

YUGOSLAVIA: THE MEDICO-LEGAL ISSUE OF TRANSEXUALITY

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I. THE DEFINITION OF TRANSEXUALITY

As children, society as a whole plays a significant role in shaping our sense of gender and sexual identity. Born physiologically male, young boys are typically dressed in blue as infants; born physiologically female, young girls are dressed in pink. We visually recognize the differences between little girls and little boys and react accordingly.

The medical term "gender dysphoria syndrome" describes the personal conflict between these external societal factors and the internal yearnings and emotions of a child or adult. It results when there is an inconsistency between one's perceived gender identity¹ and gender role² versus the outwardly visible primary and secondary biological sexual characters.³ The result is an individual who perceives oneself internally as one gender, while outwardly appearing to be the other.

Transsexuality (transsexualism)⁴ is an extreme form of gender dysphoria characterized by an obsessive desire to be delivered from one's physical

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1. Gender identity refers to one's basic sense of self as a male or a female. See AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 261 (3d ed. 1980) [hereinafter DSM III]. Gender identity and biological sexuality are usually congruent. However, in some cases mild to severe discrepancies exist, causing feelings of gender dysphoria. See Russel Reid, *Psychiatric and Psychological Aspects of Transsexualism*, in XXIIIRD COLLOQUY ON EUROPEAN LAW: TRANSEXUALISM, MEDICINE AND LAW (1995).

2. See DSM III, *supra* note 1, at 261. "Gender role can be defined as everything that one says and does, including sexual arousal, to indicate to others or to self the degree to which one is male or female." *Id.* However, there are authors who use the term gender role in the opposite sense, meaning the role that is expected to be congruent with physical gender. Their definition of the gender dysphoria is therefore slightly different. See Bram Kuiper & Peggy Cohen-Kettenis, *Sex Reassignment Surgery: A Study of 141 Dutch Transsexuals*, 17 ARCHIVES SEXUAL BEHAV. 440, 440-41 (1988).

3. See Ray Blanchard, *The Classification and Labeling of Nonhomosexual Gender Dysphorias*, 18 ARCHIVES OF SEXUAL BEHAV. 316 (1989); Jerold Taitz, *Transsexuals and Sexual Identity*, 51 MOD. L. REV. 502 (1988); Melvin Belli, *Transsexual Surgery: A New Tort?*, 17 J. FAM. L. 490 (1978-1979).

4. The term transsexualism was introduced to define individuals who clearly have a de-

primary and secondary sexual characters.⁵ Transsexuals maintain an irrepressible desire to acquire the bodily appearance and the social status of the opposite sex,⁶ and undergo a complete split between psychological and morphological sexuality in early childhood.⁷ The transsexual's life-long conviction⁸ intensifies with the passage of time and includes all of his or her life activities.⁹ This conviction evolves into a passion¹⁰ that culminates into a desperate desire for complete physical sexual transformation.

sire to be of the opposite sex, thereby distinguishing them from the transvestite. See John Hoopes et al., *Transsexualism: Considerations Regarding Sexual Reassignment*, 147 J. NERVOUS & MENTAL DISEASE 511 (1968); Friedemann Pfafflin, *Psychiatric and Legal Implications of the New Law for Transsexuals in the Federal Republic of Germany*, 4 INT'L J.L. & PSYCHIATRY 193 (1981). The term, however, is not a fortunate one because it is often mistaken for various sexual disturbances. The forensic medical specialists Esquirol and Frankel contributed the first complete description of the phenomenon now known as transsexualism in 1838 and 1870 respectively. See VOLMAR SIGUSCH, *MEDIZINISCHER KOMMENTAR ZUM TRANSEXUELLENGESETZ NEUE JURISTISCHE WOCHENSCHRIFT* 2740 (1980). Transsexuality, however, did not become a world-wide, well-known syndrome until famous American psychiatrist Dr. Harry Benjamin published his article on the subject. See Harry Benjamin, *Transsexualism and Transvestism as Psychosomatic and Somato-Psychic Syndromes*, 8 AM. J. PSYCHOTHERAPY 219 (1954).

