

Multicultural challenges in family law have become in recent years potentially more complex as the overall attitude of society and political discourse towards diversity has dramatically changed. Most notably the Migration crisis has provoked a strong opposition to alternative forms of national, racial and religious identity. All those forms are not considered as value of an individual in open society but are portrayed as alien and hostile social groups. That attitude is changing not only the approach of the Czech Republic towards the solution of Migration crisis on European level but also provokes more radical political stances towards internal existing forms of diversity. Therefore, certain forms of racism, homophobia and anti-liberal hatred have successfully penetrated the public and political discourse and can be considered as a future problematic points for the retention or further development of achieved social plurality and its ensuring via family law.

THE CIVIL STATUS OF TRANSEXUAL AND TRANSGENDER PEOPLE IN THE CZECH REPUBLIC

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Abstract: This article is focused on describing conditions of the recognition of the civil status of transsexual and transgender people (trans persons) in the Czech Republic, or former Czechoslovakia. It is based on a questionnaire created for the purposes of the XX International Congress of Comparative Law, Japan, Fukuoka, 2018. The Czech Republic's national report aims to be a basic but thorough resource of legal information relating to the civil status of trans persons for future comparative analyses of the International Academy of Comparative Law.

Keywords: transsexual, transgender, trans persons, civil status, Civil Code, Act on Specific Health Services, forced divorce, forced surgery, forced sterilization, criticism by Ombudsman and LGBT organizations

I. INTRODUCTION

The Czech Republic is a country with the Continental legal system based on written law. *The Constitution of the Czech Republic (Constitution)*¹ and *the Charter of Fundamental Rights and Basic Freedoms (Charter)*² form a part of the constitutional order of the Czech Republic.

Recognizing the inviolability of the natural rights of man, the rights of citizens, and the sovereignty of the law, and drawing on the universally-shared values of humanity, both *the Constitution* and *the Charter* **protect human rights, namely human dignity and liberty, equality of fundamental rights and basic freedoms regardless of gender, race, colour of skin, language, faith and religion, political or other beliefs, national or social origin, national or ethnic minority, property, birth, or other status.** Finally, according to *the Charter*, everyone has the right to **protection of his or her health.** Citizens shall have the right, on the basis of **public insurance, to free medical care** and to medical aids under conditions provided for by law (Article 31, Charter).

For understanding the legal regulation of trans persons' sexual identity it is necessary to list other sources of law, mainly *international treaties*³ and *Acts* as follows:

- *Convention for the Protection of Human Rights and Fundamental Freedoms*,^{4,5}

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¹ Act No. 1/1993 Coll., as amended. English translation available at: <http://www.psp.cz/en/docs/laws/constitution.html>.

² Act No. 2/1993 Coll., as amended. English translation available at: http://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf.

³ The Article 10 of the Constitution provides as follows: "Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply."

⁴ Statement of the Foreign Office No. 209/1992 Coll.

⁵ Regarding case law of the International Court of Human Rights see KMEC, J., KOSAŘ, D., KRATOCHVÍL, J., BOBEK, M. *Evropská úmluva o lidských právech. Komentář.* Praha: C. H. Beck, 2012.

- *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*,⁶
- *Convention on the Rights of Persons with Disabilities*;⁷
- *Convention on the Rights of the Child*;⁸
- *Civil Code (CC)*,⁹ that establishes civil status (Section 15 ff., CC) and regulates civil law aspects of change of sex (see Section 29, CC);
- *Act on Register Offices, Name and Surname (AR)*¹⁰ that regulates registration of a child, his or her name, surname, sex etc. and consequences of a sex change;
- *Act on Population Records and Birth Numbers*¹¹ that regulates the administration of information of the citizens, their husbands or wives, registered partners, and children, and the issuing and changing of Birth Registration Numbers;
- *Act on Specific Health Services (ASHS)*¹² that regulates medical aspects of sex change;
- *Act on Equal Treatment and on the Legal Means of Protection against Discrimination and on Amendment of Some Acts (the Anti-Discrimination Act)*¹³ that defines more precisely the right to equal treatment and prohibition of discrimination.

II. REGULATION OF THE CIVIL STATUS: GENERAL

According to *the Convention on the Rights of the Child*, **a child has to be registered** in the Book of Births (Vital Register).

The Act on Register Offices, Name and Surname provides that both the Book of Births (Vital Register) (Section 14, AR) and the Birth Certificates (Section 29, AR)¹⁴ must contain

- **the name**, or names, and the **surnames** of the child,
- the day, month and year of the birth of the child,
- **the birth registration number**, the place of birth and the **sex** of the child,
- the name, or names, the surname, or surnames, the date and place of birth, the birth registration number, nationality (citizenship) and the place of residence of the parents.

