

## COMPARATIVE CHANGE IN THE LEGAL STATUS OF TRANSGENDER PERSONS

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**Abstract.** *The experiences of countries all around the world show that there is no single, the same and universally applicable scenario of legal changes in terms of regulating the status of transgender people. The process most commonly begins by providing gender reassignment hormonal surgery procedures, which are followed by the legal recognition of a new gender identity. The next step necessarily implies the need to enact legislation to regulate the so-called social gender or gender identity, according to the right to self-determination of transgender persons, which is unrelated to previously undertaken medical treatment and gender reassignment surgery. Some countries have gone far in the implementation of this third step, while others have not taken even the first steps. Notably, different initiatives and events may be observed worldwide, many of which constitute the necessary "first steps" aimed at increasing the social acceptance of gender diversity. These steps may seem small and insufficient, but they are actually huge and significant in breaking the sanctity of the binary gender division and accepting specific transgender individuals. All the steps are based on the need to protect all people, including transgender people, from discrimination, violence, different forms of victimization, and other impacts of neglecting gender identity. Once gender identity becomes legally protected, it is possible to gradually build procedures and other types of legal protection mechanisms designed for all people whose gender identity differs from the rigid binary division into women and men, as the only identity options. In Serbia, there is still a significant lack of legal regulations on the status of transgender persons, which implies that there is much room for improvement in this area. While it would be easy to keep ignoring this issue, it would be irresponsible to exclude transgender persons from the analysis of social phenomena involving marginalization and victimization.*

**Key words:** *transgender, gender identity, gender mark change in identification documents, first steps.*

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## INTRODUCTION

Most societies are completely organized on the basis of dichotomous gender divisions, and every individual from the beginning of his/hers life passes many control filters in terms of their compliance (or non-compliance) with these gender norms. This control at birth has great impact on the identity and life experiences of transgender people, especially those whose gender identity (or presentation) do not meet society's expectations for that gender, or where one's physical body in some way does not correspond with the body that is conventionally associated with these genders. Although the population of transgender persons is still relatively small, it has increased significantly in recent years and continues to grow. However, a huge part of this population is relatively invisible, especially those individuals that are not obviously different from cisgender men and women, as well as those who live hiding their gender identity (Ellis, McNeil, Bailey, 2014).<sup>1</sup>

However, before attending to the analysis of the existing legal provisions, it is necessary to look at the overall social situation of trans people who face with discrimination in almost all social dimensions and activities. As they become more visible in our society, transgender people are increasingly subject to further discrimination and violence. Therefore, efforts are needed to raise awareness of high marginalization of transgender people. There is a significant lack of legal regulations governing the position and status of transgender persons. It further implies that there is much room for improvement in that area. While it would be easy to continue to ignore this area, it would be irresponsible TO EXCLUDE Transgender issues in the analysis of social phenomena of marginalization and victimization (MRŠEVIĆ, 2012). As permanent sources of information that indicate the existence of inequality, research in the field of gender theory may serve as a model for other professional authorities, helping to pay attention to the extreme marginalization and discrimination with which transgender people face on a daily basis (Green, 2010).

Trans and gender diverse people face a range of institutional and individual obstacles on the road to full integration into social life. Specific obstacles include institutional or factual barriers, such as a lack of regular access to hormones and/or surgery, and current statutory discrimination in some countries (Riggsa, von Doussab, Powerc, 2015), even in those that are far ahead in the recognition of gender identity (including, for example, the sterilization requirement or termination of marriage in order to enable a possible change of gender status in birth registries). All these institutional and individual barriers are designated as *cisgenderism*, which entails the ideology and practices that delegitimize the self-perception of transgender and gender diverse people, their body and gender identity.

The most common experience of trans people is rejection by the family of origin, which may prevent some of them to undertake medical treatments in transition process. Cisgender male family members tend to have more negative and hostile attitude towards trans people from cisgender female family members (Mršević, 2013). Although the views of the family of origin in individual cases still improve over time, it is not a common experience of all transgender persons. Even where they are not exposed to violence (e.g. compulsory treatment) and direct rejection (e.g. eviction from the house), there are other

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<sup>1</sup> Ellis, McNeil, Louis. (2014). Gender, stage of transition and situational avoidance: a UK study of trans people's experiences. *Sexual and Relationship Therapy*. 29:3, 351-364. <http://dx.doi.org/10.1080/14681994.2014.902925>, Accessed 19. 01. 2016. A significant minority said that they avoided travelling abroad (22,2%) and visiting restaurants/bars (19,2%); some even avoided supermarkets, pharmacies and schools.

forms of discrimination in the primary family, which primarily include: (1) refusal to use the correct pronouns and names; (2) exclusion from family events; and (3) pathologizing speech.

While psychologists often present certain problems of trans gender people (such as anxiety or low self-esteem) as personal problems, and treat them as such, it is important to understand that both anxiety and low self-esteem are often caused by discrimination.

Discrimination on the labour market and the workplace may create serious economic difficulties to transgender people. This is one reason why some of them decide to work as transgender sex workers, to engage in drug trafficking or other forms of illegal or black-market economy in order to survive. The rejection of the primary family, inability to complete education, discrimination in the workplace and exposure to constant threats of violence, individually and/or collectively result in an increased risk of conflict with the law, arrest and sentencing. Some transgender people have been arrested and prosecuted only for being part of the transgender community, as a result of prejudice of some police officers who stereotypically consider that all transgender people are engaged in illegal activities (Mršević, 2011). These practices have contributed to opening an entirely new challenge pertaining to the regulation of legal position of transgender persons deprived of their liberty, been who have either detained (in a short-term police custody) or imposed long-term sentences of imprisonment (extending from a number of years to a couple of decades).