5. See Reid, *supra* note 1, at 2.

6. See Kuiper & Cohen-Kettenis, *supra* note 2, at 440; Ray Blanchard et al., *Heterosexual and Homosexual Gender Dysphoria*, 16 ARCHIVES SEXUAL BEHAV. 140 (1987); C. N. Armstrong & T. Walton, *Transsexuals and the Law*, 140 NEW L.J. 1384 (1990); James Morton, *The Transsexual and the Law*, 134 NEW L.J. 621 (1984); David Pannick, *Homosexuals, Transsexuals and the Sex Discrimination Act*, PUB. L. 288 (1983); Martin Roth, *Transsexualism and the Sex-Change Operation: A Contemporary Medico-Legal and Social Problem*, 49 MEDICO-LEGAL J. 1 (1981); Roger Ormrod, *The Medico-Legal Aspects of Sex Determination*, 40 MEDICO-LEGAL J. 82 (1972); David Meyers, *Problems of Sex Determination and Alteration*, 36 MEDICO-LEGAL J. 174 (1968); James Graham, *Transsexualism and the Capacity to Enter Marriage*, 41 JURIST 117 (1981); ZORAN RAKIĆ ET AL., *TRANSEKSEXUALNOST I PROMENA POLA SRPSKI ARHIV ZA CELOKUPNO LEKARSTVO* 33 n.1-2 (1991); SIGUSCH, *supra* note 4, at 2742.

7. One study showed that two-thirds of a group of transsexuals studied felt as though they belonged to the other sex by the age of five. Independent interviews with their parents confirmed the group's belief. See Ira Pauly, *The Current Status of the Sex Change Operations* 147 J. NERVOUS & MENTAL DISEASES 463 (1968). Slijepčević and Vujović reported that their patients remembered that they had an outstanding inclination to be friendly with the persons who were not of their official sex. Most of them used the words "since when I know for myself." DRAGOLJUB SLIJEPCJEVIĆ & SVETLANA VUJOVIĆ, *TRANSEKSEXUALIZAM—ENDOKRINI ASPEKT*, ORTHOMEDICA 92 (1992). Finally, many studies reveal that infants are able to discriminate perceptually the sexes before the age of one year and that they reach ability to label themselves as males or females in the second year of life. See Reid, *supra* note 1, at 3.

8. According to the DSM-III, the diagnosis of true transsexualism means an extreme gender dysphoria that has persisted without fluctuations for at least two years. See DSM III, *supra* note 1, at 262. *But see* Blanchard, *supra* note 3, at 316. Blanchard states that there is no doubt that the transsexual's conviction, the feeling of maleness or femaleness opposite to the anatomic sex, is a lifelong one. See *id.*

9. This is how, for example, one of the leading researchers and experts on the transsexual phenomenon, Dr. Robert Stoller, of the University of California School of Medicine, describes what he calls the true male transsexual:

Its essential feature is not, as others feel, that the patient requests [a] sex transformation for other sorts of patients do that. It is, rather, that there has been no sig-

Although sexual reassignment surgery, a procedure that changes the outward gender-related appearance of the individual, will accomplish the desired result, surgical intervention is not always available. Without surgery, true transsexuals often view their visible sex organs as objects of hatred, disgust and deformity.¹¹ When surgery cannot be performed due to various complications, the true transsexual often feels inappropriately supported, and comes to believe that specific obstacles prevent sexual reassignment surgery;¹² this emotion may then lead to aggressive and provocative reactions. In such a critical situation, transsexuals are susceptible to psychotic breakdown and will occasionally attempt self-castration, self-mutilation, or even suicide.¹³

According to the prevailing medical opinion, the only reasonable solution for a true transsexual is to surgically adapt his or her external sexual characteristics to mirror the existing internal gender identity.¹⁴ While the sexual reassignment surgery may be psychologically fulfilling, it however can cause significant legal complications, especially in the fields of family and marriage law. Consider, for example, the pre-operative and post-operative validity of a marriage: if the marriage existed prior to the surgery,

nificant phase in life that either this anatomically normal male or an observer could recognize as masculine. Thus, from those days of childhood when any sort of gender behavior makes its first appearance, this boy appeared as if he believed himself a girl, not a *female* but a *girl*. His behavior has always been feminine; and in it there has been no more quality of imitating or acting than in undeniably feminine girls. The behavior of the boys treated, from age of four or five into adulthood, springs from a feeling of femininity expressed as the convictions that one ought to be a female.

