

NGO information to the United Nations Committee against Torture

**The Sixth Periodic Report of Czechia
under the United Nations Convention Against Torture**

**FORCED MEDICAL TREATMENT AND STERILISATION OF TRANSGENDER
PERSONS**

Submitted by:

Forum for Human Rights (FORUM)

26 March 2018

OVERVIEW

1. The objective of this submission, written by the Forum for Human Rights (FORUM)¹, is to provide the UN Committee against Torture (hereinafter “the Committee”) with relevant information for the consideration of sixth periodic report of Czechia under the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (hereinafter “the CAT”).
2. In Czechia, **transgender persons** wishing to obtain **legal recognition of their gender identity must** undergo, as a precondition to changing their administratively registered gender, an **invasive and irreversible surgical operation, including sterilisation**.
3. FORUM submits that such practice constitutes ill-treatment and discriminates against transgender persons and violates their rights under the CAT.

RELEVANT DOMESTIC LAW

4. Pursuant to Section 29 § 1 of the Civil Code (Act no. 89/2012) the change of a registered gender of a person is made after a surgical operation with concurrent sterilisation and modification of reproductive organs. This provision is further specified in the Act on Specific Health Services (Act no. 373/2011), which states in Section 21 § 1 that for the purposes of the law, the gender reassignment includes performing medical operation, whose aim is to surgically modify the sex of the patient together with sterilising. In order to obtain legal recognition of their gender identity, the Czech transgender person therefore must undergo an irreversible surgical treatment accompanied by mandatory sterilisation.

RELEVANT INTERNATIONAL STANDARDS

5. Various international organisations have repeatedly expressed their concerns that the *de facto* involuntary surgical intervention and sterilisation gravely violates rights of transgender persons and constitute

¹ FORUM is a Central European non-governmental organisation working work to ensure that human rights are respected, protected and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international human rights bodies. FORUM provides support to domestic NGOs and leads domestic and international litigation and advocacy activities in Czechia and Slovakia.

a harmful practice. The World Health Organisation together with HCHR, UN Women, UNAIDS, UNDP, UNFPA and UNICEF strongly expressed their concern about the practice in 2014 in their common statement “Eliminating forced, coercive and otherwise involuntary sterilisation: An interagency statement”.²

6. In Europe, the practice of conditioning gender reassignment by surgical operation and sterilisation as forced medical treatment were criticised by the Committee of Ministers³ and the Parliamentary Assembly of the Council of Europe, which later adopted a resolution, directly suggesting to member states to adopt laws, which will not oblige transgender persons to undergo surgery for the purpose of legal recognition of their gender.⁴The practice was already condemned by the European Court of Human Rights as a violation of the right to privacy in the judgment *A.P., Garçon and Nicot v. France* (6 April 2017, nos. 9885/12, 52471/13, 52596/13). The practice however still persists in some European states, including Czechia.
7. According to the Yogyakarta principles, a professional soft-law document regarding the rights of LGBTI persons, ensuring the respect for bodily and mental integrity of a person presumes the prohibition of involuntary invasive medical treatment, such as sterilisation and surgery.⁵ A number of United Nations experts⁶ participated in drafting of the Yogyakarta principles, which represent universal guide to human rights which affirm binding international legal standards with which all States must comply.
8. In his report, the UN Special Rapporteur on Torture, Juan Mendez, described disabling of transgender person reproductive functions as a condition for obtaining legal recognition of gender as a form of medical care that causes suffering without a legitimate reason. He called upon all states to repeal any law allowing intrusive and

² The Interagency statement is available online: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

³ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, § 20.

⁴ Resolution of the Parliamentary Assembly of the Council of Europe no. 2048 (2015).

⁵ Yogyakarta principles, principle no. 3. The principles can be found online: <http://www.yogyakartaprinciples.org>

⁶ Paul Hunt, Manfred Nowak, Philip Alston or Roman Wieruszewski.

irreversible treatments, including forced genital-normalising surgery and involuntary sterilisation⁷.

9. Similarly, in 2010, the UN Committee on Elimination of Discrimination Against Women called on Netherlands to abandon the practice of requiring surgical sterilisation for the purposes of gender reassignment,⁸ and repeated the recommendation to Belgium in 2014.⁹ Such suggestions were also adopted by the UN Committee on Economic, Social and Cultural Rights in their recommendations to Lithuania.¹⁰
10. In relation to Slovakia in 2015, the CEDAW Committee expressed concern that *(w)hen trying to change their legally recognised gender, transgender and intersex women are reportedly required to undergo medical treatment which does not respect their freedom to control one's body*. The Committee recommended the state to *(r)evue current laws and take measures to ensure respecting and protecting the rights of transgender and intersex women and girls to control their body and to be free from non-consensual medical treatment, including by **abolishing the requirement of compulsory sterilisation and surgery for transgender** women who wish to obtain legal recognition of their gender*.¹¹
11. In its core, the requirement of invasive, irreversible surgery and sterilisation for obtaining legal recognition of gender is a serious interference with the someone's bodily and mental integrity without proper justification, and therefore **constitutes ill-treatment and discrimination**. As such, it was criticised by the Committee in its Concluding Observations to China (Hong Kong), which also obliges transgender persons to undergo "sex-reassignment surgery" to obtain legal gender recognition. The Committee suggested the state party to *(t)ake the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by **removing***

⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendéz, 1. 2. 2013, OSN doc. A/HRC/22/53, § 88.

⁸ CEDAW Concluding Observations to the Netherlands, UN doc. CEDAW/C/NLD/CO/5, §§ 46-47.

⁹ CEDAW Concluding Observations to Belgium, UN doc. CEDAW/C/BEL/CO/7, § 45.

¹⁰ CESR Concluding Observations to Lithuania, UN doc. E/C.12/LTU/CO/2, § 8.

¹¹ CEDAW Concluding Observations to Slovakia, UN doc. CEDAW/C/SVK/CO/5-6., §§ 36-38.

abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilisation.¹²

CONCLUSION

12.FORUM respectfully submits that the relevant provisions of the Czech legal system are in violation of transgender persons' **right to bodily and mental integrity and constitute ill-treatment**, and therefore invites the Committee to adopt a similar approach as in the case of China (Hong-Kong).

Proposed recommendation:

- Abolish the **requirement of compulsory surgery and sterilisation and for transgender** persons who wish to obtain legal recognition of their gender, especially the provisions of Article 29 § 1 of the Civil Code and relevant provisions of the Act on Specific Health Services;
- Adopt a gender-reassignment administrative procedure, which respects the transgender persons rights to **physical and mental integrity and self-identification**;
- Introduce a **remedy scheme, including a scheme of compensation**, for those transgender persons who have been involuntarily sterilised due to their wish of obtaining legal recognition of their gender.

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¹² UN CAT Concluding Observations to Hong Kong, CAT/C/CHN-HKG/CO/5, §§ 28-29.