In that context, the legal solutions which have been enacted in California, the United Kingdom (England, Wales and Northern Ireland), Scotland, and New Zealand may be used as models of good practices, demonstrating how to deal with detained or imprisoned trans persons in all currently unregulated situations. These legal solutions include: the accommodation in gender-appropriate prison institutions; frisks and searches conducted by gender-appropriate officials; enabling trans persons to proceed with the process of gender transformation initiated before detention/imprisonment, or to start the process during detention/imprisonment; providing an opportunity for them to dress according to their gender affiliation; enabling them to keep personal belongings and items reflecting their newly acquired gender role; the change of personal identification documents; the confidentiality of data relating to the processes of gender reassignment, etc.

Gender identity is a psychological identification of person who perceives himself/herself as a male or a female. In transgender persons, this perception may vary from the anatomical sex of that person. While medical treatments are crucial for a complete transition and sex-changing surgery is a medical necessity for many transgender persons, medicine recognizes that every transgender person must be treated on an individual basis (Mršević, 2011). Surgery is not a universally required or prescribed aspect of gender reassignment. Groups such as *Gender Proud*, forefronted by trans model Djina Rocero, and *Transgender Europe* have embarked on a human rights' struggle in many countries worldwide; notably, they claim that forcing transgender people to choose between the recognition of their gender identity and potential sterilization (which occurs when surgery involves genital reconstruction) constitutes a violation of human rights. Many proponents of transgender persons' rights also point out that these operations are usually beyond the financial means of transgender people, who simply do not have health insurance that covers gender reassignment surgery, while transgender people in the United States live far below the poverty line as their living standard is four to six times lower than that of their peers.

There is a growing trend of opposing the former universally stipulated requirement that a surgery is a prerequisite for instituting a change of personal identification documents. Thus,

in parts of the United States, Canada, and some other countries (such as: Turkey, Israel, and Taiwan, as well as a number of European countries), the prior surgery requirements have been reduced recently in terms of obtaining some legal documents; for instance, driver's licenses and ID cards may be changed without surgery but issuing birth certificates to transgender persons and their entry into birth registers are often put aside. As a matter of fact, for many years now, gender mark in driving licenses in many countries does not depend on previous medical treatments.

#### COMPARATIVE LAW

In comparative law, data from a number of European, Asian and North American countries provide the basis for introducing relevant legal changes in Serbia. For example, the introduction of gender neutral marks or sex code changes in identification documents without a prior surgery has been made possible in Ireland, Canada, Hawaii, Israel, Colombia, Malta, Norway and Poland since 2015, in the USA state of Rhode Island and Taiwan since 2014, in the USA state of Oregon and South Korea since 2013, in the Canadian province of Ontario since 2012, in Portugal since 2011 and in the USA state of Vermont since 2009.

Since 2007, Spain has provided for the possibility of changing gender marks in identification documents after submitting the necessary medical documentation or dysphoria diagnosis. In Denmark, identification documents may be obtained without a surgery and medical diagnosis, only upon the request of transgender persons, since 2014.

The neutral gender mark, as the so-called third gender category, has been used in Nepal since 2015, in Australia and India since 2014, in Bangladesh since 2013, in New Zealand since 2012, and in Pakistan since 2009.

#### EUROPE

On 11 March 2015, the European Court of Human Rights (ECtHR) ruled that a law that requires permanent sterilization of trans people before they start the process of gender reassignment is not in accordance with the fundamental human rights. The judges in Strasbourg made the decision after a transgender ('YY') person had been instructed by the Turkish authorities that one should be sterilized if he/she wanted to start the process of gender reassignment in 2005. The ECtHR ruled that by Turkey had violated the applicant's right to privacy by prohibiting this YY person to start with gender reassignment surgery. The Court explicitly emphasized that such a medical treatment is not necessary in a democratic society, and it constitutes a violation of the European Convention on Human Rights (ECHR). They also added that trans people are entitled to their gender because it is "a fundamental part of the right to self-determination".<sup>2</sup>

On 24 April 2015, an overwhelming majority of the Parliamentary Assembly of the Council of Europe<sup>3</sup> adopted a historic and comprehensive resolution on the human rights

<sup>2</sup> *Evropa ukida zakon o prisilnoj sterilizaciji trans osoba* [Europe abolishes the law on forced sterilisation of transgender persons], <http://transserbia.org/vesti/824-evropa-ukida-zakon-o-prisilnoj-sterilizaciji-trans-osoba>, Accessed, 19.01.2016.

<sup>3</sup> *Istorijska rezolucija o pravima trans osoba* [A historical Resolution on transgender persons' rights], <http://transserbia.org/vesti/856-istorijska-rezolucija-o-pravima-trans-osoba>, Accessed, 19.01.2016.

of trans people. The CoE Assembly called on member states to respect, protect and fulfil the right to trans people not to be discriminated against, to allow them rapid, transparent, and accessible legal recognition based on self-determination. The resolution calls on member states: to clearly and fully adopt trans inclusive and anti-discrimination laws and measures, to quickly adopt transparent and accessible legal procedure of recognition of gender self identity without further restrictions based on personal characteristics (such as age); to prohibit sterilization and other medical procedures (such as diagnosing mental disorders/conditions) and mandatory divorce on the basis of gender identity, after which they do not have a legally recognized relationship and rights, and to ensure that the best interest of a child is observed in cases involving children; to consider the inclusion of the third gender option in gender identity documents for those seeking such a status, to organize accessible health care for the specific needs of transgender persons (including children), and to ensure that trans\* people are not labelled as mentally ill in national and international classifications; to be proactive in terms of information sharing, raising awareness and providing education, especially for relevant professional groups.

### **Spain<sup>4</sup>**

Before the adoption of the Law 3/2007, which regulates the correction of gender mark in the national registry, the legal problems related to transgender people had to be dealt with on a case-by-case basis, without a clear legal framework that one could rely on. This new Law provides that adult Spanish citizens are entitled to change their legal name and sex/gender marks in all documents. Candidates are required to submit medical documentation on the diagnosis of gender dysphoria; they are also required to have passed a two-year "medical treatment" (usually interpreted as hormonal therapy). Elderly transgender persons or persons of poor health are excluded from the latter request. In addition, the applicant must be a Spanish citizen. Unlike other countries, sterilization is not required in Spain. Even though the law allows the change of one's name, given the irreversibility of birth registry and gender identity, the newly chosen name must be unambiguous related to preferred male/female sex.