ROBERT STOLLER, *SEX AND GENDER* 138-40 (1968). See also SIGUSCH, *supra* note 4, at 2742.

10. See SIGUSCH, *supra* note 4, at 2742.

11. According to Meyers "the male transsexual has the feeling of 'being in reality a woman', whom nature by some cruel mistake has burdened and embarrassed with male genitalia ... [c]onsequently, he only lives for the day when his hated sex organs can be removed." DAVID MEYERS, *THE HUMAN BODY AND THE LAW* 219 (1990). Transsexuals feel special disgust for the functions of sex organs, like menstruation, erection, or ejaculation. See SLIJEPEVIĆ & VUJOVIĆ, *supra* note 7 at 93; SIGUSCH, *supra* note 4, at 2742.

12. See SLIJEPEVIĆ & VUJOVIĆ, *supra* note 7, at 93.

13. See MEYERS, *supra* note 11, at 219; Ormrod, *supra* note 6, at 82; SIGUSCH, *supra* note 4, at 2743. According to some authors, around thirty five percent of transsexuals see the way out of their problem in suicide, and around seventeen percent try to realize it. See Pauly, *supra* note 7, at 255. The mortality rate of male transsexuals is five times higher in relation to the whole population because of the great number of suicides. See SLIJEPEVIĆ & VUJOVIĆ, *supra* note 7, at 123.

14. According to many case reports, once established, gender identity appeared virtually impossible to influence by means of psychotherapy. This conclusion is supported by the results of some studies showing no apparent psychological disturbance in transsexuals. For example, in spite of the often and substantial distorting of reality in connection with their gender identity, apart from these critical situations, transsexuals do not exhibit any psychopathological symptoms or reactions, such as lack of reality testing, identity diffusion or primitive defenses. See Reid, *supra* note 1, at 8; SIGUSCH, *supra*, note 4, at 2742; JACQUELINE PETIT, *L'AMBIGUÏTE DU DROIT FACE AU SYNDROME TRANSEXUEL*, *REVUE TRIMESTRIELLE DU DROIT CIVIL* 267 (1976).

does the procedure render the marriage void under laws that prohibit same-sex marriages?

For that reason, sexual reassignment surgeries must only be the product of careful and complete differential diagnosis. Every single transsexual case is not as typical as described above, nor has every transsexual passed all the phases of the condition described. An accurate differential diagnosis must be used to exclude disturbances that only resemble, to a lesser or a greater degree, true transsexuality.

II. THE NEW DEFINITION OF HERMAPHRODITISM

Unlike transsexualism, in which the biological sexual identity of the individual is clearly defined at birth, hermaphroditism, sometimes referred to as intersex, is a congenital condition of ambiguity of the reproductive structures.¹⁵ The sex of a Hermaphrodite is not clearly defined as exclusively male or exclusively female. The exact cause of the condition is not yet known; however, scientists suspect that it may result from the failure of the primary gonads to properly atrophy during the embryonic stage, creating an interference with the proper development of the testes or ovaries.¹⁶

By conventional usage, hermaphroditism is defined as either true *hermaphroditismus verus* or false *pseudohermaphroditismus*.¹⁷ True hermaphroditism, by definition, occurs when both testicular and ovarian tissue are represented in the gonads.¹⁸ Yet, because of the large number of potential

15. See RICHARD GREEN & JOHN MONEY, *TRANSSEXUALISM AND SEX REASSIGNMENT* 480 (1969); K. M. Bowman & B. Engle, *Sex Offenses: The Medical and Legal Implications of Sex Variations*, 25 *LAW & CONTEMP. PROBS.* 294, 294-95 (1960).

