documentation reflecting their gender identity upon submission of a “*medical opinion about sex change.*” While no additional requirements or definitions are made up by laws or underlaw regulations, in practice forced sterilization is a precondition for legal gender recognition. Transgender persons are required to undergo sterilization with the view of losing their reproductive function, and civil registry offices require confirmation of sterilization from a sexologist.Therefore, the sterilization requirement does not have any basis in Slovak law and is the result of official practice supported by ministries and outdated guidelines.[[10]](#endnote-10)

Thus, the Ministry of Health and the Ministry of Interior confirmed that they insist on the implementation of the forced medical interventions, including sterilization, in order to provide transgender people with legal recognition of their preferred gender.[[11]](#endnote-11) However, they can never provide any legal backup for this answer.

The similar approach has been demonstrated by health care providers and the Slovak Sexologist Asssociation. They wrongly claim that the forced sterilization is required either by law or by medical standars[[12]](#endnote-12) or by the ICD-10 diagnosis of transsexualism.[[13]](#endnote-13)

6. All the efforts of *TransFúzia* to change the situation by repeatedly providing the ministries and health care professionals with information about the problem and by asking them to eliminate this harmful practice remain futile.

*TransFúzia* has informed, through the national Committee on Human Rights of LGBTI People, the Ministry of Health Care and Ministry of Interior Affairs about this situation with sterilization requirement, and then met with a head of the responsible officials and the director of the Slovak Sexologist Association (SSA). *TransFúzia* also presented this issue to SSA members during the conferences organized by the SSA or *TransFúzia* itself. The need for abolishing sterilization requirement has been repeatedly reported to individual health care providers by members of *TransFúzia*. However, all these efforts had no impact on the legal situation or medical practice. The stakeholders did not show any concerns about possible violation of the law and human rights standards.

7. Up to July 2016, *TransFúzia* was able to help some people to avoid sterilization with the help of two healthcare providers who respected this choice. They used to provide the approval for legal gender recognition irrespective of whether sterilization had been performed or not. However, it was not a systemic solution and it was also not accessible for everyone.

This situation has changed aproximatelly two months ago, in July 2016. Approvals for legal gender recognition from these two doctors had been denied by civil registry officials because the medical certificates did not contain explicit formula “*the person has undergone sex change and by that the reproductive process definitely terminated.”* Since the two doctors do not want to lie by including this formula in their statements, access to legal gender recognition without sterilization has been completly ceased.

It is still not cleare why the situation changed. According to healthcare providers, there was an order from the Ministry of Health Care. Some civil registry officials claims that there was an order from Ministry of Interior Affairs. However, the ministries replied that no such order had been issued.

***B. Lack of the free and informed consent***

8. *TransFúzia* has provided counselling services for over 500 transgender people within last 6 years. None of these people ever reported the positive approach from the medical staff that is described in the report submitted by the Slovak government.[[14]](#endnote-14) Transgender people generally are not provided with relevant instructions *“comprehensibly, respectfully and without coercion.”[[15]](#endnote-15)* In practice, they are just told that they have to undergo surgical castration and informed about the potential harm. Medical staff does not *“make it possbile to freely decide upon the granting of informed consent.”[[16]](#endnote-16)* Transgender people experience exactly the opposite approach. They have to choose between the right for physical interity (avoid sterilization) and between the right for psychological integrity (access to legal gender recognition which allows to live in accordace with their gender identity). The informed consent is never provided without coercion as far as people are forced to decide between their rights.

***Example (Laco, 25 y.o.):*** *“The results of the surgery are not visible. I did not need it. I’ve done it neither because I wanted it nor because I wanted to get rid of those organs. I’ve done it because I wanted to change my name.”[[17]](#endnote-17)*

9. Another hidden part of the problem is that transgender persons’ refusals to undergo sterilization surgery are frequently utilized by medical experts as a reason to undermine the person’s identity and to claim that the person does not meet the criteria of being “a true transsexual.” The transgender person’s refusal to undergo sterilization, therefore, may lead to the doctor’s refusal to provide diagnosis needed to receive transgender-related health care.

***Example (Mark, 23 y.o.):*** *“...and then [the doctor] wanted me to undergo castration. She used arguments, or rather pseudo-arguments, that I could have extensive health problems and cancer if I did not do it. When I told her that I am not sure about it, she questioned if I want to go through the transition at all and if I am a real man at all. I ended the contact and went to look for another doctor.”[[18]](#endnote-18)*

However, such approach is based on a false logic that all “true transsexual” people always desire surgical sterilization. In fact, transgender persons may not wish to undergo sterilization surgeries for a variety of reasons such as possible medical complications resulting from such surgeries, health contradictions, employment or family responsibilities, religious or personal beliefs against surgical bodily modifications, etc. or just because they do not want to undergo unnecessary surgery.[[19]](#endnote-19)

***C. Vulnerability of transgender youths***

10. Transgender people who have reached 18 y.o. but still attending high schools usually find themselves in the situation that is even more difficult.