### **Portugal**

Portugal adopted the Trans law on 18 March 2011.<sup>5</sup> After the Parliament's decision was vetoed by the President last year, the President now signed the law, which entered into force on 15 March 2016. Thus, Portugal finally has a legislative act regulating the legal recognition of gender identity, which has filled in a legal gap that human rights activists have been pointing out to for a long time. The new law envisages that the preferred gender may be attained in the course of a standardized administrative procedure within a period of 8 days. Apart from filing an application, an applicant is required to

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<sup>4</sup>*The narratives of transgender rights mobilization in Spain*, [http://www.academia.edu/1377556/the\\_narratives\\_of\\_transgender\\_rights\\_mobilization\\_in\\_Spain](http://www.academia.edu/1377556/the_narratives_of_transgender_rights_mobilization_in_Spain), Accessed, 19.01.2016.

<sup>5</sup> *Portugal adopts Trans Law*, <http://tgeu.org/portugal-adopts-trans-law-8-days-for-legal-gender-recognition/>, Accessed, 19.01.2016.

submit a medical certificate issued by a multidisciplinary expert team. The procedure is available only to Portuguese nationals over the age of 18.

This legislative step has ended a long period of legal uncertainty for trans people in Portugal. Thus, Portugal has joined the progressive club of Spain and the United Kingdom, where sterilization is not envisaged as a prerequisite for the legal recognition of gender identity. It also sends an important message to other countries in Europe to consider the conditions and remove harmful elements in their laws for the legal recognition of gender identity as recommended by the Council of Ministers in 2010. Richard Köhler, co-chairman of Transgender Europe, says: "The right to the documents that match the identity of the person is a basic civil right. Congratulations to ILGA Portugal and other human rights activists in Portugal on this success." This law significantly improves the lives of trans people in Portugal. After clarifying these aspects, other issues need to be addressed as well. Access to adequate health care and the labour market, as well as the guarantee of life without discrimination, should now be the priority of trans people in Portugal.

### **United Kingdom.<sup>6</sup>**

In the UK it is possible to change the gender marks in a passport without a medical diagnosis, simply on the basis of a doctor's report stating that one has a need to live one's life as a person of the other gender.<sup>7</sup> The Gender Recognition Act establishes the right to gender identity, and the right to amend personal documents (identity card, passport, voting card). It is the administrative action which is adjudicated by the Family Court. The applicant has to prove, by ensuring sworn testimonies of two witnesses, that his/her behaviour corresponds to the acquired gender identity for the past two years at least (that the change of sex given by birth and a subsequently acquired gender is stable and permanent). The Act establishes that a multidisciplinary team specializing in gender identity and diversity shall be established within the Civil Registry for the purpose of professional expertise and testimony in this regard. These professionals gather testimonies from people who know the applicant (such as neighbours, colleagues, relatives and professors), as well as from professionals who met with the applicant for different social, mental or physical purposes. The applicant may submit evidence as well but it is considered separately. Gender reassignment surgery is not required, but if the applicant has undergone such an operation, he/she is not required to submit any proof that he/she lived in the new gender role within the past two years. The applicant's marital status is irrelevant. The entry of gender change in public documents enables the person to exercise all rights related to the acquired gender. Once a person has changed his/her gender in public documents, he/she may get married in line with his/her newly acquired gender. The law establishes that the person should inform his/her partner about the gender changes, but it is not mandatory. Similarly, trans people can change their name and gender in official documents without surgery in Argentina, Uruguay and some other countries.

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<sup>6</sup>*Applying for a passport -Additional information for transgender and transsexual customers*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251703/Applying\\_for\\_a\\_passport\\_additional\\_information.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251703/Applying_for_a_passport_additional_information.PDF), Accessed, 19. 01. 2016.

<sup>7</sup>*Gender Recognition Act*, [http://www.legislation.gov.uk/ukpga/2004/7/pdfs/ukpga\\_20040007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/7/pdfs/ukpga_20040007_en.pdf), Accessed 19. 01. 2016.

*Applying for Gender Recognition Certificate*, <http://www.legislation.gov.uk/ukpga/2004/7/section/1>, Accessed 19. 01. 2016.

### Denmark

On 12 June 2014,<sup>8</sup> Denmark was the first European country that allowed the legal change of gender marks without obtaining a clinical diagnosis and without undergoing a prior medical treatment, surgery, and the like. Denmark is the first country in Europe where trans people are not required to obtain the "Gender Identity Disorder" diagnosis or a psychological assessment. The Danish Parliament has also eliminated the preconditions, such as medical interventions, surgical operations and compulsory sterilization. The new procedures for the legal recognition of the preferred gender entered into force on 1 September 2014; thus, an individual has become the sole decision-maker on the desired gender, without any conditions imposed by the state. The application for a legal change of gender/gender identity shall be submitted to the competent institution and the applicant is only required to confirm the submitted application after the expiry of a six-month period.

### Croatia

Trans people in Croatia can change their sex marks in public documents even before a gender reassignment surgery since 9 April 2013.<sup>9</sup> The adoption of the new Act on State Registers, which has been proposed by the Ministry of Administration and submitted to Parliament, will be the first step in accomplishing the ultimate goal - a legal change of gender without surgery. In Croatia, there are many transsexuals who have never changed their gender by operation, but they have subjected themselves to hormonal therapy which enables them to look and behave in a manner that reflects a person of the opposite sex and a different name as compared to data provided in their public documents. Since 2011, they have been allowed to change their sex marks in personal documents even before undergoing the genital surgery, but nobody has managed to exercise this right in practice. The former Croatian Government (at the time when the head of the Ministry of Health was a HDZ member Darko Milinovic) adopted the Ordinance which envisaged that a legal sex change or a change of sex/gender mark in the documents also applied to people who did not have a surgery but live as persons of another gender. However, this right has remained a dead letter of law given the fact that transsexuals are required to submit their claims to the National Health Council (GCD), which rejected all the requests. In that context, on 02 April 2014,<sup>10</sup> the Croatian Constitutional Court ruled: "A woman can be a man even without a sex change!" This decision concerned a female person who had been living in another gender role for a long period of time, ever since her childhood when she realized that she "trapped in the wrong body." No later than the next three months, she will be the first person in Croatia who will have a change of sex mark entered into her public documents, even though she has not undergone a sex-changing surgery. The change of sex marks shall be entered in her documents on the basis of the Constitutional Court decision.

