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Gender Identity: The New Global Reality. Can We Talk about Reverse Discrimination?

Tożsamość płciowa. Nowa globalna rzeczywistość. Czy możemy mówić o odwróconej dyskryminacji?

ABSTRACT

This article is of a conceptual and legal-research nature, examining the complex and often contentious issues surrounding equality, non-discrimination, and gender identity. The central research problem focuses on the increasing legal recognition of transgender individuals' self-identified gender and the broader societal implications of this development. While many European Union Member States have moved toward greater inclusivity, this evolution remains controversial may affect the rights, beliefs, and expectations of other social groups. The main thesis of the article is that the expansion of transgender rights may give rise to tensions with established social norms, religious convictions, and the rights of women and children, particularly in areas such as education, family law, and public spaces. The study aims to critically assess the legal and ethical challenges associated with current trends in gender identity recognition and to examine whether the balance between individual freedoms and the collective interest is being adequately maintained. The article provides an original contribution by highlighting the lack of consensus among European legal systems and emphasizing the societal tensions that may arise when policy changes are driven by ideological or political agendas rather than by broad public deliberation.

Keywords: gender identity; legal recognition; societal implications; detransition

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INTRODUCTION

Equality and non-discrimination are fundamental values and rights that must be protected. Family relationships remain one of the most sensitive areas of law, evolving significantly over recent decades, particularly from an international perspective.

Transsexualism constitutes an integral aspect of human diversity and is increasingly recognized and accepted in contemporary societies. Awareness and understanding of sexual orientation and gender identity have evolved considerably; however, full social acceptance has yet to be achieved. At the same time, the recognition of subjective sexual identity has had both social and legal implications, often being seen as a means of the sexual minority affecting the majority.

The desire to resolve the mismatch between biological sex and gender identity challenges conventional rules: a man or woman, whose sex was assigned at birth, must adopt behaviour specific to their biological sex. Thus, objective sexual identity is "threatened" by the principle of self-determination today, where the "error of nature" can be corrected.[1] Considered a social stereotype, this way of thinking still exists in many countries.

As attitudes towards gender identity and gender expression continue to evolve, there is a broader reimagining of traditional family structures. Numerous jurisdictions have introduced legislation aimed at protecting the rights of transgender individuals in areas such as marriage, adoption, and other family-related matters.

At a time when even progressive democracies, including the United States, have introduced legal restrictions concerning gender identity recognition and have reaffirmed the legal significance of biological sex, societies are facing a pivotal moment in their legal and social development. Although the complexity of transsexualism cannot be fully grasped, the subject warrants critical examination. Such analysis includes exploring its historical evolution, the process of de-pathologization, the prohibition of conversion therapies, and its relationship with human rights, discrimination, and stigmatization. The discussion also considers the legal implications for institutions such as marriage, civil status, and filiation, with reference to the jurisprudence of the European Court of Human Rights (ECtHR). Finally, it raises the question of whether advancing transgender rights might, in some cases, result in reverse discrimination, particularly in light of the growing number of detransition cases.

Being transgender is not a choice but a state of body and mind.[2] The terms "trans" and "transgender" function as umbrella concepts encompassing a wide

[1] A.M. Popescu, *Identitatea sexuală între datul biologic şi manifestarea voinţei*, "Working Papers Universitatea Mihail Kogălniceanu" 2012, p. 106.

[2] V. Venkataramu, D. Banerjee, *Gender Dysphoria in Psychiatric Practice: Understanding the Clinical Ambiguity and Management*, "Journal of Psychosexual Health" 2021, vol. 3(2), pp. 124–132.

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range of gender identities and expressions, including those that do not conform to the male–female binary. Terminology continues to evolve and older terms like "gender identity disorder" are now considered outdated, especially in modern classifications like ICD-11.

Historically, the term "transsexual" was introduced in 1923,[3] while the term "transgender" gained wider use in the 1960s. Cases such as those of David Reimer[4] and Sorin Rațiu[5] illustrate the personal and psychological complexities of gender transition. Trans identity was once viewed as pathological and classified as a mental disorder ("sexual metamorphosis paranoia"),[6] but modern psychiatry (e.g., DSM-5-TR) has moved toward recognizing gender variance without labelling it a disorder, unless it causes distress or social impairment.

Human rights are universal and apply to everyone, including transgender persons. The Yogyakarta Principles set out a framework of international legal standards protecting LGBTQ+ rights, covering areas such as privacy, health, and protection from torture.