The child can be registered **only as a woman or a man**. The sex of the child can be recognized not only from “information about sex” but from the name, the surname and the birth registration number of the child according to the *Population Records Act*.^{15,16}

⁶ Statement of the Foreign Office No. 96/2001 Coll.

⁷ Statement of the Foreign Office No. 10/2010 Coll.

⁸ Statement of the Foreign Office No. 104/1991 Coll.

⁹ Act No. 98/2012 Coll., as amended. English translation available at:

<http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady>.

¹⁰ Act No. 301/2000 Coll., as amended.

¹¹ Act No. 133/2000 Coll., as amended.

¹² Act No. 373/2011 Coll., as amended.

¹³ Act No. 198/2009 Coll., as amended. English translation available at:

https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Antidiscrimination_Act.pdf.

¹⁴ If there is a mistake in the Book of Births, Book of Marriages, Book of Registered Partnerships or Book of Deaths, the Registrar is allowed to correct it. See Section 50, AR “*Correction of erroneous or incorrect data*”.

¹⁵ Act No. 133/2000 Coll., Population Records Act and Act on Birth Numbers, as amended.

The **sex change** made in accordance with law **must be registered** as well (see “an additional record of a sex change”, Section 17a, AR). The sex change is accompanied by the change of the name and the surname and the birth registration number of the trans person. For details see below.

*The Act on the State Citizenship of the Czech Republic*¹⁷ regulates the citizenship which complements civil status in the Czech Republic.

The civil status **can be proved** by public documents (“veřejná listina” in Czech), which include the Birth Certificate, the Marriage Certificate, the Certificate of Registered Partnership, and also by the Identity Card (“občanský průkaz” in Czech).

Besides the public law registration of the child, the *Civil Code* establishes further attributes of civil (personal) status:¹⁸

- name and surname (Section 77 CC)
- legal personality (Section 15/1 CC)
- legal capacity (Section 15/2 CC)¹⁹
- domicile or residence (Section 80 CC)
- family status: single, married to a person of opposite sex, registered with the same-sex partner, divorced, widowed, adopted, etc.

III. REGULATION OF SEX

Within the process of the child’s registration into Book of Births (Vital Register), the Registrar must enter **the child’s sex** into the Book of Births with the letters “F” or “M”. The Birth Certificate must contain such information as well (Section 10/3 AR). There is no gender-neutral or third-sex possibility. Regarding the lack of intersex legal regulation there are critical voices on the websites of LGBT organizations.²⁰ However, experts, mainly doctors, are quite restrictive and conservative in this respect.²¹

As regards the registration of **an additional sex change**, the *Act on Register Offices, Name and Surname* (17a AR) provides as follows:

¹⁶ It means that the birth number shows the sex of every person. See the role of the number “5” added to the month of birth below within examples:

Male-to-female: if a man was born on the 1st January 2000, his birth number is 00-01-01/xxxx. After a sex change it would be 00-51-01/xxxx.

Female-to-male: if a woman was born on the 1st January 2000, her birth number is 00-51-01/xxxx. After a sex change it would be 00-01-01/xxxx.

¹⁷ Act No. 186/2013 Coll., On the Citizenship of the Czech Republic, as amended.

¹⁸ According to the legal doctrine, civil status (in Czech “osobní stav člověka”) is traditionally understood as personal legal position towards other people, from which status rights and duties (non-proprietary ones) are derived. See FRINTA, O. In: J. Švestka – J. Dvořák – J. Fiala (eds.). *Občanský zákoník. Komentář. Svazek I (§ 1 až 654)*. Praha: Wolters Kluwer, 2014, p. 152.

¹⁹ A person can be limited in legal capacity by the court (Section 55 ff., CC).

²⁰ See *Změna pohledu na úpravy nejednoznačných genitálií*. In: *Translidé* [online]. [2018]. Available at: <<http://www.translide.cz/nejednoznacne-genitalie>>; *Intersexualita*. In: *GLBTI Poradna* [online]. [2018]. Available at: <<http://glbtiporadna.unas.cz/intersexualita.php>>.

²¹ For instance, see ZVĚŘINA, J. *Pohlavní příslušnost by neměla být volitelná*. In: *Česká justice* [online]. 25. 5. 2014 [2018]. Available at: <<http://www.ceska-justice.cz/2014/05/jaroslav-zverina-pohlavni-prislusnost-by-nemela-byt-volitelna/>>.

An additional record of sex change shall be made in the Book of Births on the basis of a certificate issued by the health service provider who is required to notify the registry office within 3 working days since the date of the sex change. The day of sex change is the day shown in this confirmation.