<sup>8</sup> *Danska prva evropska zemlja koja omogućuje pravnu promenu oznake roda bez kliničke dijagnoze* [Denmark-the first European country to legally recognize a change of gender status without clinical diagnosis], <http://transserbia.org/vesti/664-danska-je-postala-prva-evropska-zemlja-koja-omogucuje-pravnu-promenu-oznake-roda-bez-klinicke-dijagnoze>, Accessed, 19. 01. 2016.

<sup>9</sup> *Hrvatska: Transeksualci će i pre operacije u dokumentima moći promeniti pol* [Croatia: Transsexual persons may change gender status in identity documents even before surgery], <http://transserbia.org/vesti/246-hrvatska-transeksualci-ce-i-pre-operacije-moci-u-dokumentima-promeniti-pol-246>, Accessed, 19. 01. 2016.

<sup>10</sup> *Ustavni sud Hrvatske: "Žena može biti muškarac i bez promjene spola"* [The Constitutional Court of Croatia: "A woman may be a man even without sex-changing surgery"], <http://transserbia.org/vesti/619-ustavni-sud-hrvatske-zena-moze-biti-muskarac-i-bez-promjene-spola>, Accessed, 19. 01. 2016.

### Malta

Owing to the new LGBTI Act adopted on 02 April 2015,<sup>11</sup> surgical procedures and sterilization have been repealed from the legislations. Thus, transgender persons in Malta will no longer have to undergo gender reassignment surgery, sterilization, and/or obtain a diagnosis in order to legally change gender. This Act has been designated by human rights activist and groups as a revolutionary and pioneering legislative act when it comes to LGBT rights in Europe. By enacting this law on gender identity, gender presentations and sex characteristics, Malta has become the second European country (after Denmark) which allowed transgender people to have their gender identity recognized without any medical intervention or state-imposed requirements. This law also prohibits unnecessary medical genital surgeries on intersex babies, which makes Malta the first country in the world that has envisaged such legal provisions. Last year, Denmark became the first European country to allow transgender people to exercise the right to legal gender change without a prior medical intervention, provided that the person is over the age of 18 and that, after the expiry of a six-month period, the person has reaffirmed the desire for the preferred gender to be legally recognized. The Maltese law does not stipulate this waiting period, nor the age limit. Instead, it allows parents or legal guardians of a person under the age of 18 to refer to court requesting a legal change of gender in their name. This legislative act also allows parents and guardians of intersex children to postpone the entry of the child's gender in a birth certificate. As explained by the ILGA-Europe, it implies that hasty, serious and often irreversible surgical procedures can be avoided.

### Germany

On 01 November 2013, Germany<sup>12</sup> allowed parents of newborns to choose the option "no gender" to be entered into the register of births, thus enabling them not to opt for either gender. This provision is a step towards creating a legal recognition of intersex persons, i.e. children born without clearly defined genitalia, whose gender is impossible to determine. Given the fact that one in 1500 babies is born without the possibility to clearly determine their genitals/gender, whereas many intersex people do not exhibit their gender characteristics at an early age (but only later in life), the legal system tends to "release the pressure on the parents to opt for one gender immediately after the child's birth. This will be the first time that a law recognizes that there are human beings who are neither women nor men, or who are both." In this respect, Germany is similar to Australia, which is the first country in the world that recognized and allowed the third gender option ("X") in passports in late 2011.

### Poland

On 23 July 2015, the Lower House of the Polish Parliament (the *Sejm*) adopted the Gender Harmonization Act, which was the first legislative act in the history of this country that recognized gender affiliation. After the initial submission of the proposal in May 2012 by Ana Grodcka, the first open transgender member of Parliament, the parliamentary procedure took a

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<sup>11</sup>*Hirurški zahvati i sterilizacija izbrisani iz revolucionarnog LGBTI zakona* [Surgery and sterilisation repealed from the revolutionary LGBT Act], <http://transserbia.org/vesti/839-malta-hirurški-zahvati-i-sterilizacija-izbrisani-iz-revolucionarnog-lgbti-zakona>, Accessed, 19. 01. 2016.

<sup>12</sup>*Nema roda* [No gender], <http://transserbia.org/vesti/531-nema-roda>, Accessed, 19. 01. 2016.



very long time, due to the constant criticism by the conservative media. The legislative act was finally adopted by the prevailing majority vote of 252 in favour, 158 against and 11 abstentions. The Members of the Polish Parliament openly supported the bodily autonomy of trans people and recognized the guaranteed right of transgender persons to ensure their dignity. Although the legal recognition of gender identity has had a long history in Poland, dating back to the 1960s, this process has never led to enacting legislation on this matter, which ultimately resulted in confusing court proceedings. Thus, trans persons seeking recognition of their gender identity were often forced to face their parents and children in court, to produce expert assessments and diagnosis of gender dysphoria, and to wait for court decisions for a period ranging from 4 months to even a year. Even then, the legal battle was far from being over because Poland did not allow its citizens to obtain a new birth certificate, and there was no mechanism to ensure that all documents on education and employment data matched one's new gender identity.