Despite global progress, numerous states continue to criminalize same-sex relationships and, in some cases, transgender identities. For example, Romania repealed its anti-homosexuality legislation in 2001,[7] whereas countries such as Saudi Arabia, Nigeria, and Malaysia continue to impose severe penalties, including the death penalty or long-term imprisonment.[8] In some jurisdictions, laws specifically target transgender persons through offences such as "cross-dressing" or "usurpation of identity".[9]

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[3] M. Hirschfeld, *Die intersexuelle Konstitution*, "Jahrbuch für Sexuelle Zwischenstufen" 1923, vol. 23, pp. 3–27, cited after: J.P. Rojas Saffie, N. Eyzaguirre Bäuerle, *Etiology of Gender Incongruence and Its Levels of Evidence: A Scoping Review Protocol*, "PLoS One" 2023, vol. 18(3), pp. 1–10.

[4] P. Gaetano, *David Reimer and John Money Gender Reassignment Controversy: The John/Joan Case*, 15.11.2017, https://embryo.asu.edu/pages/david-reimer-and-john-money-gender-reassignment-controversy-johnjoan-ca (access: 11.9.2024).

[5] R. Găină, *Destinul trist al primului român care a făcut schimbare de sex. Cândva vedetă națională, astăzi om al străzii*, 19.12.2013, https://adevarul.ro/stiri-locale/sibiu/destinul-trist-al-primului-roman-care-a-facut-1499521.html (access: 20.10.2024).

[6] R.K. Unger, *Toward a Redefinition of Sex and Gender*, "American Psychologist" 1979, vol. 34(11), pp. 1085–1094.

[7] C. Miheș, *Romania: National Regulations in the Shadow of a Common Past*, [in:] *Criminal Legal Studies: European Challenges and Central European Responses in the Criminal Science of the 21st Century*, ed. E. Váradi-Csema, Miskolc–Budapest 2022, p. 126.

[8] Human Dignity Trust, *Injustice Exposed: The Criminalisation of Transgender People and Its Impacts*, https://www.humandignitytrust.org/wp-content/uploads/resources/Injustice-Exposed-the-criminsalisation-of-trans-people.pdf (access: 8.10.2024).

[9] Human Dignity Trust, *Map of Countries That Criminalize LGBT People*, https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/?type_filter=death_pen_applies (access: 8.10.2024).

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Transgender individuals often face serious psychological challenges, including depression, anxiety, and even suicide, especially among marginalized groups.[10] Discrimination in healthcare also remains prevalent across the European Union, where only a limited number of Member States have adopted legislation specifically addressing transgender healthcare needs.[11] The American Psychological Association supports unrestricted, evidence-based gender-affirming care.[12] Transgender persons may also face workplace discrimination and career limitations. Empirical studies indicate that individuals experiencing gender incongruence are significantly more likely to experience mental health difficulties, including mood disorders, antidepressant use, and suicide attempts. Nevertheless, such findings should be interpreted with caution in light of methodological limitations and the influence of broader social determinants.[13]

Hate crimes continue to disproportionately affect transgender individuals. According to recent reports, between 2023 and 2024, approximately 350 transgender persons were killed worldwide, the majority of whom were transgender women.[14] In Romania, local cases have highlighted harassment and lack of police support.[15] Particular concerns have also been raised regarding the treatment of transgender persons in places of detention. Transgender inmates may experience discrimination, limited access to gender-affirming healthcare, including hormone therapy, and an increased risk of abuse when they are accommodated according to their biological sex rather than their gender identity.[16]

Parenthood presents additional legal and social challenges for transgender individuals. Cases such as those of Thomas Beatie and Freddy McConnell illustrate the legal complexities and social stigma that may arise when transgender men

[10] M.L. Haarer, *A Phenomenological Study of the Experience of Gender Detransitioning*, PhD Thesis, Counselling Regent University, 2022.

[11] N. Adams, D. Ganesan, *The State of Trans-Specific Healthcare in the EU*, 2023, https://www.tgeu.org/files/uploads/2023/11/TGEU-Trans-Health-Map-Report.pdf (access: 8.6.2024), p. 6.

[12] American Psychological Association, *APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science*, February 2024, https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf (access: 8.6.2024).

[13] R. Bränström, J.E. Pachankis, *Reduction in Mental Health Treatment Utilization among Transgender Individuals after Gender-Affirming Surgeries: A Total Population Study*, "American Journal of Psychiatry" 2020, vol. 177(8), p. 731.

[14] TGEU, *Will the Cycle of Violence Ever End? TGEU's Trans Murder Monitoring Project Crosses 5,000 Cases*, 13.11.2024, https://tgeu.org/will-the-cycle-of-violence-ever-end-tgeus-trans-murder-monitoring-project-crosses-5000-cases (access: 8.6.2024).