16. Under normal circumstances, atrophy-involution takes place under the administration of sex hormones. One of the hypotheses still being discussed, therefore, is that there is a congenital enzymatic defect that prevents a normal response of the originally bipolar gland to normal hormone administration, although the biochemical nature of this defect is not yet known. One other hypothesis credits the disorder with the lack of normal concentrations or quality of the acting hormones. See SLIJEPEVIĆ & VUJOVIĆ, *supra* note 7, at 4-6.

17. *See id.*

18. See GREEN & MONEY, *supra* note 15, at 99; SLIJEPEVIĆ & VUJOVIĆ, *supra* note 7, at 65; Ormrod, *supra* note 6, at 82. True hermaphroditism is exceptionally rare. In the entire medical literature, only 200 cases have been reported. See JACQUELINE POUSSON-PETIT, *LE DEMARIAGE EN DROIT COMPARE* 383 (1981); K. Fraser et al., *Hermaphroditus Verus with Report of a Case*, 1 *MED. J. AUSTL.* 1003 (1966). True hermaphroditism is even more rare in court practice. One of the best-known and most cited cases was the case before the Family Court of Australia. It involved a purported marriage that lacked a truly heterosexual character because one of the parties was a true hermaphrodite and the other, the applicant, was a woman. The medical history in this particular case was well documented: a chromosomal arrangement was female; on the left side a testicle was found, slightly smaller than normal; on the right side was an ovary and fallopian tube (later removed by surgical intervention); a rudimentary vagina was assumed to exist; gross phallic deformity (also later surgically corrected); tiny uterus and well-formed breasts. The sub-group to which the respondent belonged in this case is considered the least common of all. So the person in question would appear to be rare even within the comparative rarity of true hermaphroditism. See In the Marriage of C. and D. (falsely called D) (1979) 5 *Fam. L.R.* 636. See also H.A. Finlay, *Sexual Identity and*

tissue combinations, a unique clinical manifestation cannot be feasibly defined.¹⁹

Pseudohermaphroditism, by definition, is a condition where an individual has the same chromosomal and gonadal sex but lacks sufficiently developed external or internal sexual organs of that sex.²⁰ Thus, while the individual is genetically only one sex, he or she may have outward appearances of both sexes as a result of the ill-developed external and internal sexual organs. Depending on the chromosome affected, pseudohermaphrodites can be male or female.²¹

Prominent medical literature presents different views on the link between transsexuality and hermaphroditism.²² Transsexuality, according to some authors, is a broader notion than hermaphroditism.²³ In all cases of hermaphroditism, there are discrepancies between the assigned genetic sex of the in-

the Law of Nullity, 54 AUSTL. L.J. 115 (1980); Rebecca Bailey, *Decree of Nullity of Marriage of True Hermaphrodite*, 53 AUSTL. L.J. 659 (1979).

19. Scholars distinguish four main sub-groups according to the anatomical distribution of the gonadal tissue occurring within the classification of the true hermaphrodite. The most common is probably an ovotestis on one or both sides. See GREEN & MONEY, *supra* note 15, at 99; SLIJEPCÉVIĆ & VUJOVIĆ, *supra* note 7, at 65; Finlay, *supra* note 18, at 116.