The new Gender Harmonization Act ensures that no other person except the applicant may be involved in the process of gender recognition. To obtain recognition of gender identity, an applicant must meet three necessary conditions: 1) he/she must be a Polish citizen; 2) he/she must be single; and 3) he/she has to submit two independent certificates (issued within a period of the past 12 months, either by a clinical psychologist who is concurrently a sexologist or a psychiatrist/sexologist who is concurrently a medical doctor) confirming that he/she is a person who has a legally assigned gender identity. The application for the recognition of gender identity is examined by the regional court in Lodz, which is the only court in the country to receive such applications. As there are no requirements on a prior medical intervention and hormonal therapy, the court is obliged to decide on the recognition of gender identity within a period of three months from the application date. Trans people shall also be issued a new birth certificate and new certificates on their education and work history. The Trans-Fuzja organization<sup>13</sup> has contributed to raising the awareness of the general public and policy-makers in Poland on the importance of enacting relevant legislation which would regulate the issues concerning the recognition of trans persons' gender identity. However, there are many other open questions that still have to be addressed, such as: the issue of self-determination, security of the parental rights of trans people, the annulment of forced divorces and request for citizenship, reinstating the public funding of health care in the transition process, improving the current protection standards, and many others. This legislative act is only the first step towards providing for a better position of the trans population in Poland, which needed a period of three years to take this important first step.

## Israel

On 22 January 2015, trans people in Israel were allowed a legal change of gender without surgery,<sup>14</sup> when Israel announced changes to its law on gender identity recognition. This means that the local trans people will no longer be forced to go through surgeries to legally obtain gender changes. The Israeli Ministry of the Interior announced then that citizens would be allowed to change the gender marks in their identity cards without meeting the requirement to

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<sup>13</sup> *Press Releases, Polish Parliament makes trans history*  
[http://transfuzja.org/en/artykuly/press\\_releases/polish\\_parliament\\_makes\\_trans\\_history.htm](http://transfuzja.org/en/artykuly/press_releases/polish_parliament_makes_trans_history.htm),  
Accessed, 19. 01. 2016.

<sup>14</sup> *Izrael: Trans osobama se dozvoljava zakonska promena roda bez operacije* [Israel: Trans persons are allowed to change gender status without surgery], <http://transserbia.org/vesti/790-izrael-trans-osobama-se-dozvoljava-zakonska-promena-roda-bez-operacije>, Accessed, 19. 01. 2016.

undergo a gender reassignment surgery. This change is important because a large number of trans people cannot afford or do not want to go through complex surgical procedures in order to have their basic rights recognized.

## NORTH AND SOUTH AMERICA

### Canada

Transgender people in Canada have the right to self-determination in their documents on citizenship, without undergoing gender reassignment surgery, since 28 April 2015.<sup>15</sup> Pursuant to the reform of the "Citizenship and Immigration Canada", Canadians no longer need to undergo gender reassignment surgery to change the gender mark in their certificates of citizenship. Those who want to change their gender in accordance with his/her self-determination should now just provide relevant evidence, such as is the amended birth certificate. "This change will enable people who identify themselves as another gender but who have not undergone the operation (or do not plan to do so) to have access to the relevant certificate of citizenship," said Bill Brown, a spokesman for Citizenship and Immigration Canada in his email to the National Post.

Previously, it was necessary to provide evidence of gender reassignment surgery, usually including the surgery of both "upper" (chest) and "lower" (genital) part of the body. They were also required to submit two other identification documents and a statement from a third party to guarantee that he/she had known the person before and after the surgery. The reform has contributed to harmonizing the federal requirements with provincial ones, and enabled the change to quickly spread throughout Canada. Currently, the provinces of Ontario, British Columbia, Alberta and Manitoba have abolished the gender reassignment surgery as a condition for changing gender marks in provincial documents, such as a birth certificate.

The right to self-determination is the most important right. In many judicial decision, courts have established that every person has the right to define his/her own gender identity, which is independent of the physical body and the kind of transition the person has gone through. For many transgender people in Canada, it may be quite a challenge to find a doctor who is capable of providing competent care. For those who want to have a gender reassignment surgery, it can be an expensive and lengthy process, considering that the legal requirements for a complete transition have not been stipulated in detail. Given the statistics showing that transgender people face a higher rate of assault, harassment and discrimination in the field of housing and employment, it is very important that they are now able to have their official identification documents that meet their real needs and living identities.

The first transgender judge was elected in early December 2015 in the Canadian province of Manitoba.<sup>16</sup> Kyle McKenzie, a lawyer and then a judge in Winnipeg in Manitoba, was appointed by the independent judicial commission. The Canadian media reported that Mackenzie was the first transgender judge in Canada and third in North America. "I believe that it is important for our community. I think we have finally broken

<sup>15</sup> *Transgender Canadians can now self-identify on citizenship documents without sex-reassignment surgery*, <http://news.nationalpost.com/news/canada/federal-government-quietly-eases-requirements-for-canadians-seeking-to-change-gender-on-citizen-certificate>, Accessed, 19. 01. 2016.

<sup>16</sup> *BETA/AFP NEDELJA, 2015, Prvi transrodni sudija izabran u Kanadi*, B92, 20. decembar. [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=12&dd=20&nav\\_category=78&nav\\_id=1076796](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=12&dd=20&nav_category=78&nav_id=1076796), Accessed, 19. 01. 2016.

the ice," Mackenzie said for local media. It was the first step in the professional promotion of transgender people.

### **Ontario, Canada**

Transgender people born in Ontario<sup>17</sup> can change the gender mark in their birth certificate without surgery, as decided in that province on 12 October 2012. Ontario is the first province in Canada which abolished the gender reassignment surgery requirement. People who live in the role of gender identity opposite to the one obtained at birth can now change their gender mark in the Ontario registries without undergoing a gender reassignment surgery. The new rules, which have recently entered into force, enable transgender people born in the province to apply for a change of gender mark in their documents only by submitting a statement issued by a doctor or a psychologist. Trans people will now be able to synchronize their private and public personas. This follows from the judgment of the Ontario Human Rights Tribunal in the case *XY v. Ontario* (2012) concerning an Ontario woman (XY) who was born as a man. The Court found that the law, which requires proof of "transsexual surgery" in order to change a gender marks in a birth certificate was discriminatory. In its decision, the Court pointed out that such a requirement, apart from the additional stigma experienced by persons belonging to the transgender community, reinforces the stereotypes on transgender people's gender identity. After years of legal ambiguity or open denial of their human rights, transgender people are now recognized just as other vulnerable groups and minority communities, and finally gain access to their legal rights.