11. The Slovak legislation does not allow to amend any data in educational certificates. This means that even if a person has successfully change their gender marker, name and personal number in their IDs, the educational certificate still contains that person’s birth name and gender marker. Having these documents, the person would be forced to reveal their personal history and private details to many third parties, for example, looking for a job or entering a university.

12. In order to avoid this and to obtain legal gender recognition before finishing high school, young transgender people undergo sterilization surgeries, because such surgeries would allow them to receive educational certificate with preferred name and gender marker.

13. *TransFúzia* knows about 4 such cases within the last 2 years, and is aware of 3 more young people who are preparing to undergo surgical sterilization.

***Example (Robin, 17 y.o.):***

*R: I want to do it [sterilization surgery] as soon as possible. I´ll be 18 in March and I want to make it until the end of the school. I want [to get] my high school certificate with my name.*

*T: What about children? Is it something you thought about? Did your doctor talk about it with you?*

*R: No. She just told me that this is what I must do. But I don´t care. I don´t want be seen as a women at the university. I can´t live like this anymore.”[[20]](#endnote-20)*

14. This situation perfectly demonstrates intersectional discrimination faced by transgender youths. If it was a case of 18 y.o. cisgender (non-transgender) persons wishing to undergo sterilization surgery for contraception, it would be considered as nonsense and harmful to that persons’ health. They would not be allowed to do it by the law, but they would be offered various other means of contraception. In contrast, transgender young people are the only group required to undergo sterilization surgery with no other options.

**Summing up, transgender people in Slovakia cannot fully enjoy their human rights, such as the right to be free from violence, right to physical and psychological integrity[[21]](#endnote-21), right to respect for privacy and family life, as they have to choose between sterilization, i.e. undergoing unwanted invasive surgical intervention which causes loss of their reproductive funcions, and an option to live in accordance with their identity having appropriate documentation reflecting their identity.**

|  |
| --- |
| **Questions** |
| 1. What are the legal grounds for requiring sterilization surgeries for legal gender recognition of transgender persons in Slovakia? 2. Taking into account that a transgender person may obtain legal gender recognition only after sterilization, whether such surgeries could be understood as executed upon free and informed consent, as required by the Act No.  576/2004  on Health Care? 3. Why sterilization is required for legal gender recognition for any person regardles of that person’s health needs? |

|  |
| --- |
| **Recommendations** |
| 1. Reform current practices of legal gender recognition and gender reassignment treatment providing that:  a) legal gender recognition procedures and health care services are independent form each other,  b) no medical intervention and specifically sterilization is not required for change of identification documents, and  c) legal gender recognition is based on the transgender person’s self-determination while any medical interventions are performed only upon free and informed consent of the transgender person concerned.  2. Cooperate with human rights based transgender advocacy groups from civil society when preparing any changes influencing lives and human rights of transgender people.  3. Ensure that any laws, policies and programs affecting trangender people, including health care practice, are based on human rights standars and modern medical standards and knowlege in the field of transgender health care. |

**Terminology**

**Gender identity** refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.[[22]](#endnote-22)

**Legal Gender Recognition** is the official recognition of a person’s gender identity, including gender marker and name(s) in public registries and key documents.[[23]](#endnote-23)

**Sterilization** is any of a number of medical techniques that intentionally leave a person unable to reproduce. In relation to transgender persons sterilization may be performed through:

* ***hysterectomy***, a removal of the uterus (usually denotes complete removal of the uterus, i.e. corpus and cervix);
* ***adnexetomy***, an excision of the uterine tube and ovary if unilateral, and excision of both tubes and ovaries (adnexa uteri) if bilateral; or
* ***orchiectomy***, a removal of one or both testes.

While a  term ***sterilization*** is internationally recognized and widely used, an alternative term ***castration*** is more specific and precise for the situation of transgender people in the Slovak national context where medical interventions include surgical removal of uterus and ovaries (for transgender men) and testicles (for transgender women). These particular surgical interventions are not defined as sterilization but they result in sterility. The Slovak law and medicine do not even recognize surgeries of that kinds as a mean for human contraception. However, veterinary medicine does recognize it for animals. Therefore, transgender people in Slovakia are castrated as pet animals in order to prevent their reproduction.