IV. REGULATION OF THE NAME

As already mentioned, *the Act on Register Offices, Name and Surname* provides that both the **Book of Births** (Section 14, AR) and the **Birth Certificate** (Section 29, AR) must contain the name, or names, and the surnames of the child. There are many rules for that (Section 62, AR). Mainly, it is provided that

Any existing name can be entered into the register book in a correct orthographic form. It is not possible to register garbled, dull or homemade names. A natural person of male sex cannot register the name of a woman and vice versa. The registry office will not write down the name if it is known that name is used by a sibling if the siblings have a common parent. If doubts arise as to the existence of a name or its proper form, the natural person is required to produce a document issued by an expert witness.

Any person is allowed to **change** his or her name (Section 72, AR). *The Act on Register Offices, Name and Surname* provides that

(1) *The name, or names, or the surname, or more surnames, which the natural person is obliged to use, may be changed in a natural person only upon his or her application, or the application of his or her legal representatives.*

(2) *A change of the surname shall be permitted, in particular, if the surname is derogatory or ridiculous, or if there is a serious reason for doing so.*

(3) *A change of the name shall not be permitted if a male requests a change of his name to a female one, or, conversely, if a chosen name is not existing, is grievous, diminished, domestic, or it is a name of a living sibling of the common parents. If doubts arise as to the existence of a name or its proper form, the applicant shall be required to produce a document issued by an expert witness.*

Finally, there are **special provisions** regulating a **change** of the name in relation to **sex change** (gender reassignment). *The Act on Register Offices, Name and Surname* states (Section 72, AR) that

(5) *At the request of a natural person and confirmation of the provider of health services, the registry office shall permit the change of the name, or names, and the surname*

(a) *to a neutral name and surname when treatment for gender reassignment has been initiated; or*

(b) *to another name, if applicable, and surname, if the treatment for sex change was completed.*

V. REGULATION OF FAMILY STATUS²²

The Civil Code provides who a child's **mother** (Section 775, CC) and **father** (Sections 776, ff. CC) are. The child, and even an adult, can be **adopted** and become a part of a new family (*adoption natura imitatur*). The court decides about that (Sections 794 ff., CC).

Marriage can be concluded only by persons of **opposite sex**. This traditional approach has not been changed by the new Civil Code (see Section 655, CC). Divorce is based on irretrievable breakdown (Section 755 ff., CC).

People of the **same sex** are allowed to enter into **registered partnership** regulated by *the Act on Registered Partnership*.²³ Registered partnership is in some aspects similar to marriage (maintenance duty between the partners and ex-partners) and in others to cohabitation without marriage (no duty to live together, no duty to be faithful to each other, no duty to help each other, no community property, no common tenancy of a flat by operation of law, no protection of family dwelling and no institution of the things forming the common household). Regarding the parental role of the partners, they have no right to adopt a child together (or to become step-adopters) or to become common foster parents.²⁴

VI. PARTICULAR REGULATIONS FOR TRANS PERSONS

A. *The Civil Code*,²⁵ the primary source of status rights, uses in relation to **sex change** the term "individual" or "human being" ("člověk" in Czech) and provides as follows (Section 29, CC):

(1) *Sex change of an individual takes place by surgery while simultaneously disabling the reproductive function and transforming the genitalia (sexual organs). The date of the sex change is presumed to be the date indicated in the certificate issued by the health care provider.*

²² For more see HRUŠÁKOVÁ, M., KRÁLÍČKOVÁ, Z., WESTPHALOVÁ, L. (eds.), *Rodinné právo. Učebnice*. 2nd edition. Praha: C. H. Beck, 2017.

²³ Act No. 115/2006 Coll., as amended.

²⁴ The same was provided by the Act No. 94/1963 Coll., on the Family (cancelled by the new Civil Code).

²⁵ The new Civil Code was passed after quite a long preparatory period. It is interesting that "Principles and Starting Points of the Civil Code" did not contain anything regarding the change of sex. See ELIÁŠ, K., ZUKLÍNOVÁ, M. *Principy a východiska nového kodexu soukromého práva*. Praha: Linde, 2001. Neither its predecessor, the Act No. 40/1964 Coll., Civil Code, did regulate such an issue.

However, the first published version of the new Civil Code, the so-called "White Book", contained a regulation of the change of sex. For more see ELIÁŠ, K., ZUKLÍNOVÁ, M. (the main authors) *The Draft Civil Code. The Draft of the Working Group*. Praha: Ministry of Justice, 2005. The text of the Section 33/1, Draft, was as follows: "The day of changing the sex of a person through medical and cosmetic interventions is the day that will be confirmed by the appropriate health facility as the day of the change." It is important that neither the reproductive function nor the transformation of the genital organs were mentioned in the text.

Finally, another published version of the new Civil Code, the so-called "Blue Book", had quite a different wording. See ELIÁŠ, K., ZUKLÍNOVÁ, M. (the main authors) *Civil Code. The Version for the Government Meeting*. Praha: Ministry of Justice, 2008. The text of the Section 28/1, Draft, was as follows: "Changing the sex of a person occurs by surgical intervention while disabling the reproduction function. The day of the change of sex is considered the date stated in the confirmation issued by the health service provider."