[15] P. Brăila, V.D. Dragomir, I. Ionescu, T. Ion-Rotaru, M. Popa, *Trans în România*, https://transinromania.ro/wp-content/uploads/Raport-trans-in-Romania.pdf (access: 8.6.2024), p. 66.

[16] J.E. Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/HRC/22/53, Geneva, 1 February 2013, para. 36.

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give birth.[17] In response to these challenges, several European countries, including Belgium, Iceland, Malta, Slovenia, and Sweden, have introduced legal frameworks that provide varying degrees of recognition of the parental status of transgender persons.[18]

Transgender children are especially vulnerable to bullying, particularly online. The European Union Strategy on the Rights of the Child stresses their heightened exposure to violence and discrimination.[19] Available data indicate that approximately 15% of LGBT adolescents aged between 15 and 17 have been victims of online harassment due to their sexual orientation.[20]

Several landmark judgments of the ECtHR[21] have exposed failures by states to protect transgender rights. These cases have addressed issues such as pension entitlements, excessive procedural delays, failures to investigate hate crimes effectively, and violations of the right to privacy. The level of legal protection afforded to transgender persons continues to vary significantly across countries, often resulting in social, administrative, and bureaucratic hardships.

Transgender individuals may also face restrictions in relation to military service. While some countries ban them entirely, others impose medical conditions. By contrast, countries such as Canada, Israel and the United Kingdom permit transgender persons to serve in the armed forces and have adopted policies intended to facilitate their inclusion and support.

DE-PATHOLOGISING THE CONCEPT: CONVERSION THERAPIES

In 2010, the World Professional Association for Transgender Health called for the global depathologization of gender nonconformity, stating that diverse gender expressions should not be considered inherently pathological.[22] Malta was among

[17] European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health (OJ C 81/43, 18.2.2022).

[18] ILGA, *Rainbow Map*, 2024, https://rainbowmap.ilga-europe.org/categories/family (access: 8.12.2024).

[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU strategy on the rights of the child, Brussels, 24.3.2021, COM/2021/142 final.

[20] European Union Agency for Fundamental Rights, *A Long Way to Go for LGBTI Equality*, 2020, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf (access: 5.12.2024).

[21] ECtHR, *Grant v the United Kingdom*, Application no. 32570/03, 23 May 2006; ECtHR, *S.V. v Italy*, Application no. 55216/08, 11 October 2018; ECtHR, *Accept Association and Others v Romania*, Application no. 19237/16, 1 September 2021; ECtHR, *Minasyan and Others v Armenia*, Application no. 59180/15, 7 January 2005.

[22] E. Coleman, W. Bockting, M. Botzer, P. Cohen-Kettenis, G. DeCuypere, J. Feldman, L. Fraser, J. Green, G. Knudson, W.J. Meyer, S. Monstrey, R.K. Adler, G.R. Brown, A.H. Devor, R. Ehrbar,

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the first countries to formally depathologize gender identity in 2015.[23] However, in many countries, surgery remains a requirement for legal gender recognition, despite being a personal and often controversial choice.

So-called "conversion therapies" or "reparative therapies", historically involving harmful practices like electric shocks, nausea induction, and hypnosis, aim to change an individual's sexual orientation or gender identity. These practices are widely condemned. In 2023, the *Carnet des droits de l'homme* reaffirmed that such interventions are not therapeutic and urged European Union Member States to eliminate them.[24]

Conversion therapies have been argued to potentially violate Articles 3, 8, and 14 of the European Convention on Human Rights, as they may cause serious harm to mental health and interfere with the rights to human dignity, bodily integrity, autonomy, and non-discrimination.

Considering these practices to be discriminatory, conversion therapies have also been associated with significant economic and social costs. A 2022 systematic review focusing on young people in the United States found that approximately 12% of sexual and gender minority individuals had been subjected to conversion practices, contributing to the broader economic burden associated with the resulting psychological and health-related harm.[25]

By 2024, ten European countries (Belgium, Cyprus, France, Germany, Greece, Iceland, Malta, Norway, Portugal, and Spain) had banned conversion practices targeting gender identity.[26] Current German law allows individuals, including minors with parental consent, to legally change their name and gender.[27] Similarly,

R. Ettner, E. Eyler, R. Garofalo, D.H. Karasic, A.I. Lev, G. Mayer, H. Meyer-Bahlburg, B.P. Hall, F. Pfaefflin, K. Rachlin, B. Robinson, L.S. Schechter, V. Tangpricha, M. van Trotsenburg, A. Vitale, S. Winter, S. Whittle, K.R. Wylie, K. Zucker, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, "International Journal of Transgenderism" 2011, vol. 13(4), p. 168.