\*\*\*

|  |
| --- |
| **TransFúzia** is a grassroots NGO advancing human rights of transgender people in Slovakia since 2010. Our agenda is built upon the pressing issues of our community. We have complex approach to transgender people. Our main tools are peer counselling services and community building which feed our research, education and advocacy activities aimed at promoting transgender isuess and improving the situation of transgender people. TransFúzia is a member of Transgender Europe (TGEU). |

|  |
| --- |
| **International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)** is the world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people. ILGA is an umbrella organisation of more than 1200 member organisations presented in six different regions: Pan Africa ILGA, ILGA-Asia, ILGA-Europe, ILGA-LAC (Latin America and the Caribbean), ILGA North-America and ILGA-Oceania (Aotearoa/New Zealand, Australia and Pacific Islands). Established in 1978, ILGA enjoys consultative status at the UN ECOSOC. As the only global federation of LGBTI organisations, ILGA voices its agenda in various United Nations fora. |

**Footnotes**

1. Human Rights and Gender Identity: Issue Paper, Commissioner for Human Rights, Council of Europe, CommDH/IssuePaper(2009)2. [↑](#endnote-ref-1)
2. List of issues in relation to the fourth periodic report of Slovakia (CCPR/C/SVK/Q/4), *Violence against women, including domestic violence (arts. 2, 3, 7 and 26)*, at para. 12. [↑](#endnote-ref-2)
3. Replies of the Slovak Republic to the list of issues (CCPR/C/SVK/Q/4/Add.1), at paras. 65–67. [↑](#endnote-ref-3)
4. Concluding observations on the combined fifth and sixth periodic reports of Slovakia (CEDAW/C/SVK/CO/5-6), at para. 36(c). [↑](#endnote-ref-4)
5. Ibid, para. 37(c); bold added. [↑](#endnote-ref-5)
6. See Concluding observations of the Committee against Torture on Hong Cong, China (CAT/C/CHN-HKG/CO/5), at paras. 28 and 29; Concluding observations of the Committee on Elimination of Discrimination against Women on Belgium (CEDAW/C/BEL/CO/7), at paras. 44 and 45; and Finland (CEDAW/C/FIN/CO/7), at paras. 28 and 29; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/22/53), at paras. 88 and 78; Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23), at para. 79(i); Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO).

   For the Council of Europe see Discrimination against transgender people in Europe, PACE Resolution 2048 (2015), at para. 6.2.2; Human Rights and Gender Identity: Issue Paper, Commissioner for Human Rights, Council of Europe, CommDH/IssuePaper(2009)2, recommendation No. 4; Discrimination on grounds of sexual orientation and gender identity in Europe: A  report by the Commissioner for Human Rights, Council of Europe (2011), recommendation 5(2). [↑](#endnote-ref-6)
7. See Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, at para. 35; Discrimination on grounds of sexual orientation and gender identity in Europe: A  report by the Commissioner for Human Rights, Council of Europe (2011), recommendation 6(4); Concluding observations of the Human Rights Committee on Ukraine (CCPR/C/UKR/CO/7), at para. 10. [↑](#endnote-ref-7)
8. The World Medical Association (WMA) and International Federation of Health and Human Rights Organisations (IFHHRO) have notised that “involuntary sterilisation is a clear infringement of a persons’ reproductive autonomy and human rights. Among those affected are […] transgender persons […]. Consent to sterilisation should be free from material or social incentives and should not be a condition of other medical care, social, insurance or institutional benefits.” (See: Global Bodies call for end to Forced Sterilisation. URL: http://www.wma.net/en/40news/20archives/2011/2011\_17/index.html). In 2015, the WMA reaffirmed that “any health-related procedure or treatment related to an individual’s transgender status, [including] surgical interventions, […] requires the freely given informed and explicit consent of the patient,” and “no person should be subjected to forced or coerced permanent sterilization,” including “sterilization as a condition for rectifying the recorded sex on official documents following gender reassignment.” (WMA Statement on Transgender People, adopted by the 66th WMA General Assembly, recommendations 3, 5 and 7).