The explanatory report (memorandum) on the two above mentioned drafts referred to the Québec Civil Code (CCQ) without a further elaboration on the relevant change. For more see CCQ-1991 – Civil Code of Québec. in: *Légis Québec* [online]. [2018]. Available at: <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/CCQ-1991>>.

(2) Sex change does not affect the personal (civil) status of an individual or his or her personal and property situation; however, marriage or registered partnership are terminated. The rights and duties of the man and the woman whose marriage terminated towards their common child and their property rights and duties at the period following the termination of marriage are governed, analogically, by the provisions concerning the rights and duties of divorced spouses towards their common child and concerning their property rights and duties at the period following the divorce; a court shall decide, even at its own motion, on the care each of the parents will take of their common child thereafter.

As mentioned above, *Civil Code* as *lex generalis* allows sex change to a person (“člověk” in Czech). That is, *Civil Code* does not define such a person in connection with his or her state of health, or does not stipulate *expressis verbis* the condition of a permanent disparity between psychological and physical gender (“sexual dysfunctional disorder”) unlike the *Act on Specific Health Services* (for details see below). According to the legal doctrine, the wider concept of any person (“člověk” in Czech) regulated in the *Civil Code* suggests that the official sex is exclusively associated with the biological sex and does not allow the psychological choice of sex.²⁶

B. *The Act on Specific Health Services*²⁷ uses the term “transsexual patient” (“transsexuální pacient” in Czech). In accordance with the *International Statistical Classification of Diseases and Associated Health Problems* by the WHO, it refers to “Sexual Identification Disorder”.²⁸ The possibility of changing sex is exclusively tied to the person who has a persistent confusion between his or her mental and physical sex. *The Act on Specific Health Services* as *lex specialis* is quite restrictive in this respect.

(b) *The Act on Specific Health Services* provides, in its Part 4 entitled **Changing sex of transsexual patients**, as follows (§ 21 ASHS):

(1) *By changing sex of transsexual patients, for the purposes of this Act it is understood the exercise of health care for the purpose of a change of sex by surgical intervention while*

²⁶ For more details, see DOLEŽAL, A. In: F. Melzer – P. Tégl. (eds.). *Občanský zákoník. Velký komentář*, § 1–117. Svazek I. *Obecná ustanovení*. Praha: Leges, 2013, p. 342; DOBROVOLNÁ, E. In: P. Lavický (ed.). *Občanský zákoník I. obecná část (§ 1–654)*. Praha: C. H. Beck, 2014, p. 191 ff.; FRINTA, O. In: J. Švestka – J. Dvořák – J. Fiala (eds.). *Občanský zákoník. Komentář. Svazek I (§ 1 až 654)*. Praha: Wolters Kluwer, 2014, p. 145 ff.

²⁷ The former Act No. 20/1966 Coll., on Popular Health Care, as amended by Act No. 548/1991 Coll., provided for the first time the possibility of “transgender surgery” as follows (Section 27a):

(1) *Physical interventions in the reproductive capacity of individuals, castration, stereotactic surgery and transsexual surgery shall be carried out only at the request of the person in question, and after an approval by a commission of professionals consisting of an attorney, at least two physicians with specialization in the relevant field and two other doctors not participating in the medical intervention.*

(2) *Before the application is made, the person shall be duly informed by the physician about the nature of the medical intervention with a warning of the risks and any adverse consequences associated with it.*

Before the amendment to the Act on Popular Health Care, there was a “practice” under “internal instructions” by the Ministry of Health published in Journal of Ministry of Health No. 1-2/1971 and 1-2/1980 (in Czech “Věstník”). Regarding the history, see TĚŠÍNOVÁ, J., ŽDÁREK, R., POLICAR, R. *Medicínské právo*. Praha: C. H. Beck, 2011, p. 160–161.

²⁸ See the Statement of the Czech Statistical Office No. 495/2003 Coll., On the International Statistical Classification of Diseases and Associated Health Problems (ICD-10), the 10th revision, disease “F 64”, in Czech “MKN-10”, “poruchy pohlavní identity”. Tabuleární část. In: *Ústav zdravotnických informací a statistiky ČR* [online]. [2018]. Available at: <<http://www.uzis.cz/cz/mkn/index.html>>.

disabling reproductive function. A transsexual patient means a person who has a persistent confusion between his or her mental and physical sex (“Sexual Identification Disorder”).