[23] Article 15(2) of the Act XI of 2015, as amended.

[24] T. Fuchs, *Rien à changer : mettre fin aux « thérapies » de conversion des personnes LGBTI*, 2023, 16.2.2023, https://www.coe.int/fr/web/commissioner/-/rien-%C3%A0-changer-mettre-fin-aux-soi-disant-%C2%AB-th%C3%A9rapies-%C2%BB-de-conversion-des-personnes-lgbti (access: 12.11.2024).

[25] T. Salway, D.J. Kinitz, H. Kia, F. Ashley, D. Giustini, A. Tiwana, R. Archibald, A. Mallakzadeh, E. Dromer, O. Ferlatte, T. Goodyear, A. Abramovich, *A Systematic Review of the Prevalence of Lifetime Experience with 'Conversion' Practices among Sexual and Gender Minority Populations*, "PLoS One" 2023, vol. 18(10), p. 3.

[26] Council of Europe, *Human Rights and Gender Identity and Expression*, March 2024, https://rm.coe.int/0900001680aed541 (access: 5.12.2024), p. 36.

[27] German Law 206/2024 on self-determination regarding gender registration and amending other regulations.

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Argentina has allowed legal gender recognition without surgery or psychological assessments since 2012, making the process administrative and free.[28]

In the United Kingdom, the Equality Act 2010 provides protection against discrimination on the grounds of gender transition or sexual orientation. However, in 2024, the UK introduced a ban on the use of puberty blockers for transgender youth.[29]

GENDER SELF-DETERMINATION

As of 2024, an increasing number of countries have moved towards models of gender self-determination, allowing individuals to change their gender and name through simplified administrative procedures without requiring medical or judicial intervention.

Progressive examples include countries like Belgium,[30] Spain,[31] Iceland,[32] Argentina,[33] and Switzerland,[34] which have adopted laws supporting self-identification without medical requirements. Nations such as Sweden, Finland, and Malta also recognize transgender parenthood. Meanwhile, Denmark and Ireland have pioneered streamlined legal gender recognition in Europe. Since 2017, France has allowed legal gender changes through the courts, and in 2022 introduced legislation prohibiting conversion therapy.[35] Iceland's Gender Autonomy Act (2019) permits individuals under the age of 15 to change their gender and name with parental consent, without medical requirements. In Scotland, the Gender Recognition Reform Bill (2023) sought to simplify the process for recognizing a person's self-identified gender. In 2024, Germany introduced a law enabling transgender, intersex, and

[28] United Nations, *Living Free and Equal: What States Are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 1.10.2016, https://www.ohchr.org/sites/default/files/Documents/Publications/LivingFreeAndEqual.pdf (access: 12.11.2024, p. 71.

[29] The Medicines (Gonadotrophin-Releasing Hormone Analogues) (Restrictions on Private Sales and Supplies) Order 2024 No. 1319, UK Statutory Instruments, https://www.legislation.gov.uk/uksi/2024/1319/made (access: 12.11.2024).

[30] Law reforming the regulations relating to transgender persons with regard to the recording of a change of sex in civil status documents and its effects of 25 June 2017.

[31] Law 4/2023, of February 28, for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people.

[32] Gender Autonomy Act No. 80/2019.

[33] Law 26.743 on Gender Identity.

[34] Swiss Civil Code (Change of sex on civil status records).

[35] Law No. 2022-92 of 31 January 2022 prohibiting practices aimed at changing a person's sexual orientation or gender identity.

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non-binary individuals to change their name and gender via a straightforward self-declaration at registration offices.[36]

Despite these advancements, some countries still enforce medical prerequisites like sterilization (Romania, Turkey, and Lithuania), or completely ban gender recognition (Hungary, Russia, and Georgia).[37] Hungary banned in 2020 the right of individuals to legally change their gender. Basically, two categories of people will coexist in Hungary: those who have already applied for gender recognition and those who no longer have this right. In July 2022, the European Commission decided to take Hungary before the Court of Justice of the European Union regarding this discriminatory law based on sexual orientation and gender identity.[38] Russia's 2023 law[39] prohibits all medical and legal gender transitions.[40] In the United States, several states, including Kentucky, Tennessee, Texas, and Indiana, have passed laws banning gender-affirming healthcare for minors. At the same time, certain judicial decisions have found that such restrictions may conflict with constitutional provisions under federal law.[41]

Globally, resistance to the expansion of transgender rights continues to persist. In 2025, the President of the United States signed executive orders limiting federal recognition to two sexes and discontinuing certain diversity and inclusion programmes, signalling a shift towards more restrictive policy approaches in this area.[42]

Overall, while legal recognition and rights for transgender people are expanding in many regions, significant legal and political resistance remains, particularly in conservative or authoritarian regimes.