20. See GREEN & MONEY, *supra* note 15, at 100-13; SLIJEPCÉVIĆ & VUJOVIĆ, *supra* note 7, at 67.

21. Male pseudohermaphroditism concerns an error where the person with the normal male chromosome pattern XY has external and/or internal reproductive organs that are incompletely developed. Among the different types, the most common is testicular feminization (Syndrome Morris). This syndrome occurs in a genetic 44+XY male with testes and predominantly male internal organs, insofar as they are differentiated. Thereafter, the testes produce androgen, as they should also normally do in a male, but the cells of the body are unable to accept this androgen and use it. Since androgen from fetal testes is responsible for the masculine differentiation of the external genitalia, in the testicular feminizing syndrome, because androgen is without effect, the external organs differentiate as female and cannot be distinguished from those of the normal female. See GREEN & MONEY, *supra* note 15, at 96; SLIJEPCÉVIĆ & VUJOVIĆ, *supra* note 7, at 69; Roth, *supra* note 6, at 5; Ormrod, *supra* note 6, at 81. Female pseudohermaphroditism is an error where the individual with the normal female chromosome pattern XX, with ovaries and normally formed internal reproductive organs, has external masculine genitals. In a few cases, the masculinization is so complete as to produce a normal-looking penis and scrotum. See GREEN & MONEY, *supra* note 15, at 100-03; SLIJEPCÉVIĆ & VUJOVIĆ, *supra* note 7, at 76-82. There are, however, a number of errors that cannot be encompassed within the classical definition of pseudohermaphroditism, for among them there is not even the coincidence between chromosomal and gonadal sex. Among these errors are syndrome XX-male, which concerns anatomically normal male with female XX chromosome complement; Turner's syndrome, where most commonly one of the sex chromosomes is missing so the chromosome complement is 44+X0 with the absence of ovaries; Klinefelter's syndrome, where the sex chromosomal error is a redundancy of the X chromosome so the chromosomal count is 44+XXY with male gonads and male shape of the body, but for reasons not yet accounted for, some patients develop breasts (gynecomastia) at adolescence; and gonadism, where male chromosome pattern XY is followed by the lack of the gonads of either of the sexes. See GREEN & MONEY, *supra* note 15, at 93-98; SLIJEPCÉVIĆ & VUJOVIĆ, *supra* note 7, at 83; Bowman & Engle, *supra* note 15, at 295-99; Roth, *supra* note 6, at 6.

22. See GREEN & MONEY, *supra* note 15.

23. See *id.* at 111.

dividual and one or more of the somatic outwardly apparent variables of sex.²⁴ Some of these cases may also encompass elements of transsexualism, namely a discrepancy between the individual's genetic sex and his or her personal gender identity. In these latter cases, labeled hermaphroditic transsexualism, a desire for sexual reassignment exists and is potentially justified by the physical and biologically founded discrepancy.²⁵

In contrast to hermaphroditic transsexualism, sexual reassignment requests to remedy true transsexualism (also known as eonistic transsexualism) may not be so readily justifiable. True transsexuals do not have a biological discrepancy between sex assigned at birth and the appearance of the external or internal types of sexual organs. Furthermore, there is typically no discrepancy between the assigned sex and the other measurable somatic criteria of sex.²⁶

A differing medical viewpoint, from the Yugoslavia School of Endocrinology, suggests that the definition of hermaphroditism should be enlarged to encompass all the cases of transsexuality.²⁷ This new definition would include all individuals who suffer from a discrepancy between chromosomal sex and gender identity, regardless of whether a psychological or morphological deformity exists. In other words, the sphere of sexual differentiation between man and woman would include not only the function and morphology of the chromosomes, sex glands, genitals and the other secondary sex characters directly connected to the reproductive tract, but the entire biological and social conduct of the person.

This broader definition seems appropriate, as both hermaphroditism and transsexuality share a common element, an extreme personal dissatisfaction with one's genetic sexual identity. It does not seem relevant that one, namely hermaphroditism, began as an embryogenetic disorder that was readily apparent upon birth, while the other, transsexualism, developed during life as a psychological dissatisfaction with an absolute genetic makeup. In any case, the very discrepancy itself makes a new expanded definition of hermaphroditism possible.²⁸ Enlarged in this way, the new definition of pseudohermaphroditism will appropriately encompass situations where a discrepancy exists between physiological and morphological content of the sexuality as represented in a certain chromosomal and gonadal make up. Furthermore, this broader definition will include situations in which there is a psychological rejection of that make up,²⁹ regardless of biological absoluteness.

24. *See id.*

25. *See id.*

26. *See id.*

27. *See* SLIJEPEČEVIĆ & VUJOVIĆ, *supra* note 7, at 67-68.