(2) *Gestational surgical procedures may be performed on a patient*

(a) *who has been clearly identified as having a sexual identity disorder and demonstrated the ability to live permanently as a person of the opposite sex, and*

(b) *who is not married or who has not entered into the registered partnership or a similar relationship of the same sex abroad, or who proved that his or her marriage or registered partnership or similar bond has been terminated.*

(3) *Surgical procedures aimed at changing sex are performed on a patient who has reached the age of 18 years, on the basis of*

(a) *his or her written requests; and*

(b) *positive opinion of an expert commission/panel.*

C. According to some experts,²⁹ it is necessary to stress that *the Act on Specific Health Services* does not use the term “transforming the genitalia (sexual organs)” but “change of sex” which is **less invasive** and **more sensitive** towards the patients and in harmony with *the Recommended procedure for surgical interventions aimed at sex change in transsexual patients (Recommended Procedure)* issued by the Ministry of Health.³⁰ It uses the term “people with disorders of sexual identity” (in Czech “osoby s poruchami pohlavní identity”) and provides in its Preamble as follows:

The implementation of surgical interventions aimed at sex change is part of a complex therapy for people with disorders of sexual identity, the goal of which is to achieve a lasting sense of satisfaction in the sexual role and the associated mental satisfaction. For people with a diagnosis of transsexuality a surgery along with hormone therapy and RLE (Real Life Experience) are an effective procedure.

As for details, the *Recommended Procedure* provides that:

Surgical procedures aimed at the sex change of transsexual patients are surgical interventions aimed at achieving sex reassignment while at the same time preventing reproduction function. These surgical procedures are as follows:

a) *Female-to-male: mastectomy (reduction mammoplastics), hysterectomy, bilateral ovariectomy, meta-idioplasty, faloplasty, scrotoplasty and urethroplasty.*

b) *Male-to-female: orchiectomy, penectomy, vaginoplasty, clitoridoplasty and labioplasty.*

A sex change surgery can be carried out on the patient

a) *upon his written request,*

b) *on the basis of medical reports confirming that all required examinations and diagnostics have been carried out, and that the patient meets the required criteria, and*

c) *after approval by an expert commission/panel established by the Ministry of Health.*

A sex change surgery can be carried out on the patient

²⁹ See FRINTA, O. In: J. Švestka – J. Dvořák – J. Fiala (eds.). *Občanský zákoník. Komentář. Svazek I (§ 1–654)*. Praha: Wolters Kluwer, 2014, p. 150–152.

³⁰ File No. 29991/2012, published in Journal of Ministry of Health No. 8/2012 (in Czech “Věstník”), for more see <http://www.mzcr.cz/Legislativa/>.

- a) for whom a complete disorder of sexual identity has been clearly established - transsexuality,
- b) who has shown to have the ability to live as the opposite sex for at least 12 months (RLE),
- c) who, if his or her state of health allows that, has been using the relevant hormonal medicaments for the past 12 months at least,
- d) who is not married and/or who has not entered into a registered partnership or similar relationship abroad, or he has proven that his/her marriage or registered partnership or similar relationship terminated,
- e) who has reached the age of 18,
- f) who has a demonstrable awareness of the nature of surgery, the surgeon's options, the duration of hospitalization and possible complications.

Criteria demonstrating patient readiness are as follows:

- a) demonstrable progress in the transition to a new role,
- b) provable progress in dealing with family, work, positive changes in personal life to improve mental well-being, and satisfactory control of social maladaptation problems, psychoactive substance abuse, drugs abuse, psychotic disorder, or suicidal tendencies.

D. From the above mentioned legal framework it is possible to conclude **the following conditions** the patient must meet for sex reassignment:³¹

- a) age over 18 years,
- b) family status: single, divorced, cancelled registered partnership, widowed etc. (not married, not registered),
- c) written request of the patient,
- d) unambiguous determination of a sexual identification disorder,
- e) demonstration of the ability to live permanently as a person of the opposite sex,
- f) positive opinion of an expert commission (panel).³²

E. In practice, **the following steps** must be taken:³³

- a) diagnostics: examinations indicating that a person feels fit to be of the opposite sex,
- b) the decision-making process: the phase after the diagnosis in which the person decides according to the recommendations of a specialist doctor,

³¹ The law does not provide that the patient should be a Czech citizen. The existence of (minor) children is not a legal obstacle to sex change.

³² Regarding the expert commission (panel), *the Act on Specific Health Services* provides (§ 22/6 ASHS) that: *The expert commission, after examining the application, shall draw up a written expert opinion in which it assesses whether all the conditions for the change of gender are fulfilled; it shall also indicate the period of validity of the opinion, taking into account the urgency of the intervention of the medical intervention. A positive opinion on making sex change requires the approval of all members of the expert commission. In the event that the agreement of all members fails, the expert commission will describe in its opinion the reasons which led to it. The expert commission submits to the Ministry of Health an expert opinion in 3 copies and a copy of the minutes of the meeting.*

³³ For details see FIFKOVÁ, H. (ed.) *Transsexualita: diagnostika a léčba*. Praha: Grada, 2002, p. 43 ff.

c) real life test (RLT): a test phase in which a person tries to live in the role of the opposite sex (he or she can change his or her name and surname to a neutral one); it is a test of the correctness of his or her decision,

d) hormonal therapy: it is carried out after several months of the test phase (a recommended period is about 1 year),

d) operation: the procedure itself followed after the legal and administrative steps.