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[36] German Law 206/2024.

[37] S. Starcevic, *Georgia Signs Sweeping Anti-LGBTQ+ Bill into Law*, 3.10.2024, https://www.politico.eu/article/georgia-signs-sweeping-anti-lgbtq-bill-into-law (access: 5.12.2024).

[38] Case C-769/22: Action brought on 19 December 2022 – *European Commission v Hungary*, OJ C 54/16, 13.2.2023.

[39] Federal Law of 24 July 2023 No. 386-FZ "On Amendments to Certain Legislative Acts of the Russian Federation", adopted by the State Duma on 14 July 2023. Article 451 is marginally entitled "Prohibition of changing the gender of a person".

[40] Trans Rights Map, *Europe & Central Asia 2024*, https://transrightsmap.tgeu.org (access: 11.12.2024).

[41] U.S. Supreme Court, *Raul Labrador, in his official capacity as Attorney General of the State of Idaho, v. Pam Poe, by and through her parents and next friends Penny and Peter Poe, et al*., 601 U.S. (2024).

[42] D. Arkin, Y. Alcindor, M. Lavietes, *Trump Signs Executive Orders Proclaiming There Are Only Two Biological Sexes, Halting Diversity Programs*, 20.1.2025, https://www.nbcnews.com/nbc-out/out-politics-and-policy/trump-sign-executive-orders-proclaiming-are-only-two-biological-sexes-rcna188388 (access: 5.12.2024).

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IMPLICATIONS ON INSTITUTIONS SUCH AS MARRIAGE, CIVIL STATUS OR FILIATION

Most states that have procedures for transgender individuals to change their name and/or gender on their documents often impose lengthy and expensive judicial formalities, as well as requirements deemed abusive as a precondition for recognizing one's gender identity. For example, the condition of being unmarried or obtaining a divorce, undergoing sterilization treatments, having sex-reassignment surgery, or undergoing other medical procedures, diagnoses, violate international human rights standards, including abusive requirements for recognizing gender identity.[43]

Since 1996, Romania has allowed legal gender change following sex reassignment surgery. However, legal recognition requires fulfilling several conditions, including a medical diagnosis of transsexualism, evidence of medical treatment, and alignment of physical appearance and social behaviour consistent with the claimed gender.[44] Romanian law does not provide a comprehensive legislative framework specifically regulating gender identity. Instead, partial regulation is derived from Law No. 119/1996 on civil status documents,[45] the Civil Code, and relevant case law. Individuals seeking legal gender recognition must obtain court approval for surgery, name change, and updating civil records. The process can involve confidential court hearings and personal testimonies confirming the individual's gender identity.

In practice, Romanian courts have, in some instances, granted legal gender recognition even without full surgical transition.[46] For example, a 2014 decision by the Galați Tribunal allowed legal gender change after partial surgery abroad.[47] In 2019, a court in Cluj-Napoca ruled in favour of a transgender applicant, affirming that private life includes gender identity.[48]

Overall, although certain judicial developments indicate incremental progress, Romania's legal framework governing gender recognition remains fragmented, inconsistent in application, and not fully aligned with prevailing European or human rights international standards.[49]

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[43] General Comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 1 May 2016, para. 58.

[44] C. Jugastru, *Încheierea căsătoriei în dreptul internațional privat. Evoluții şi tendințe*, "Revista Română de Drept Privat" 2015, no. 5, p. 73.

[45] Republished in Official Gazette No. 339 of 18 May 2012, and amended.

[46] C. Nicolescu, *Dreptul familiei*, București 2023, p. 65.

[47] Trib. Galați, s. civ., dec. civ. nr. 1206/19.12.2013.

[48] Jud. Cluj Napoca, sent. nr. 1273/2019 din 22-feb-2019.

[49] D.A. Deteșeanu, C.M. Nicolescu, *The Civil Status of Trans Persons Under the Romanian Legal System*, [in:] *Trans Rights and Wrongs*, eds. I.C. Jaramillo, L. Carlson, Cham 2021, pp. 119–132.

