

Legal and social contexts of the discussion on transsexualism as a mental disorder

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ABSTRACT : *Mental health protection is a special area of social discussion. It deals with unique problems. They refer to the dignity of a man who often experiences suffering. This suffering is sometimes associated with a person's lack of acceptance. This is due to, e.g., the specific behavior of a person who has been diagnosed with a mental disorder. Transsexualism is a mental disorder of particular importance to society.*

Discussions on transsexualism have been taking place for a long time. Transsexual people are in a special situation experiencing a strong desire to change their biological sex. In particular, they do not accept their appearance, which prevents them from fully realizing their person. A similar situation has special legal and medical significance. A strong desire to change sex allows you to have a surgical operation. Its purpose is to customize the patient's appearance: the patient wants a look that fully reflects his identity.. A person is treated like a patient. Transsexualism is a mental disorder. It was entered many years ago in the International Classification of Mental Diseases and Disorders. In recent months, the World Health Organization (WHO) announced a change in this area. In the new standards, there will be no similar sexual dysfunction. The above planned modification has particular significance for both individuals and the shape of social debate. We see it, among others in Poland, where the topic of transsexual rights has repeatedly returned in recent months.

Is a similar action correct? Is this the right way to fight with discrimination and exclusion? Can a WHO decision lead - paradoxically - to a violation of patients' rights?? The answer to the above questions will be sought based on the specificity of the situation recently recognized in social discussions taking place in Poland.

Key words: *Transsexualism, patient rights, stigmatization, mental disorder, international standards,*

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I. INTRODUCTION

Is transsexualism a mental disorder? It is a question of particular relevance to the public debate. It refers in a multifaceted way to a perspective directly linked to the protection of human rights and freedom. (Document, Amnesty, 2014) On the one hand, we automatically point to the issue of discrimination against a given individual. A person who recognizes that he or she is in the body of another person may become convinced that it is their natural state. Therefore, describing a person as "disordered" may be a form of exclusion and discrimination. On the other hand, the previous classification of mental illnesses and disorders does list transsexualism as a mental disorder. (ICD 10, F64/0, 2008) There is also an additional area that is clearly visible in Poland, where a heated discussion on LGBT rights is currently taking place. (Haynes, 2019) If transsexualism is not a mental disorder, then the doctor has no formal basis to initiate actions of surgical gender reassignment of the patient. (Urbanowicz, Bętkowska, 2018)

The World Health Organization has announced that in the next few years transsexualism will disappear for good from international classifications of mental illness and disorders. Is it based on medical knowledge? Is such a measure really a positive thing? Does it not lead to a formal complication of the possibility to exercise patients' rights, i.a. in Poland?

Changes

The answer to the question raised at the beginning of the proposed deliberations is positive. Transsexualism is a mental disorder indeed. As J.P. Watson, T. Davis and others point out, transsexualism is "[...] a disorder in which there is a lifelong conviction that the correct sex of a person is different from that of a phenotype". (Watson, Davis, 1998). The International Classification of Mental Diseases and Disorders (ICD 10) also displays a similar approach to the patient's situation. As indicated in the above-mentioned document, the patient "wishes to live and be accepted as a representative of the opposite sex, usually accompanied by a feeling of dissatisfaction with the inadequacy of his or her own anatomical gender traits and a desire to undergo hormonal or surgical treatment to make his or her own body as similar as possible to that of the preferred sex". (ICD 10, F64/0, 2008)). However, as indicated, a similar clinical approach needs to be modified in the coming

years. The World Health Organization (WHO) has recently announced that transsexualism will soon cease to be considered a mental disorder. (Haynes, 2019)

Such information was of great interest in Poland. Currently, there is a lively media discussion on the rights of LGBT people. On the one hand, the rights of gays, lesbians, bisexuals and transsexuals are emphasized. There are ever more frequent equality parades, attention is drawn to the rights to access information for their partners, and homosexual politicians are also gaining more and more popularity in Poland. (Jablinska, Knut, 2012) On the other hand, however, the debate on the rights of individuals representing a certain sexual orientation provokes disturbing situations. This includes, for example, cases of violation of the rights of believers (violation of religious feelings) by people parodying the representatives of the Catholic Church). (Document, Moms and Dads Foundation, 2019)

As one could read in the press releases, "Gender identity disorder will no longer be officially recognized as a mental illness. This is what the World Health Organization has decided. New standards will apply, among others, to transsexuality". (Document, TVP, 2019) It was also added that the WHO "explains that classifying gender disapproval syndrome, i.e. identifying oneself with a gender different from the one that an individual has had since birth, as an illness can cause a huge stigma in transsexual people." (Document, TVP, 2019, WHO, CNN) Julia Ehrst from Transgender Europe observes that the described modification is the result of "a huge work of trans and gender activists from all over the world. (...) I am excited that WHO agrees that gender identity is not a mental illness. (Message, Polityce.pl, 2019)