   The World Professional Association for Transgender Health (WPATH) noted that “legally recognized documents matching self-identity are essential to the ability of all people to find employment, to navigate everyday transactions, to obtain health care, and to travel safely; transgender […] status should not preclude individuals from enjoying the legal recognition all citizens expect and deserve. Barriers to legal recognition for transgender and transsexual individuals may harm physical and mental health.” The WPATH opposed surgery or sterilization requirements for legal gender recognition stating that “no particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone’s gender identity, so these should not be requirements for legal gender change.” The WPATH urged “governments to eliminate unnecessary barriers, and to institute simple and accessible administrative procedures for transgender people to obtain legal recognition of gender, consonant with each individual’s identity.” (WPATH Statement on Legal Recognition of Gender Identity, 19 January 2015. Available at: http://www.wpath.org). Consistently, the WPATH Board of Directors in its statement emphasized that “no person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person’s lived gender, regardless of reproductive capacity” and urged “governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.” (WPATH Identity Recognition Statement, 16 June 2010. Available at: http://www.wpath.org). “Changes to documentation are important tools to social functioning, and are a necessary component of the pre-surgical process; delay of document changes may have a deleterious impact on a patient’s social integration and personal safety.” (WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage for Transgender and Transsexual People Worldwide, 16 June 2010. Available at: http://www.wpath.org). [↑](#endnote-ref-8)
9. Zákon Národnej rady Slovenskej republiky zo 14. decembra 1995 o rodnom čísle 301/1995 Z.z. URL: http://www.noveaspi.sk/products/lawText/1/43477/1/2. [↑](#endnote-ref-9)
10. See Vestník MZ SSR 1981, Liečebné zákroky u intersexuálov, transsexuálov, sexuálnych deviantov a postup pri vydávaní posudku pre zápis v matrike u transsexuálnych osôb, Volume 3-4, at 23, part I. This document cannot be seen as a  sourse of law for several reasons, including formal grounds and its non-bindary nature. Apart from that, being issued in the early 1980s, it became extremely outdated in light of the recent medical standards. Moreover, according to the legal analysis of this document obtained by *TransFúzia*, it has not even been incorporated into the legal system of Slovakia when the country was established in 1993. [↑](#endnote-ref-10)
11. Meeting of representatives of TransFúzia with representatives of the Ministry of Health held on 11 September 2015 at the Ministry of Health. A response of the Ministry of Interior Affairs of 19 February 2013, No. SVS-OVVS1-2013/007417 *(“...odborný posudok sexuologickej ambulancie, kde je potvrdené, že u osoby došlo k zmene pohlavia a tým je definitívne ukončený reprodukčný proces a môže dôjsť k zápisu zmeny pohlavia”)*. [↑](#endnote-ref-11)
12. The most respected and known modern Standards of care of transsexual, transgender and gender non-conforming people (WPATH, 2011) do not require any such suregery. On the contrary, these standards very explicitly recommend to follow individual approach based on goals and wishes of the patient. [↑](#endnote-ref-12)
13. ICD-10 definition “*Desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make one's body as congruent as possible with one's preferred sex through surgery and hormonal treatment.”* (source: http://www.who.int/classifications/icd/en/GRNBOOK.pdf) IDC-10 does not mention any requirement for chirugical castration and explicitly gives space for individual experience by using the word „*usually* accompanied by the wish to meke one´s body congruent... through surgery...“ (not even mentioning any specific surgery). [↑](#endnote-ref-13)
14. Replies of the Slovak Republic to the list of issues (CCPR/C/SVK/Q/4/Add.1), at paras. 65. [↑](#endnote-ref-14)
15. Ibid. [↑](#endnote-ref-15)
16. Ibid. [↑](#endnote-ref-16)
17. The quote comes from the interview with this transgender man for the purposes of the research of TransFúzia titlem “*It's not a disease, it's me! Experiences of transgender people with health care*”. The research has not been published yet in its final version. However, the results have been presented to the director of Slovak Sexologist Association and many of the SSA members. [↑](#endnote-ref-17)
18. Ibid. [↑](#endnote-ref-18)
19. See in more detail in third party intervention by Amnesty International, ILGA-Europe and TGEU in the European Court of Human Rights’ case of A.P. v. France (App. no. 79885/12), Garçon v. France (App. no. 52471/13) and Nicot v. France (App. no. 52596/13), p. 7-8. URL: http://tgeu.org/wp-content/uploads/2015/07/Third-Party-Intervention-A-P-Nicot-Garcon-v-France-FINAL-.pdf. [↑](#endnote-ref-19)
20. Counselling sessions with *TransFúzia* (13 October 2015). [↑](#endnote-ref-20)
21. These rights are also explicitly mentioned in a section titled “Rights and obligations of person receiving health care” in the Act No. 676/2004 on Health Care (para 11(8a):“When receiving health care, everyone has the rights... for protection of dignity and respect for their physical and psychological integrity.” [↑](#endnote-ref-21)
22. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. [↑](#endnote-ref-22)
23. See Richard Köhler, Alecs Recher & Julia Ehrt, *Legal Gender Recognition in Europe*: Toolkit, TGEU, December 2013, p. 9. URL: http://www.tgeu.org/sites/default/files/Toolkit\_web.pdf. [↑](#endnote-ref-23)