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1. The importance of ECtHR and CJEU jurisprudence on this issue

Although the European Convention on Human Rights does not explicitly enshrine a right to health, nor expressly refer to sexual orientation, gender identity, gender expression, or sex characteristics, the European Court of Human Rights has frequently examined alleged violations of the rights of transgender individuals. The Court's case law in this area is characterised by an evolving interpretation of Convention rights. Over time, it has recognised that a violation of private life occurs through the refusal to acknowledge an individual's gender identity and consequently the legal recognition of a sex change. It should be noted that the requirement for sterilization or irreversible surgical sex changes was considered by the Court to be a violation of Article 8.

Several landmark judgments of the European Court of Human Rights and the Court of Justice of the European Union have significantly advanced transgender rights. In *B. v France* (1992) the Court found that requiring invasive procedures for legal gender recognition violated the right to private and family life under Article 8 of the Convention.[50] In *Y.Y. v Turkey* (2015), it held that sterilization cannot be a legal prerequisite for gender recognition.[51] In *Hämäläinen v Finland* (2014), the Court addressed discrimination due to refusal to update personal identification to match gender identity.[52] In *X v Russia* (2017), the Court also highlighted discrimination tied to mismatched legal names and gender identity.[53] In *A.P., Garçon and Nicot v France* (2017), it explicitly ruled that mandatory sterilization violates Article 8.[54] In *Rana v Hungary* (2020), the Court condemned Hungary's denial of legal gender recognition to a transgender refugee due to restrictive administrative requirements.[55] In *X and Y v Romania* (2021), the Court marked a shift toward recognizing gender self-determination, criticizing Romania's lack of a clear legal framework for gender identity recognition without mandatory surgery.[56] In *W.W. v Poland* (2021), the Court held that denial of access to hormone therapy to a transgender woman in detention could violate the right to respect for private life.[57]

At the level of EU law, the Court of Justice of the European Union in *Mirin* (2024) emphasized that Member States are required to recognize changes to legal gender and names lawfully obtained in Member States, reinforcing the principle

[50] ECtHR, *B. v France*, Application no. 13343/87, 25 March 1992.
[51] ECtHR, *Y.Y. v Turkey*, Application no. 14793/08, 10 March 2015.
[52] ECtHR, *Hämäläinen v Finland*, Application no. 37359/09, 16 July 2014.
[53] ECtHR, *X v Russia*, Application no. 60796/16, 4 August 2017.
[54] ECtHR, *A.P., Garçon and Nicot v France*, Application nos. 79885/12, 52471/13 and 52596/13, 6 April 2017.
[55] ECtHR, *Rana v Hungary*, Application no. 40888/17, 16 July 2020.
[56] ECtHR, *X and Y v Romania*, Application nos. 2145/16 and 20607/16, 19 January 2021.
[57] ECtHR, *W.W. v Poland*, Application no. 31842/20, 15 December 2021.

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of mutual recognition and EU citizenship rights.[58] In addition, the Court also ruled that requiring gendered titles on train tickets in France constitutes discriminatory data collection.[59]

Together, these cases affirm the growing legal consensus that self-identification should guide gender recognition, and that practices requiring medical intervention or failing to respect gender identity violate fundamental human rights.

2. The right to marriage

The concept of the traditional family is no longer imperative, as the focus shifts towards the protection of individual rights and freedoms, with the right to self-determination leading to a change in the perspective on family life, where procreation is no longer the primary purpose. Thus, same-sex individuals and transgender persons are able to form a family structure and family life that they seek to have recognized legally.

In Romania, transgender individuals are permitted to marry, provided that their spouse is informed of the legal gender transition.

The European Court of Human Rights has addressed issues relating to transgender marriage rights multiple times. In *Rees v the United Kingdom* (1986), the Court held that Article 12 of the European Convention on Human Rights, which guarantees the right to marry, referred to unions between persons of opposite biological sex.[60] However, in *Cossey v the United Kingdom* (1990), the Court emphasized that limitations must not undermine this right.[61]

The jurisprudence evolved significantly with *Christine Goodwin v the United Kingdom* (2002), where the Court ruled that states must legally recognize a transgender person's gender change, acknowledging changes in societal norms and science. The terms in the Convention were no longer seen as strictly biological.[62]

Remaining in a marriage after gender transition depends on national laws. In Romania, same-sex marriages are prohibited under Article 277 of the Civil Code. The legal consequences in such situations (e.g., divorce or annulment)[63] remain unclear, though caducity may be the most feasible solution.[64]

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[58] CJEU, C-4/23, *Mirin*, 4 October 2024.

[59] CJEU, C-394/23, *Mousse v Commission Nationale de l'Informatique et des Libertés (CNIL), SNCF Connect*, 9 January 2025.

[60] ECtHR, *Rees v the United Kingdom*, Application no. 9532/81, 17 October 1986.