As regards the **starting of the process** of sex change, *the Act on Specific Health Services* provides (Section 23, ASHS) that

(1) Sex changes may be initiated if the patient or the guardian of the patient has given his or her written consent immediately prior to the commencement of the change.

(2) The provider shall give a confirmation to the patient or the guardian of the patient about the implementation of sex reassignment.

F. In this respect, as it was already mentioned above about the regulation of the **name** and the **surname**, *the Act on Register Offices, Name and Surname* states (Section 72, AR) that:

At the request of a natural person and on the basis of a confirmation of the provider of health services, the registry office shall permit the change of the name or names and the surname

(a) to a neutral name and surname when treatment for gender reassignment has been initiated; or

(b) to another name, if applicable, and surname, if the treatment for sex change was completed.

If a natural person does not request a change of the name and surname after the change of sex, the registry office shall enter the surname in accordance with **the rules of the Czech grammar in the form corresponding to the new sex**; regarding the name, the registry office shall not enter anything in the Book of Births making a notification to the court.

G. Other public law aspects of sex change must also be mentioned.

First of all, *the Act on Register Offices, Name and Surname* regulates the **additional record of the sex change** and provides as follows (Section 17a, AR):

An additional record of the sex change shall be made in the Book of Births on the basis of a certificate issued by the health service provider who is required to notify the registry office within 3 working days since the date of the sex change. The day of the sex change is the day shown in this confirmation.

*The Population Records Act*³⁴ then provides that trans person must be assigned a **new birth registration number** (Section 17):

*(2) The change of the birth registration number shall be made when ... (d) the sex has been changed.*³⁵

³⁴ Act No. 133/2000 Coll., Population Records Act and Act on Birth Numbers, as amended.

³⁵ See No. 16 and mainly the examples.

The process is followed by issuing a **new identity card**³⁶ and a **new passport**³⁷ because of the new name, surname, sex, and birth registration number.

VII. ACCESS TO TREATMENT

As mentioned above, sex change is available for those with the **diagnosis** of the “sexual identification disorder” according to *the International Statistical Classification of Diseases and Associated Health Problems* by the WHO.³⁸ That is why sex change **is covered by the public insurance**.³⁹ It includes:

- a) diagnostics: examinations that indicate that a person feels fit to be of the opposite sex,
- b) the decision-making process: the phase after the diagnosis in which the person decides according to the recommendations of the specialist doctor,
- c) real life test (RLT): a test phase in which a person tries to live in the role of the opposite sex (he or she can change his or her name and surname to neutral one); it is a test of the correctness of his or her decision,
- d) hormonal therapy,
- d) operations.⁴⁰

However, regarding the “cosmetic treatments”, which include for instance epilation, breast augmentation, insertion of prosthetic testes, voice therapy and thyroid eminence elimination, are paid for by the patients.⁴¹

VIII. CURRENT DISCUSSION

Many experts⁴² in their books, articles and commentaries on the new *Civil Code* express the opinion that the law regulating sex change was passed without proper analyses, wider discussions⁴³ and mainly without the knowledge of the modern foreign

³⁶ Act No. 328/1999 Coll., On Identity Cards, as amended.

³⁷ Act No. 329/1999 Coll., On Travel Documents, as amended.

³⁸ See Note No. 28.

³⁹ See FIFKOVÁ, H. (ed.). *Transsexualita. Diagnostika a léčba*. Praha: Grada, 2002, p. 110.

⁴⁰ Op. cit.

⁴¹ See WEISS, P. (ed.). *Sexuologie*. Praha: Grada, 2010, p. 463. For details and criticism regarding pathologisation of transgender persons, see HAVELKOVÁ, B. The Legal Status of Transsexual and Transgender Persons in the Czech Republic. In: J. M. Scherpe (ed.). *The Legal Status of Transsexual and Transgender Persons*. Cambridge – Antwerp – Portland: Intersentia, 2015, p. 132.

⁴² For the historical background, especially the period before 1989, and after the fall of communism in Czechoslovakia in 1989, statistical data, the current regulation and its criticism, mainly regarding pathologisation of trans persons, see HAVELKOVÁ, B. The Legal Status of Transsexual and Transgender Persons in the Czech Republic. In: J. M. Scherpe (ed.). *The Legal Status of Transsexual and Transgender Persons*. Cambridge – Antwerp – Portland: Intersentia, 2015, p. 125 – 145. For further criticism of the current legal regulation, see DOLEŽAL, A. In: F. Melzer – P. Tégl. (eds.). *Občanský zákoník. Velký komentář, § 1 - 117. Svazek 1. Obecná ustanovení*. Praha: Leges, 2013, p. 332–346; and FRINTA, O. In: J. Švestka – J. Dvořák – J. Fiala (eds.). *Občanský zákoník. Komentář. Svazek I (§ 1 - 654)*. Praha: Wolters Kluwer, 2014, p. 145–156.