A fundamental remark is needed here: transsexualism can still be considered a mental disorder until the changes come into force. However, it has not been and is not a mental illness. It should be remembered that in international standards a similar concept has not existed for a long time. In the psychiatric and sociological literature it is pointed out that the term "mental illness" caused the emergence of behaviors stigmatizing and excluding from social life people experiencing mental crisis. (Urban, 2009), In Poland, one of only few countries in the world, the term "mental illness" is still used. It is an important element of the Act on Mental Health Protection. The aforementioned legal act allows for compulsory treatment, in principle, only of persons diagnosed with similar diseases. The term "mental illness" refers to mental disorders in which we observe the emergence of psychotic disorders / psychoses (there are e.g. visual or auditory hallucinations, delusions of power, religious, hypochondriac, etc.) (Act of 19 August 1994) Therefore, precisely speaking, referring to the behavior of a person diagnosed as a transsexual we point to a specific character experiencing mental disorders, in the form of gender identification disorders. It is not a mental disease of a psychotic nature. (Urban, 2009), However, the most recent revision of the WHO's proposed classifications is intended to change the above presented state of affairs. In one of the press materials, Anton Ambroziak, who analyzes the discussed issues, points out that "Transgender issues have been removed from the list of mental disorders and moved to the "Conditions Related to Sexual Health" chapter." The journalist, who often deals with human rights issues, adds that "Instead of disorders and medicalized terms such as transsexualism (...), they are divided into two categories: sexual incompatibility in teenagers and adults; sexual incompatibility in children. Thus, the chapter on "Gender Identity Disorders", previously known to clinicians, will over time give way to a new part of the WHO classification, which - interestingly - will refer to sexual health issues, not sexual health disorders. It has also been reported in recent days that, in the latest review of the World Health Organization, the concept of homosexuality has been completely abolished. (ambroziak, 2019) It is worthwhile to stop for a moment on this thread. In one of the chapters of a book published a few years ago, entitled "Bioethics", professor Andrzej Kapusta, doctor of medicine and ethics, pointed out that the removal of homosexuality from the list of mental illnesses years ago was a particularly important element in the fight against stigmatization of non-heteronormative people - as in recent years LGBT people have been called. It was also a measure aimed at moving away from a standard nomenclature that excludes this term. (Kapusta, 2013) Dr. Lale Say from WHO adds that the latest revision was caused by an in-depth case study. In her opinion, there is a consensus among scientists about the contemporary way of perceiving transsexuality. Anton Ambroziak recalls in this respect "(...) the evidence clearly shows that it is not a mental disorder [transsexualism-BK] and in fact classifying [sexual incompatibility] in this way can cause a huge stigmatization of people who are transgendered. In other words, mental crises in this group of people do not arise because of the frustration of gender incompatibility, but because of the social stigmatization they experience. Transsexualism itself is considered an existing phenomenon. Negative emotional consequences appear, according to the promoters of the discussed changes, only in connection with disturbing, excluding behavior of e.g. peer groups. (Ambroziak, 2019)

Reflection And Debate

The literature on the subject shows that modern medicine is based on an important paradigm: evidence-based medicine (EBM). In other words, in debates, research and analysis, it is particularly important to recognize the logical link between the phenomena. At the same time, facts and evidence are a key element of ethical reflection. They can be used to refer to specific remarks, contexts and real elements that enable, for

example, to forecast and present the expected consequences. (Giovanni, 2018), The WHO's decision is based on a different approach. Paraphrasing the above expression, the idea of "emotion-based medicine" can be conceptualized. Transsexualism is shown as a phenomenon that evokes "mixed" social emotions. Emerging negative social assessments of the functioning of transsexuals are considered to be the main cause of pathological (from the health point of view) behaviors. The WHO's approach now completely ignores the cause of the unique and strong desire to function as the opposite sex to the biological one. What is equally important, as a result of the officially displayed activity of certain environments, we are now facing a movement that can be described as "cancelling the disorder". It is stated that mental discomforts result only from the negative influence of the society on the individual. However, it is difficult to consider such an approach as rationally justified. For this is a completely discretionary diagnosis. It ignores the achievements of not only psychology and pedagogy, but also medicine, especially pediatric endocrinology. Specialists in the latter medical specialty have to review their own scientific approach based on inquiries concerning, among other things, the hormonal functioning of the human body. (Wrobel, 2016)

