

**THE RIGHT FOR GENDER REASSIGNMENT****KARALINA LASTOVSKAYA****Polotsk State University**

*The article is devoted to the analysis of somatic (personal) human rights. Positions of the scientists who are engaged in this perspective are investigated. Estimates of content of the specified rights are stated. The attention is focused on the right of gender reassignment taking into account the diagnosis "trasseksualizm". The procedure of recognition of the person by the transsexual and legal consequences of gender reassignment operation is opened.*

The categories of human rights existing today undergo a set of changes: some of them are supplemented, others are specified, and some are not published in the legislation at all. It is connected with the fact that one of the main values in this world are human rights and a legal mechanism of their protection. Today, the rights which concern freedom of the person to dispose their body are really urgent. They are called somatic or personal. These rights and difficulties arising in connection with their emergence represent a new direction in modern legal science. It is possible to claim unambiguously that modern nanotechnologies by means of which the question of the right for body order is staticized lead to not only technical difficulties, but also problems of legal and ethical nature. These difficulties are such problems which arise in connection with the order of the body by the person, determination of essence and the nature of the somatic rights and limits of intervention of the state into the sphere of their regulation.

In legal literature there are various approaches concerning determination of the somatic rights.

The first who was engaged in studying the somatic rights is the Russian scientist V. I. Crous who defined these rights as "the personal ("somatic") rights". The author notes that it is possible to allocate the whole group of the rights which lean on the fact that the person has "rights" to dispose of the body independently. It refers to such rights as the right to carry out its "modernization", "restoration" and even "fundamental reconstruction" and the right to change some abilities of an organism. Here he includes the right to death, gender reassignment, homosexual contacts, organ transplantation, the use of psychotropic drugs, the right for an artificial sterilization, abortion, the right for cloning, and on virtual modeling [1, page 43].

Another position is taken by M. A. Lavrik [2, page 22]. The author, criticizing some provisions of the theory of V. I. Crous who considered the somatic rights through a prism of legal philosophy and constitutional rights, supplements this theory. M. A. Lavrik suggests to abandon the term "personal rights" owing to the fact that the concepts "personal rights" and "laws of persons" are rather similar. He also notes a certain impossibility of unambiguous definition as it is necessary to determine whether the body of the person is specifically personal characteristic of a person. It should be noted that M. A. Lavrik most fully disclosed essence of the somatic rights and classified them as follows:

- 1) the right to death;
- 2) human rights concerning their bodies and fabrics;
- 3) sexual human rights (the opportunity to look for, receive and transfer information concerning sexuality, the choice of the partner, the opportunity to solve, to be a sexually active person or not, etc.);
- 4) reproductive rights (the right for artificial insemination, the right for abortion, sterilization and contraception);
- 5) the right for gender reassignment [2, page 22].

Around the world, including the Republic of Belarus, gender reassignment surgery is gaining popularity. This operation is rather actively performed in such countries as the USA, Iran, Thailand and Russia.

The problem of denial of a gender (Gender Dysphoria) is one of the types of mental disturbances of a personality. According to most western experts, the only effective way of transsexuality treatment today which gives more or less satisfactory results is surgical and hormonal correction of gender, including change of documents and socialization in a new gender role. In the Republic of Belarus years about 70 similar operations have carried out for the last 20 years, however abroad such operations are done much more often.

According to the Law of the Republic of Belarus of June 18, 1993 "About health care", "change and correction of gender are carried out at the request of a full-aged patient in the state organizations of health care in the order determined by the Ministry of Health of the Republic of Belarus" [3]. On the list of Minsk city

sexological center there are about 170 people wishing to change gender (with almost equal number of men and women). In the majority these are people aged from 23 to 26 years. Permission for the operation by means of which the male body will be changed into female or on vice versa, is received by about five people a year [4].

Diagnosis "Gender Dysphoria" has its difficulties. Statement of such a diagnosis is possible only at the request of the full-aged patient in the state organizations of health care. In the legislation it is also defined that the person wishing to change sex undergoes a comprehensive medico-psychological examination necessary for an exception of other sexual, mental and somatic disturbances [5]. Inspection of such people wishing to change gender is carried out within a year in three steps in the stated organizations of health care.

The final decision in giving a diagnosis "transseksualizm" and further need for gender reassignment is made by the Interdepartmental commission at the Ministry of Health of the Republic of Belarus (further - the commission). 15 specialists of the Ministry of Health, Defense, Internal Affairs, Justice, Education comprise the commission. It directs the patient to a psychiatric and sexological inspection.

If the person is recognized as a transsexual, there issued the corresponding conclusion signed by the Minister of Health of the Republic of Belarus which grants the right for change of documents. After change of the passport the transsexual is observed by the commission within half a year. Experts study how he adapts to the new status. The decision on surgical and hormonal correction is accepted only if the process of adaptation took place successfully. Only about 5% of the transsexuals who received a new name refuse to undergo the operation as they are satisfied by the fact that they were recognized in a new gender role.

After gender reassignment surgery the question of change of documents becomes urgent. In the list of the ministerial procedures which are carried out by public authorities and other organizations by request from citizens, approved by the Presidential decree of the Republic of Belarus from 26. 04. 2010 No. 200 such decisions are made by the interdepartmental commission on the physician-psychological and social resettlement of persons with gender denial at the Ministry of Health, on the basis of the passport or other identity document. The list of the documents which are subject to change includes diplomas, the distribution certificate, the independent employment certificate, a pupil ticket, a student ID card, the degree certificate (for graduates from a military academy, doctoral candidates, applicants), a ticket of the listener, the book of progress of the pupil, the record book, the certificate for the right of service of potentially dangerous objects [6]. However in other countries such procedure is carried out without special procedural difficulties.

As for the name and the surname change, as well as replacement of the passport in case of gender reassignment, no special bases for the persons who changed gender are provided in the legislation. General provisions on change of the name and surname will apply for this category of people.

The question of succession in case of gender reassignment remains debatable. At a regulation of such succession we consider it necessary to fix a universal succession at gender reassignment of a person that assumes transition of all property, sets of all rights and duties belonging to the person to the assignee as a unit, and to this set uniformly belong not only all prevailing laws and duties valid at the time of succession, but also future, or not revealed at the time of succession. At the same time it should be noted that succession has to happen taking into account the criteria of an opportunity to accept such rights and duties, as well as physiological, psychological and other abilities of the person who changed gender to carry them out (for example, a conscription, the right for social pension for age, etc.).

New legal status of the person who changed gender is established in full at the time of final change of identity documents that, in turn, has to be the basis for succession at gender reassignment. Succession at gender reassignment has to be based on the law, however the Civil code of the Republic of Belarus (further - group of companies) refers inheritance (Art. 129 of group of companies), reorganization of the legal entity (Art. 129 of group of companies) and separate cases in liability law to cases of succession (for example, Art. 552 of group of companies - donation, Art. 560 of group of companies – a constant rent). It is obvious that lack of special legal regulation in practice at permission of concrete disputes creates a number of legal problems.

Thus, we consider it necessary to complement the existing list of universal succession of gender reassignment with the subsequent equalization of rights of such people with those of people of the same gender from birth, having at the same time systematized all legislation.

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