28. *See id.*

29. *See* RAKIĆ ET AL, *supra* note 6, at 36; SLIJEPEČEVIĆ & VUJOVIĆ, *supra* note 7, at 68.

III. COMPARATIVE LAW

In contemporary comparative law, a country's attitude towards transsexuality can be divided into one of two distinguishable groups. The first group consists of the countries that have adopted special legislation regulating the legal status of transsexuals.³⁰ In these countries, transsexuals who wish to legally change their sexual status must meet particular medical and legal requirements. In general, these countries utilize the "real life" test to ensure that these medical requirements are satisfied.³¹ Under this test, one must demonstrate the existence of a firm and long-term belief that one is not of the sex officially registered at birth in the country's official registers. Furthermore, evidence of sterility and proof of the successful sexual reassignment surgery are typically required. In a majority of these countries, legal requirements must also be satisfied to change sexual status, including attainment of a minimum age requirement and status as a domestic, unmarried citizen.

The other group is composed of those countries that do not have any special legislation. These countries formally address voluntary sexual alteration through judicial decisions,³² the practice of administrative agencies,³³ or by applying solutions from other regulations.³⁴ Many countries using the last method utilize laws that explain how to make changes and corrections of data listed in the civil status registers.³⁵

IV. YUGOSLAV LAW

Yugoslav law undoubtedly falls into the second group, as Yugoslavia lacks any special legislation regarding transsexuals. Under Yugoslav law, general record book regulations dictate the legal status of those who have undergone sexual reassignment surgery. Moreover, Yugoslavian law and Austrian law deal with changes to the legal sexual status of transsexuals in a similar fashion, in that administrative agencies have jurisdiction over changes and corrections to the record books.³⁶

30. Sweden, Germany, Italy, the Netherlands and Turkey have all enacted such legislation. See Law on the Determination of Sex in Special Cases, April 21, 1972 (Swed.); Law on the Change of Forenames and the Determination of Sex in Special Cases (Transsexuals' Law), September 10, 1980 (F.G.R.); Law No. 164, Norms in the Rectification of Sex Attribution, April 14, 1982 (Italy); Law on the Detailed Regulations on Transsexuals Concerning the Change of Sex Determination on the Birth Certificate, April 24, 1985 (Neth.); Act No. 3444, May 12, 1988 (Turk.).

31. MARIJA DRAŠKIĆ, *TRANSEXUALITY AND MARRIAGE* 31-33 (1995).

32. Swiss and French law permits change of sex through judicial decision. See Cour de Cassation, December 11, 1992, *La Semaine Juridique*, 1993, II, 21991, 41 (Fr.); Judgment of the Basel Court, July 27, 1961 (Switz).

33. See Austrian Law Runderlass, July 18, 1983.

34. See MARIJA DRAŠKIĆ, *TRANSEXUALITY: A EUROPEAN UNION LEGAL ISSUE* (2000).

35. See *id.*

36. Article 16 of the Law on Record Books ("Official Herald of the SR of Serbia", No.

By applying the above-mentioned statutory power, the Municipal General Administration Secretariat of the Savski Venac Municipality in Belgrade has handed down approximately ten relevant rulings. In these ten cases, persons registered with female names were permitted to change their sex listing from a "female" to "male" name and *vice versa*, persons registered in the birth registry as a "male" were permitted to change their sex listing to "female."³⁷

Yet while the presence of these changes may be encouraging, the administrative processes that were applied to effect the changes reflect a severe and prolonged underlying issue. The transsexuality issue, by all means, was not a new one within the scope of experience acquired in comparative law; yet Yugoslavia had a surprisingly developed history of transsexuality, as evidenced by the very presence of the ten rulings. It was thus disappointing to discover that the ten documented requests by transsexuals for legal sexual status alteration were settled with incredibly superficial and groundless simplicity. Sadly, the administrative agency that was deemed competent to enact the change did so in a routinely administrative manner, hesitating not for a moment in deciding those cases. While there is no doubt that the transsexuals involved were entitled to the legal sexual status that corresponds to their unchanged gender convictions and their adapted bodies, the evaluation that determines their status should reflect careful thought and credible adjudication. Indeed, Yugoslavia's essentially clerical procedure has numerous shortcomings, and under this administrative process, the final result of any administrative act can be easily and frequently discredited because no actual adjudication occurs.