At this point it should be recalled that the diagnosis of transsexualism has so far been based on a specific scientific and medical analysis. First, the person was examined for his or her genetic equipment (the so-called genotypic-phenotypic compatibility). It was checked whether the genes "correspond" to the external appearance, the diagnosis could be accompanied by the already mentioned endocrinologists. As Andrzej Brodziak and Tomasz Kłopotowski emphasize in "Annales Academiae Medicae Silesiensis", the causes of transsexualism may already be observed in the prenatal period of human development. According to the above mentioned researchers, "If an embryo of the genetic sex XY in the womb is exposed to insufficient concentrations of testosterone (...), male targeting of brain changes may not occur and then it will retain female traits. Such a person will feel like a woman despite having genetic and gonadal traits of the male type. This is the main cause of "transsexualism". (Brodziak, Kłopotowski, 2013), The modification of the ICD classification means that similar inquiries lose their meaning. As do Adam Blikiewicz's observations. The author of one of the most important Polish psychiatric textbooks in the last two decades has indicated that the criteria for recognizing transsexuality should be based on an assessment of a person's behavior in this context, which is characterized by, among other things, a deep-rooted aversion to one's own sexuality. We are talking here about a longer period of time, which can last even two years. In the scientific doctrine it has been pointed out that the assessment of transsexualism should be combined with the so-called everyday life test. (Bilikiewicz, 2006) As a result of a similar assessment of an individual's behavior, one may consider whether a given person is able/ unable to behave and to perform basic, even elementary actions characteristic of his/her gender. However, as indicated, the changes proposed by WHO go in a different direction.

Final Remarks

Transsexualism is a concept that is somewhat specific in the context of the entire discussion on the LGBT movement. In this abbreviated form, probably already known to most observers of social life, a crucial inconsistency has to be noted. This topic is widely recognized and can be read by readers of the Wikipedia portal who want to understand what the individual letters of the acronym mean. It should be remembered that LGB letters refer to the words lesbians, gays, bisexuals. They are therefore abbreviations that touch the problem of the sexual orientation of a given person. By the word "sex" we mean, above all, a sexual attraction to another person of the same sex, or of the same sex and the opposite sex. Transsexualism (letter T) shows us "sex" literally, i.e. the body's possession of a given biological equipment. (Kmieciak, 2016) The thread of similar equipment of the organism is of particular importance in the context of therapeutic activities. For in therapeutic actions taken with regard to transsexuals, mentioned by Stefan Kornas among others in the Encyclopedia of Bioethics, reference is made to several stages of actions. These are:

- psychosocial support,
- hormonal assistance (administration of substances modifying the appearance and the voice) and
- surgical gender modification aimed at achieving a therapeutic effect (a significant change in the appearance of the body). (Kornas, 2009).

The third element is very important for the legal and criminal discussion. Paweł Daniluk reminds us that in Poland, among others, a gender reassignment operation only in a similar therapeutic context will be legal, ergo will not be in fact a form of human mutilation (e.g. depriving people of their ability to conceive). (Daniluk, 2007) Here we come to a worrying conclusion. The change in diagnostic standards to be applied by WHO member states will lead to an interesting, but also tragic situation for many people. If transsexualism ceases to be considered a mental disorder, then it will be impossible in Poland to undertake surgical actions aimed at modifying/adjusting the sex to strong and established states showing one's own / experienced sex. WHO, under a clear influence of trans and gender environments, goes in a completely different direction. Therefore, we see a standard in which:

- the objective criterion of mental disorder based on medical diagnosis is to be replaced by the classification showing health conditions relating to sexual reality and individual sexual experiences,
- diagnosis of health conditions/disorders should be based not on own experience of e.g. hormonal equipment, but on external social triggers resulting in the feeling of sadness,
- the hormonal and emotional development of the child is disregarded,
- sex reassignment based on biological criteria will cease to apply and will be replaced by a sex and gender agreement based on subjective emotional experiences.

The last of these points appears as the most important at the moment. It must be concluded that the LGBT community has convinced the World Health Organization that sex is primarily a subjective experience of the individual, which does not require surgical modification. Until now, it was the change in the appearance of the body that was the final, therapeutic element allowing to start a "new life". New WHO criteria introduce justification for legal, but not medical, gender reassignment. Several years ago, Polish researcher Justyna Juzwa stressed that the omission of the obligation to perform a surgical operation as part of the gender reassignment procedure leads to a situation in which we observe the emergence of a de facto "third gender". From a formal perspective, we are talking about people who belong to one of the sexes, with the appearance of the opposite sex at the same time. It is possible that formally the father of the child is a person who, from the biological perspective, is a woman. (Juzwa, 2013).