⁴³ However, there has been an ongoing serious discussion on the web pages of *the Journal of Medical Law and Bioethics* (in Czech “*Časopis zdravotnického práva a bioetiky*”). See articles mentioned below.

regulations, case law of the Constitutional and Supreme Courts and tendencies of the development.⁴⁴

Key problems mentioned there are as follows:

- pathologisation of trans persons,
- forced divorce or cancelling of registered partnership,
- forced surgery,
- forced sterilization.⁴⁵

According to some lawyers,⁴⁶ a future amendment of the new *Civil Code* should replace the wording “transforming the genitalia” (sexual organs) into less invasive “sex change” which can be, for instance, only hysterectomy (for FtM) and orchiectomy (for MtF).

Regarding *the Government of the Czech Republic*, let us only mention the analyses of the situation.⁴⁷

Finally, the activities of *the Ombudsman (Public Defender of Rights)* (in Czech “*Veřejný ochránce práv*”) should be mentioned, especially his criticism of forced sterilization.⁴⁸ As regards military service, there are no official data, however, some experts reported a case from 2004 of discrimination against an MtF post-operative transsexual woman seeking a job in the Czech Army.⁴⁹

AGHA, P. Trans jako výzva symbolickému uspořádání společnosti. *Časopis zdravotnického práva a bioetiky*. 2013, Vol. 3, No. 1, [2018]. Available at:

<<http://medlawjournal.ilaw.cas.cz/index.php/medlawjournal/article/view/40>>.

BARŠOVÁ, A. Skalpel a duše. Ke změně pohlaví podle nového občanského zákoníku. *Časopis zdravotnického práva a bioetiky*. 2013, Vol. 3, No. 1, [2018]. Available at:

<<http://medlawjournal.ilaw.cas.cz/index.php/medlawjournal/article/view/43>>.

DOLEŽAL, A. Konstrukce identity v právním diskurzu. Dvoji pojetí bytí. *Časopis zdravotnického práva a bioetiky*. 2013, Vol. 3, No. 1, [2018]. Available at:

<<http://medlawjournal.ilaw.cas.cz/index.php/medlawjournal/article/view/42>>.

DOLEŽAL, T. Judikatura Evropského soudu pro lidská práva v oblasti problematiky “translidí”. *Časopis zdravotnického práva a bioetiky*. 2013, Vol. 3, No. 1, [2018]. Available at:

<<http://medlawjournal.ilaw.cas.cz/index.php/medlawjournal/article/view/44>>.

⁴⁴ See for instance Recommendation to Council of Europe Member States by the Commissioner for Human Rights in COUNCIL OF EUROPE. Human Rights and Gender Identity. In: *Council of Europe* [online]. [2018]. Available at: <<https://rm.coe.int/16806da753>>. See also The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. In: *THE YOGYAKARTA PRINCIPLES* [online]. [2018]. Available at: <<http://www.yogyakartaprinciples.org/>>.

⁴⁵ See the proceedings from the conferences held at Masaryk University, Brno, for instance from “Dny práva 2017” – “Days of Law 2017” and “COFOLA 2018” available at: <https://www.law.muni.cz/content/en/proceedings/>.

⁴⁶ See FRINTA, O. In: J. Švestka – J. Dvořák – J. Fiala (eds.). *Občanský zákoník. Komentář. Svazek I (§ 1 - 654)*. Praha: Wolters Kluwer, 2014, p. 150–152. The author speaks about *cruelty* towards trans persons and is in favor of an interpretation of the legal regulation *largo sensu* instead of *stricto sensu*.

⁴⁷ See [https://www.vlada.cz/assets/ppov/rlp/vyboru/sexualnimensiny/CZ_\(analiza_web.pdf\)](https://www.vlada.cz/assets/ppov/rlp/vyboru/sexualnimensiny/CZ_(analiza_web.pdf)). [cit. 15th July 2017].

⁴⁸ See Nucená sterilizace transgender lidí je v rozporu s lidskými právy, rozhodl soud. In: *Ombudsman* [online]. 28. 7. 2017 [2018]. Available at: <<https://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2017/nucena-sterilizace-transgender-lidi-je-v-rozporu-s-lidskymi-pravy-rozhodl-soud/>>. See Evropská komise zveřejnila první zprávu o zavedených opatřeních na podporu LGBT rovnosti. In: *Ombudsman* [online]. 23. 6. 2017 [2018]. Available at: <<https://www.ochrance.cz/diskriminace/aktuality-z-diskriminace/aktuality-z-diskriminace-2017/evropska-komise-zverejnila-prvni-zpravu-o-zavedenych-opatrenich-na-podporu-lgbt-rovnosti/>>.