### **Hawaii, USA**

Since 6 May 2015,<sup>18</sup> the transgender people in Hawaii will no longer have to prove their gender identity by undergoing gender reassignment surgery in order to change their birth certificates. The proponents of transgender rights emphasize that more lenient requirements for updating the legal identification of trans people have a range of positive effects in many aspects of their lives, such as housing and mental health. Hawaii has provided huge support to this population since the legislature passed an act which enabled transgender persons to obtain new birth certificates that reflect their authentic gender identity. The US House of Representatives and the Senate approved a bill that abolished the previous requirement under which trans people had to provide "evidence" of gender reassignment surgery before being allowed to legally change gender mark in their birth certificates. Under the new bill, anyone should get a certificate from a doctor to prove they are transgender. The bill is now awaiting approval of the Hawaiian government. The proponents of transgender rights expect the law to be passes; thus, Hawaii will join a group of at least six other US states that have rejected the barriers for legal and social recognition of transgender identity.

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<sup>17</sup> *Transgender people born in Ontario can change birth-certificate gender without surgery, provibce, says*, <http://news.nationalpost.com/news/canada/transgender-people-in-ontario-can-change-birth-certificate-gender-without-surgery-province-says>, Accessed, 19. 01. 2016.

<sup>18</sup> *Trans Hawaiians Will No Longer Need to "Prove" Their Surgeries to Change Their Birth Certificate*, <http://www.advocate.com/politics/transgender/2015/05/06/trans-hawaiians-will-no-longer-need-prove-their-surgeries-change-bir>, Accessed, 19. 01. 2016. ; another source (*Hawaii bill for birth certificate gender change passes*, <http://honolulu.suntimes.com/hnl-politics-government/7/100/78796/hawaii-bill-birth-certificate-gender-change>), Accessed, 19. 01. 2016.

### **Maryland, USA**

In the US state of Maryland, the legislative act that enables trans people to change their name and gender marks in their birth certificates, without gender reassignment surgery, came into force in early 2015 (without being signed the Governor). The lawmakers in the State of New York adopted an identical legislative act last December. The Statute of Mexico City, which allows trans people to legally change gender without obtaining a court order, entered into force at the beginning of 2016.

### **Oregon, USA**

*Equal Protection: Requirement of gender reassignment surgery in order to change gender marks in registers (HB 2093) (2013) is cancelled.*<sup>19</sup> After the adoption of the legislative act marked as "HB 2093" and its entry into force on 1 January 2014, the transgender people in Oregon will no longer need to have proof of surgery to change their birth certificates that accurately reflect their gender identity. Previously, the law in Oregon required the operation to update the gender mark in birth registers, which included even those transgender people who did not need, did not want, or could not afford the operations for financial, medical or other reasons. Historically speaking, many public and private insurance companies refused to cover the costs of gender reassignment surgery and related operating procedures, leaving them out of reach even for those patients who really needed these operations. For decades, transgender people who wanted to get the appropriate birth certificate were required to be subjected expensive surgical procedures, regardless of whether they needed or wanted to have a surgery. Although long overdue, HB 2093 balances the Oregon law with well-established medical standards. It promotes fairness and equality and makes life easier for transgender people born in Oregon.

### **Vermont, United States**

The State of Vermont<sup>20</sup> issued an important law regulating changes of gender mark in birth registries. Although some other states allow in their policies the change of gender marks without providing evidence of operation, Vermont is the first state that clearly specified in its statute that gender reassignment surgery is no more a requirement for changing gender marks in trans persons' birth certificates.

### **Rhode Island, USA**

On 27 October 2014, Rhode Island<sup>21</sup> abolished the requirement that proof of a prior gender reassignment surgery is needed for changing the gender marks in birth certificates of transgender people. The proponents of civil liberties praise the state of Rhode Island for facilitating the change of gender marks in birth certificates of its transgender residents.

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<sup>19</sup>*Equal protection: Repeal surgery requirement for gender change on birth certificate (HB 2093)*, [http://aclu-or.org/Repeal-surgery-requirement-gender-change-birth-certificate-HB\\_2093](http://aclu-or.org/Repeal-surgery-requirement-gender-change-birth-certificate-HB_2093), Accessed, 19. 01. 2016.

<sup>20</sup>*Transgender rights victory in Vermont*, <http://www.thetaskforce.org/transgender-rights-victory-in-vermont/>, Accessed, 19. 01. 2016.

<sup>21</sup>*Rhode island drops surgery requirement for transgender birthcertificate changes* <http://www.lgbtqnation.com/2014/10/rhode-island-drops-surgery-requirement-for-transgender-birthcertificate-changes/>, Accessed, 19. 01. 2016.

The American Civil Liberties Union of Rhode Island and the Youth Pride advocacy groups say that the Department of Health has established new regulations eliminating the requirement of gender reassignment surgery before changing the gender marking in birth certificates. Under the new rule, the change of gender marks will be allowed if doctors certify that a person has undergone surgery or hormonal treatment, or some other appropriate treatment, but the regulations also provide that new birth certificates shall be issued without any designation that they have been modified.

### **Colombia**

Colombia allowed the change of gender mark without surgery on 10 June 2015.<sup>22</sup> The Government of Colombia allowed transgender people in this South American country to legally change their name and gender mark in identity cards and other documents, without a prior gender reassignment surgery. In his statement for *El Espectador*, a Colombian daily newspaper, the Colombian Minister of Justice, Jesid Reyes, said that notaries and registrars were issued a decree on 5 June 2015, which would allow trans people in Colombia to register their new gender in notary-public offices through "a simple bureaucratic transaction", after which they only have to contact the birth registry in order to receive a document/certificate on their new gender. Reyes noted: "For the first time in the history of Colombia, the government has adopted the public policy enabling trans people to change their gender and providing for the legal recognition of their new gender. Trans people constantly experienced injustice because their gender identity was not inconsistent with gender marks in their personal documents. This created problems in all aspects of their everyday lives, including education, employment, housing, movement, access to health care, etc."