In the Paradoxes of Legal Bioethics, Marta Soniewicka noticed that the formation of a society "blind to gender" is slowly becoming visible. Biological criteria are gradually being replaced by subjective factors, which are significantly based on emotional criteria. (Soniewicka, 2010) A similar approach is, of course, possible for further implementation. However, a key question arises here: is it still medicine we are speaking of in such situation?

REFERENCES

- [1]. Document, (2014), The State Decides Who i am. Lack of recognition for transgender people, Amnesty International January, 6,
- [2]. Document, (2008), The ICD-10 Classification of Mental and Behavioural Disorders, World Health Organization,
- [3]. Urbanowicz K., Bętkowska K., (2018), Legal aspects of sex change - remarks on the Grodnu Polish law and selected European countries, *Medical Vocanda*, 10, 99- 109,
- [4]. Haynes S. (2019), The World Health Organization Will Stop Classifying Transgender People as Having a 'Mental Disorder', *Time*, online: <https://time.com/5596845/world-health-organization-transgender-identity/>
- [5]. Watson J.P., Davis T. [in:] *ABC of mental health*, edited by T. Davies, T.K.J. Craig, Warsaw 1998, 53,
- [6]. Document, (2019), LGBT Organizations in Poland Activities, financing, network, Moms and Dads Foundation, Warsaw, 12,
- [7]. Jablinska Z., Knut P.(2012), Rights of LGBT persons in Poland, Campaign Against Homophobia, Warsaw, 303,
- [8]. Document, (2019), WHO deleted transsexualism from the list of mental diseases, TVP Portal, online: <https://www.tvp.info/42863583/who-wykreslilo-transseksualizm-z-listy-chorob-psychicznych>
- [9]. Message, (2019), WHO in the service of homopropaganda? The organization has recognized that transsexualism is no longer a mental disorder. Portal wPolityce.pl, online: <https://wpolityce.pl/swiat/448923-straszne-who-transseksualizm-nie-jest-juz-choroba>,
- [10]. Urban M., (2009), Transsexualism or delusions of sex change? Avoiding misdiagnosis, *Polish Psychiatry*, 6, 719–728,
- [11]. Art. 3 Act of 19 August 1994 on the protection of mental health. *OJ 1994 No. 111 item 535*
- [12]. Ambroziak A. (2019), World Health Organization (WHO): Transgender is not a mental disorder. Life without stigma, eye press, online: <https://oko.press/swiatowa-organizacja-zdrowia-who-transplciowosc-to-nie-zaburzenie-psychiczne-zycie-bez-stygmatyzacji/>
- [13]. Kapusta A. (2014), Dispute about the concept of mental illness, *Bioethics*, edited by Chańska W., Różańska J, Warsaw,
- [14]. Giovanni T. D., (2018), The Emperor's New Clothes: a Critical Appraisal of Evidence-based Medicine, *International Journal of Medical Sciences*, 12, 1397-1405.
- [15]. Wrobel J., (2016), Transsexualism from the Ecclesiastical Perspective, *Family Forum*, 6, 113-136
- [16]. Brodziak A., Kłopotowski T., (2013), Biological and environmental conditioning of orientation, *Annales Academiae Medicae Silesiensis*, 67, 256–267.
- [17]. Bilikiewicz A. (2006), Psychopathological disorders related to disorders of physiological processes, in: A. Bilikiewicz (ed.). *Psychiatry - a textbook for students medicine*, Warsaw, 383–413,
- [18]. Kmiecik B., (2016), Changing sex in children as a challenge for law and society, *Family Forum*, 6, 155-176,
- [19]. Kornas A. (2009,.) Transsexualism, in: A. Muszala (ed.), *Encyclopedia of bioethics*, Radom 637–644.
- [20]. Daniluk, P. (2007) Legal aspects of "surgical sex change" in transsexuals, *State and Law*, 5,
- [21]. Juzwa J. (2013), Civil law issues of transsexualism in Poland, in: A.M. Bielecki, B. Sasin (ed.), *Contemporary challenges of health law*, Warsaw, 90–94,
- [22]. Soniewicka M. (2010,.) A gender-blind society, in: J. Stelmach, B. Brożek, M. Soniewicka, W. Załuski (ed.), *Paradoxes of legal bioethics*, Warsaw, 113–132.
- [23]. The presented article is an extended and enriched version of the author's earlier journalistic study.

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