[61] ECtHR, *Cossey v the United Kingdom*, Application no. 10843/84, 27 September 1990.

[62] ECtHR, *Christine Goodwin v the United Kingdom*, Application no. 28957/95, 11 July 2022.

[63] C.O. Mihăilă, *Familia și căsătoria "neconvenționale". A devenit căsătoria între persoane de același sex un scop esențial al U.E.?*, [in:] *Familia în contextul provocărilor actuale. Reglementări naționale, europene și internaționale*, eds. D.C. Creț, A.F. Moroșteș, D. Berlingher, București 2024, p. 78.

[64] E. Florian, M.I. Floare, *Dreptul familiei*, București 20244, p. 51.

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In *R. and F. v the United Kingdom* (2006), the Court maintained that national authorities should assess societal needs, but restrictions on marriage must not undermine its essence.[65] In *Hämäläinen v Finland* (2014), the Court found converting a marriage into a registered partnership was acceptable if rights remained protected.[66]

RECOGNITION OF TRANSGENDER RIGHTS: POTENTIAL FOR REVERSE DISCRIMINATION?

Policies for the rights of transgender people may be viewed as discriminatory against other individuals or groups. By creating advantages for a relatively small group of people, disadvantages may arise for others. It has often been pointed out that hiring a transgender individual for a specific job might be considered "necessary" to fulfil diversity requirements. The creation of spaces specifically for transgender individuals in schools or workplaces might generate a sense of exclusion among others and the idea of favouring the former.

A key area of controversy is transgender participation in sports. Critics argue that transgender women may retain physical advantages developed during male puberty, creating unfair competition in women's sports. Supporters advocate for inclusive participation based on gender identity. International and national bodies vary in their approaches: while Resolution 2465 (2022) supports trans inclusion in sports,[67] several sports organizations (like World Athletics and World Rugby) restrict transgender women's participation. The United States also reflects this divide, with 25 states implementing laws that bar transgender youth from competing according to their gender identity.[68]

Notable legal cases include Renée Richards,[69] who won the right to compete in women's tennis after gender reassignment surgery, and Lana Lawless,[70] whose lawsuit led to the LPGA changing its policy on transgender athletes. High-profile

[65] ECtHR, *R. and F. v the United Kingdom*, Application no. 35748/05, 28 November 2006.

[66] ECtHR, *Hämäläinen v Finland*, Application no. 37359/09, 16 July 2014.

[67] Resolution 2465 (2022) of the Parliamentary Assembly of the Council of Europe: The fight for a level playing field – Ending discrimination against women in the world of sport, adopted by the Assembly on 13 October 2022.

[68] Movement Advancement Project, *Equality Maps: Bans on Transgender Youth Participation in Sports*, https://www.mapresearch.org/equality-maps/youth/sports_participation_bans (access: 11.11.2024).

[69] *Richards v U.S. Tennis Assn*., 93 Misc.2d 713, 400 N.Y.S.2d 267 (1977).

[70] K. Thomas, *L.G.P.A. Will Allow Transgender Players to Compete*, 2.12.2010, https://www.nytimes.com/2010/12/02/sports/golf/02lpga.html (access: 11.11.2024). See also J. Randall, *A Changing Game: The Inclusion of Transsexual Athletes in the Sports Industry*, "Pace Intellectual Property, Sports & Entertainment Law Forum" 2012, vol. 2(1), pp. 198–209.

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NCAA swimmers Lia Thomas and Iszac Henig highlighted the complex dynamics of hormone therapy, physical advantage, and gender identity in sports.[71]

The placement of transgender individuals in women's prisons is another sensitive issue. Cases in Scotland involving Isla Bryson[72] and Katie Dolatowski,[73] both transgender individuals convicted of serious crimes, raised public safety concerns and prompted policy changes.

In Denmark, transgender artist Ibi-Pippi Orup Hedegaard sparked public outcry after using a women's locker room, challenging boundaries between legal rights and societal norms.[74]

After this brief analysis, we wonder if the safety and freedom of women are not threatened and put in danger, if their private space will be invaded by men who identify as women, but who, biologically, have remained men? Can the individual choice of gender identification, without any form of conditioning, lead to reverse discrimination?

THE BEST INTERESTS OF THE CHILD

A key concern in the debate over gender transition for minors is determining the appropriate age and maturity level for making such a life-altering decision. Critics question how children, who are legally restricted from voting, driving, or entering contracts, can be permitted to change their gender identity, often without psychological counselling.