### **Bolivia**

Bolivia legally allows trans people to change documents.<sup>23</sup> The proposal for enacting the Gender Identity Act was submitted to the Bolivian Parliamentary Assembly in 2012 by the Bolivian Movement for the rights of transgender persons. The proposed Act was aimed at enabling the transsexual and transgender persons to change their names and gender mark in personal identification documents: the ID card and birth certificate. It took the Bolivian government three years to support this legislative proposal. In the press conference held on 25 December 2015,<sup>24</sup> the Bolivian Minister of Justice (Virginia Valesco) stated that the proposal would be sent to the Bolivian legislative assembly for approval. Valesco noted: "The Ministry of Justice has cooperated with various institutions working on a draft gender identity act, aimed at establishing the procedure for the change of names and gender marks of transsexual and transgender people. The persons pursuing a gender change will be able to change their personal data in the registry offices, which will significantly facilitate the subsequent process of their gender identity recognition."

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<sup>22</sup> *Kolumbija: Dozvoljava se promena roda, bez operacija* [Columbia: Gender changed allowed without surgery], <http://www.transserbia.org/vesti/891-kolumbija-dozvoljava-se-promena-roda-bez-operacija>.

<sup>23</sup> *Bolivija: Istorijska pobeda za trans osobe* [A Historical victory for transgender persons] <http://transserbia.org/vesti/994-bolivija-istorijska-pobeda-za-trans-osobe>, Accessed, 19. 01. 2016.

<sup>24</sup> *Transgender Bolivians Gain Right to Change Gender on ID Cards* <http://www.telesurvtv.net/english/news/Transgender-Bolivians-Gain-Right-to-Change-Gender-on-ID-Cards-20151126-0040.html>, Accessed, 19. 01. 2016.

This Gender Identity Act refers to transgender persons over the age of 18; as estimated by the national Trans, Lesbians, Gays and Bisexuals (TLGB) community, this Act will have a positive effect on more than 1,500 self-identified trans people in Bolivia. In October 2015, the Bolivian government issued a statement that they would support a new video campaign aimed at increasing respect for the elderly LGBT people, who are one of the most marginalized groups in the Bolivian society. Yet, in her presentation of the Gender Identity Act, the Minister noted that this Act was completely unrelated to same-sex marriage given the fact that gender identity was quite a distinct issue, which called for a different kind of discussion. According to the data collected by different organizations fighting for transgender people's rights and advocating for the adoption of this Act, there is a total number of 1085 people in Bolivia who claim to have been discriminated on different grounds, particularly when they needed health care or medical assistance. Discrimination based on sexual orientation and/or gender identity is prohibited in 2009 by the Bolivian Constitution. However, many people from the Bolivian LGBTQ community claim that the law is rarely applied and argue that they are frequently subjected to discrimination and violence. A report from 2011 contains information that, in the past decade, there were at least 55 cases involving murder of the LGBT people in Bolivia, 11 of whom were transgender persons. Based on the same report, 80 percent of those who participated in the study were subjected to verbal, physical or mental harassment by the police.

#### THE FIRST STEPS

##### Vietnam

The first steps in Vietnam<sup>25</sup>: In November 2015, Vietnam passed a law which allows a change of gender marks in documents, which is in line with the newly acquired gender identity of persons who have undergone gender reassignment surgery, whereby they will have "personal rights that are in line with their new gender identity".<sup>26</sup> Yet, gender reassignment surgery is still completely illegal in Vietnam, but individuals who need it usually go to the neighbouring Thailand. What is interesting in Vietnam is the reverse order in introducing legislative changes. The first step usually implies opening opportunities via *leges* and/or *via facti* to hormonal therapy and operational processes related to gender reassignment. The next step emerges as a result of the urgent need to legally regulate the process of changing personal documents and the gender status of people who have undergone a transformative process. In 2015, 600 people who had undergone the gender reassignment process publicly requested to be legally allowed to obtain adequate identification documents. In Vietnam, legal gender reassignment is not possible but the change of personal documents and the gender status are provided by the legislative act which will enter into force in 2017. The report of the Vietnamese Parliament states that the law is expected to meet the requirements of one part of the society (the people who requested a legal change of documents and gender status), in accordance with international practice, and that it will not be contrary to the tradition of the

<sup>25</sup> *Vijetnam: donet zakon koji štiti prava transrodnih osoba* [Vietnam passes the law to protect transgender persons' rights], <http://transserbia.org/vesti/993-vijetnam-donet-zakon-koji-stiti-prava-transrodnih-osoba>, Accessed, 19. 01. 2016.

<sup>26</sup> Xinhua, 2015, *Gender reassignment, transgender people recognized in Vietnam*, English.news.cn, 24. November 2015. [http://news.xinhuanet.com/english/2015-11/24/c\\_134850153.htm](http://news.xinhuanet.com/english/2015-11/24/c_134850153.htm), Accessed, 19. 01. 2016.

Vietnamese people. This change was welcomed by activists for LGBT rights in Vietnam, and is considered to be an introduction into the legalization of gender reassignment surgery. Studies presented at the Ho Chi Minh City University of Social Sciences and Humanities in June 2014 showed a very complicated social situation of trans people whose personal documents are inconsistent with their appearance, who cannot use health and social insurance services, who are unable to start or continue their education, or to get a job, which particularly affects young trans people.<sup>27</sup>

### Changes in Puerto Rico

The Puerto Rican Ministry of Education obliges all students to wear school uniforms.<sup>28</sup> In order to reduce the rigidity of the binary gender division, on 12 October 2015, the Ministry issued new rules which provided that students of either sex may choose to wear skirts or trousers as part of the mandatory school uniform, without a risk of being punished.<sup>29</sup> This was an attempt to achieve greater inclusion of lesbian, gay, and trans students in the education process and school community. Of course, the new rules on wearing skirts or trousers do not only apply to LGBT people but to every single student, regardless of his/her sex; thus, the teaching staff cannot take disciplinary measures against them.