⁴⁹ See PECHOVÁ, O. Transsexuální lidé v kontaktu s veřejnou správou. Noted according to HAVELKOVÁ, B. The Legal Status of Transsexual and Transgender Persons in the Czech Republic. In: J. M. Scherpe (ed.). *The Legal Status of Transsexual and Transgender Persons*. Cambridge – Antwerp – Portland: Intersentia, 2015, p. 142, Note No. 130.

Last but not least, we should mention criticism made by LGBT organizations, mainly the “Proud”,⁵⁰ its *Report on trans people and their experience with health care and legislation* and *Closing Recommendations* (available in English)⁵¹ and the *Collective Complaint by the Transgender Europe (TGEU)* jointly with *ILGA-Europe*, and two international non-governmental organizations addressing the Council of Europe.⁵²

According to one sociological study,⁵³ gay organizations operating in the Czech Republic devote almost all their time to the organizing of leisure activities in the form of trips, sporting events or debates. Almost none of them develops awareness-raising (educational) or political activities aimed at the majority society. In addition, many gay organizations are at least nominally declared to be gay-lesbian, although there are not nearly any lesbian women among their members. Given that, the functioning of these organizations usually depends only on a very limited number of individuals, few of them actually having a long-term character and form of civic association. This causes great difficulty in mapping the development of this community and addressing it in terms of policies that are of its direct concern (e.g. information on means of protection against discrimination, HIV prevention, etc.).⁵⁴

IX. CONCLUSIONS

As mentioned above there are a lot of problems in the legal regulation of sex change in the Czech Republic. Besides the general ones, as for instance no relevant research and serious discussions, forced divorce or cancelling of registered partnership, forced surgery and forced sterilization, let us mention the assigning of new birth registration numbers to trans persons. This is said to be heritage of the communist past when there were no insurance numbers as the state provided health care to everybody free of charge. Some ex-

⁵⁰ Report on Trans People and Their Experience with Health Care and Legislation in the Czech Republic. In: *Proud.cz* [online]. 2015 [2017-06-18]. Available at:

<<http://www.proud.cz/component/attachments/download/79.html>>.

⁵¹ See *Report on Trans People and their Experience with Health Care and Legislation*. Prague: Platform for equality, recognition and diversity (PROUD), 2012. Available at: <http://proud.cz/o-proudu/dokumenty.html>.

See *Report on Implementation by the Czech Republic of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity*, supported by ILGA-Europe's Human Rights Violations Documentation Fund in the framework of the project “*Implementing the Council of Europe's Recommendation on LGBT Rights*”. This project is financially supported by the Dutch Government Department for Gender & LGBT Emancipation of the Ministry of Education, Culture and Science. Prague: Platform for equality, recognition and diversity (PROUD), 2012. Available at: file:///Proud-cz/Report_implementation_LGBT_Council-Europe.pdf. [cit. 2nd July 2017].

⁵² See Complaint from 27th April 2015, Case Document No. 1, Registered at the Secretariat on 30th March 2015. In: *Council of Europe* [online]. 27. 4. 2015 [2018]. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804835f1>>.

⁵³ See ČÍSAŘ, O., VRÁBLÍKOVÁ, K. LGBT aktivismus v České republice: historie, organizace a aktivisté. In: *Heinrich Böll Stiftung* [online]. 2012 [2018]. Available at: <https://cz.boell.org/sites/default/files/studie_lgbt_v_cr.pdf>.

⁵⁴ However, no doubt that increasing the social support of LGBT rights influences the decision-making process of courts and the legal regulation of “sensitive” matters. For more see KOZUBÍK, J., WINTR, J. Ústavní soudy a práva gayů a leseb – veřejné mínění jako determinant rozhodnutí soudů? *Jurisprudence*. 2016, No. 5, p. 34–47.

perts⁵⁵ think that the new birth registration number may be a real problem for a trans person as there would not be “legal continuity” and the trans person would have to disclose his or her “old birth number” and thus “the previous sex” to prove “legal continuity” before various public and private persons. Finally, problems also arise for trans entrepreneurs who run businesses as individuals and for anybody paying taxes and using the “tax identification number/VAT ID” (“DIČ” in Czech) which contains numerical information about their sex.

⁵⁵ See HAVELKOVÁ, B. The Legal Status of Transsexual and Transgender Persons in the Czech Republic. In: J. M. Scherpe (ed.). *The Legal Status of Transsexual and Transgender Persons*. Cambridge – Antwerp – Portland: Intersentia, 2015, p. 139, p. 142.