As an illustration, the provision of the Law on Record Books, referred to by the Municipal Secretariat in the ten rulings mentioned above, applies

15/1990) reads as follows:

Errors noted by the registrar prior to completing the registration in the record book may be corrected by the registrar. Corrections in record books after completing the registration may be effected by the registrar only on the ground of the ruling of the agency competent in terms of the keeping the record book where correction should be effected. Corrections in record books may be effected in line of duty or at the request of the party, namely of the person having a direct or legally founded legal interest thereof.

Id.

37. See Municipal General Administration Secretariat of the Savski Venac Municipality in Belgrade [hereinafter Municipal Secretariat Belgrade] Ruling No. 200-433/92, June 5, 1992 and Ruling No. 200-612/90, July 26, 1990. The same Secretariat, a month later, handed down the ruling by which the first person was permitted to change the name "Arnica" into "Alexandra." Municipal Secretariat Belgrade Ruling No. 201-77/92-02, July 6, 1992. The subject of analysis in the present paper are only the rulings of mentioned Secretariat, since all maternity homes in Belgrade, except one, are located in the territory of the Savski Venac Municipality, while competence for keeping record books is determined according to the place of birth of the child. Unfortunately, data from other towns in the provinces were not available, which applies also to data from former Yugoslav republics, where patients previously operated in Belgrade also live.

exclusively to corrections of the record books. This process assumes that the original registration was incorrect and is essentially limited to changing administrative errors. This process is insufficient because sexual status should only be legitimately and legally altered when a special administrative or judicial proceeding factually determines that it is appropriate. Legal sexual status should be determined based on the expert opinion of corresponding specialists to ensure that the process respects the elementary right of human dignity. Consequently, a transsexual's request for alteration of his or her legal sexual status is not a case of a "correction" because the notion of "correction" necessarily implies that one is correcting something that contained an error. In transsexuality cases, there are no errors either at the initial moment of registering the sexual status in the record book or after the applicant has undergone surgical intervention to achieve the external appearance of the other sex.³⁸

One must look at the intent embodied by the legislature when deciding to leave the delicate legal and human problem of legal sexual status alteration to municipal administrative agencies. Legislative intent becomes even more vital when the legislature fails to provide the agencies with instructions or other more detailed regulations on how to proceed with these matters.³⁹ The result is an entirely arbitrary evaluation by municipal secretaries on the most significant medico-legal issues involving transsexuality: (1) whether surgical intervention is necessary for altering the sex in the record book; (2) what kind and quantity of medical evidence should be enclosed with corresponding requests⁴⁰ and who should be authorized to supply such evidence; and (3) what legal consequences should be acknowledged, beginning with retroactive effect of the "correction." This last issue has far reaching implications because it affects those who have undergone sexual reassignment

38. It is clear from grammatical interpretation of mentioned statutory norm that the legislator had in mind the error as the supposition of correction. See SLIJEPCević & VUJOVIĆ, *supra* note 7, at 4-6. On the other hand, even the Municipal Secretariat that has enacted the mentioned ruling, while deciding on the request for changing the name of a person did not refer to the provision of the Law on Record Books permitting the correction of all information entered, including that regarding the personal name, but to the provisions of articles 404 through 406 of the Law on Marriage and Family Relations, by which the institute termed as "the change of personal name" is regulated, and of article 202 paragraph 1 of the Law on General Administrative Procedure covering the relevant procedure. See Municipal Secretariat Belgrade Ruling No. 201-77/92-02, of July 6, 1992.

39. Indeed, at the time of enactment of the newest Serbian Law on Record Books (1990), the problem of transsexuality has already been well-known both in medical and judicial practices of quite a number of countries. Moreover, the fact that in many countries close to Yugoslavia, in terms of legal culture and tradition, the solution for this problem has been found, could have motivated a pedantic law-maker to use the experience from other legal systems.