### Skirts Day in Mexico

Students of the Escuela Nacional Preparatoria 6, an elite secondary school in Kojoaki in Mexico, traditionally celebrate the "Skirts Day".<sup>30</sup> Although this is only one private secondary educational institution, this is one of the first steps towards promoting greater tolerance for different gender identities. It is also a way to reduce the rigidity of the binary division of gender roles and to get students used to gender diversity in clothing, fashion and appearances.<sup>31</sup> In 2015, the Skirts Day was celebrated on 20 November. The concept is simple: boys wear skirts or dresses, and girls wear pants, "male" shirts and ties. It is also a way to relativize the society-imposed requirements concerning what boys and girls should wear, how they should look and behave. One of the students (Huan) said: "Every year, every guy in my high school in Mexico wears a skirt/dress, and every girl wears pants and a tie. It is a movement to support gender equality and the acceptance of different gender roles in society." He explained that the school wants to encourage children to gain further understanding of gender equality, to fight against rigidly imposed gender roles in society, and to eradicate sexism and homophobia. He also took pride in the fact that his school is the progressive private educational institution, racially tolerant environment, accustomed to racial differences, where bullying among students is almost non-existent.

<sup>27</sup> Editor: huaxia, 2015, *Hundreds of Vietnamese transgender people request new identification*, *English.news.cn*, 12. August. [http://news.xinhuanet.com/english/2015-08/12/c\\_134509278.htm](http://news.xinhuanet.com/english/2015-08/12/c_134509278.htm), Accessed, 19. 01. 2016.

<sup>28</sup> Only with one exception, justified by medical reasons.

<sup>29</sup> Duffy Nick, 2015, *Boys can now wear skirts to school in Puerto Rico*, *Pink News*, 12. October. <http://www.pinknews.co.uk/2015/10/12/boys-can-now-wear-skirts-to-school-in-puerto-rico/>, Accessed, 19. 01. 2016.

<sup>30</sup> Barron, A, (2015), *Boys wear skirts to school in Mexico City to challenge gender roles*, *Flama*, 25 November. <http://www.theflama.com/boys-wear-skirts-challenge-gender-roles-mexico-city-school-1475922250.html>, Accessed, 19. 01. 2016.

<sup>31</sup> Williams, J, (2015). *School celebrates annual 'skirt day' to promote gender diversity*, *Pink News*, 23 November <http://www.pinknews.co.uk/2015/11/23/school-celebrates-annual-skirt-day-to-promote-gender-diversity-photos/>, Accessed, 19. 01. 2016.

## CONCLUSION

The experiences of countries all around the world show that there is no single, identical and universally applicable scenario of legal changes in terms of regulating the status of transgender people. The process most commonly begins by providing gender reassignment hormonal and operative procedures, which are followed by the legal recognition of a new gender identity. However, the next step necessarily involves the need to enact legislation to regulate the so-called social gender or gender identity, according to the right to self-determination of transgender persons, which is completely unrelated to previously undertaken medical treatment and gender reassignment surgery. Some countries have gone far in the implementation of this third step, while others have not taken even the first step. Notably, different initiatives and events may be observed throughout the world, many of which constitute the necessary "first steps" aimed at increasing the social acceptance of gender diversity. These steps may seem small and insufficient, but they are actually huge and significant in breaking the sanctity of the binary gender division and accepting the concrete transgender individuals. All these steps are based on the idea of necessity to protect all people, including transgender people, from discrimination, violence, different forms of victimization, and other impacts of neglecting gender identity. Once gender identity becomes legally protected, it is possible to gradually build procedures and other types of legal protection mechanisms designed for all whose gender identity differs from the rigid binary division into women and men, as the only identity options. In Serbia, there is still a significant lack of legal regulations on the status of transgender persons, which further implies that there is much room for improvement.

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## UPOREDNOPRAVNE PROMENE STATUSA TRANSRODNIH OSOBA

*Iskustva drugih zemalja sa raznih krajeva sveta, dokazuju da ne postoji jedan isti, svuda primenljiv scenario zakonskih promena u pogledu regulisanja statusa trans osoba. Najčešće se počinje faktičkim omogućavanjem hormonalno operativnih procedura prilagođavanja pola, čemu nužno sledi pravno priznavanje novostečenog rodnog identiteta, da bi se kao sledeći korak javila potreba za zakonskim regulisanjem tzv. socijalnog/društvenog roda, ili rodnog identiteta shodno ličnom opredeljenju transrodnih osoba nevezano za medicinske tretmana i procese prilagođavanja. U nekim zemljama se daleko otišlo u realizaciji tog, već trećeg koraka, dok ponegde nije realizovan ni prvi korak. Ipak, gotovo svuda u svetu danas mogu da se uoče inicijative i događaji koji mogu da predstavljaju neophodne "prve korake" u povećanju društvenog prihvatanja rodnih različitosti. Kada rodni identitet postane zakonom zaštićena karakteristika, onda se polako grade procedure i druge vrste pravno zasnovanih zaštitnih mehanizama svih čiji rodni identitet odstupa od rigidnosti binarne podele na žene i muškarce kao jedine identitetske opcije. Kod nas još uvek postoji značajan nedostatak zakonskih propisa koji regulišu položaj i status transrodnih osoba. To znači da postoji mnogo prostora za poboljšanje upravo u toj oblasti. Iako bi bilo lako da se nastavi ignorisanje cele te oblasti, propuštanje inkluzije tematike transrodnosti u analize društvenih pojava marginalizacije i viktimizacije, bilo bi neodgovorno.*

Ključne reči: *transrodnost, rodni identitet, promena rodnih oznaka u identifikacionim dokumentima, prvi koraci.*