40. In one of the rulings of Savski Venac Municipality the evidence cited was "that a surgical transformation of sex has been effected at the Children Clinic in Belgrade, Tirsova Street 10, from female to masculine which is proved by discharge papers [from the hospital] with epicrisis and the act of mentioned Clinic 017 No. 1245/1 of 22 May 1992." Municipal Secretariat Belgrade, Ruling No. 200-433/92, June 5, 1992.

surgery and applied for the corresponding legal status change with the intent to marry.

Understandably enough, these critical remarks are based solely on the ten rulings handed down by the Savski Venac Municipality in Belgrade. Moreover, these rulings have only addressed corrections to the original sexual status listed in the birth registry. These are, namely, the only legal acts under Yugoslavian law relating to transsexuals that were uncovered by research. In regard to the ten cases discussed, none of those individuals subsequently applied to get married, obtain recognized parental rights, or adopt a child. Furthermore, there were no formal judicial proceedings in Yugoslavia that involved the rights of transsexuals. Therefore, this author's conclusion could be challenged for a lack of a statistically relevant sample. In spite of this, the evidence suggests that the agency discussed above and other state agencies are entirely unaware of the medical, social, and legal aspects of the transsexuality issue when faced with sexual status change requests.

Urgent legislative intervention is necessary to confront the medical, social, and legal consequences that Yugoslavian municipal administrative agencies encounter when faced with sexual status change requests. This is not to say that transsexuality issues in Yugoslavia should by all means be regulated by statute. Other countries, for example, have demonstrated successful solutions with their administrative and judicial practices.⁴¹ At this time, however, legislative intervention is desperately needed in Yugoslavia because the agencies confronted with the issues accompanying transsexuality are completely ignorant of the seriousness of the situation. Contrary to the experience in foreign legal orders where, as a rule, initial hesitation was noted on the part of registrars and courts before recognizing requests for legal sexual status alteration request, the lack of strict legislative regulation in Yugoslav law could open the way to irresponsible and superficial interpretation. The process of altering legal sexual status should not be a routine administrative decision copied on a hectographed form, but should instead be the result of a fair and competent legal or administrative hearing, which then can claim credibility and permanence.

The need for legislative intervention is not only demonstrated by the inherent inadequacies of the current process but also by the growing number of transsexual cases. During the period from January 1986 to January 1993, for instance, a Belgrade medical team, engaged in addressing the condition of transsexuality, diagnosed seventy-eight transsexuals.⁴² Of those diagnosed during the period, twenty-two have undergone sexual reassignment surgery.⁴³ It is thus logical to expect that in the near future, Yugoslavian agencies and courts will need to address new requests by transsexuals to either alter their

41. See *supra* notes 32-33.

42. See Zoran Rakić et al., *Gender Dysphoric Patients - Belgrade's Team Experience*, in XXIIIRD COLLOQUY ON EUROPEAN LAW: TRANSSEXUALISM, MEDICINE AND LAW (1995).

43. See *id.*

registered sexual status or to recognize other rights. These requests require a civilized and adequate response by the state agencies and the positive law.

V. CONCLUSION

Yugoslav law has no statutory solution to deal with transsexuality issues, nor is there any judicial practice in this field. Municipal administrative agencies, in their marginal practice, have issued rulings in approximately ten cases where transsexuals were permitted to change the sex previously entered into the civil status register. This change, however, was treated only as correcting a mistake in the birth certificates files. This kind of approach is only an initial step in assisting transsexuals; special legislation is needed to regulate the precise manner in which either the court procedure or the administrative procedure provides a right to change sexual status,⁴⁴ as it is inappropriate to address these decisions as mere “corrections.” The procedure should be initiated only after the requester demonstrates that successful sex reassignment surgery was necessary and has occurred; once this has been shown, legal sexual alteration should be compulsory.

44. For instance, a special extra contentious proceeding like the court procedure provided in German law or the administrative procedure in Austrian law.