Laws differ by country. In Luxembourg, children as young as 5 can apply to change their gender, with the Ministry of Justice or the courts involved depending on age. Norway permits gender recognition from age 6 without requiring medical advice. In Belgium, children over 12 can request a name change with parental consent. Malta allows gender changes for minors under 16 via court approval, and Spain's 2023 law permits minors aged 14–16 to change their gender with parental assistance, while those aged 12–14 need judicial authorization.

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[71] J. Yurcaba, *Amid Trans Athlete Debate, Penn's Lia Thomas Loses to Trans Yale Swimmer*, 10.1.2022, https://www.nbcnews.com/nbc-out/out-news/trans-athlete-debate-penns-lia-thomas-loses-trans-yale-swimmer-rcna11622 (access: 11.11.2024).

[72] BBC, *Isla Bryson: What Is the Transgender Prisoners Row All About?*, 28.2.2023, https://www.bbc.com/news/uk-scotland-63823420 (access: 11.11.2024).

[73] D. Sanderson, *Trans Paedophile Praises Nicola Sturgeon's Gender Reforms*, 11.4.2023, https://www.telegraph.co.uk/news/2023/04/11/katie-dolatowski-trans-paedophile-nicola-sturgeon-gender (access: 11.11.2024).

[74] Å. Linderborg, *Konstnär i fängelse efter kupp mot hyllad anka*, 17.03.2023, https://www.aftonbladet.se/nyheter/kolumnister/a/wA9BLP/jag-vill-inte-dela-duschrum-med-ibi-pippi (access: 17.9.2024).

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The removal of mandatory psychological evaluations in some cases raises concerns about insufficient time for reflection. Media influence is also seen as a factor in the increasing number of young people identifying as transgender.[75] At the Tavistock and Portman NHS Foundation Trust in the United Kingdom, cases of gender identity struggles in children have risen significantly, with some patients as young as 3 years old.[76]

Children's identities and preferences can shift rapidly during development, and undergoing transition, especially involving hormone treatments, can have serious side effects. Reflecting this concern, countries like Sweden, the United Kingdom, and Norway are scaling back or suspending hormonal treatments for minors.[77] Recent studies also suggest that medical transitioning does not necessarily improve mental health outcomes in youth.

DETRANSITION OR RE-TRANSITION

Detransitioning is a complex process that requires a multidimensional approach, addressing psychological, medical, and social challenges. Individuals may detransition due to regret, health issues, or social pressures such as discrimination and stigmatization. Some discontinue gender-affirming hormones because of adverse physical or mental health effects.[78] Both transition and detransition processes can lead to social exclusion and difficulties accessing healthcare.

Research, particularly on people assigned female at birth, indicates that some regret their transition due to the consequences of medical treatments. The 2015 United States Transgender Survey, which included 27,715 adult respondents, found that approximately 8% reported having temporarily or permanently detransitioned.[79] Common reasons included family pressure, harassment, and employment difficulties.

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[75] R. Kaltiala, E. Heino, M. Marttunen, S. Fröjd, *Family Characteristics, Transgender Identity and Emotional Symptoms in Adolescence: A Population Survey Study*, "International Journal of Environmental Research and Public Health" 2023, vol. 20(4), pp. 1–13.

[76] A. Gilligan, *Tavistock Clinic Reveals Surge in Girls Switching Gender*, https://www.thetimes.co.uk/article/surge-in-girls-switching-gender-pwqdtd5vk (access: 20.10.2024), cited after: J. Williams, *The Corrosive Impact of Transgender Ideology*, London 2020, p. 20.

[77] U.S. Supreme Court, *Raul Labrador, in his official capacity as Attorney General of the State of Idaho, v. Pam Poe, by and through her parents and next friends Penny and Peter Poe, et al*., 601 U.S. (2024), p. 9.

[78] K.R. MacKinnon, P. Expósito-Campos, W.A. Gould, *Detransition Needs Further Understanding, Not Controversy*, "British Medical Journal" 2023, no. 381, pp. 1–4.

[79] S.E. James, J.L. Herman, L.E. Durso, R. Heng-Lehtinen, *Early Insights: A Report of the 2022 U.S. Transgender Survey*, https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf (access: 10.12.2024).

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Another study involving 237 individuals who detransitioned (92% of whom were female) found that many discovered their gender dysphoria stemmed from unrelated issues like trauma, mental health struggles, or social influences.[80] Key factors for detransition included identifying more with their biological sex (60%), health-related concerns (49%), discovering dysphoria had other causes (38%), and facing discrimination (23%).[81]

Although limited, these studies are significant. They raise concerns about overly simplified transition procedures, particularly for minors,[82] and underscore the physical and psychological challenges many face after transitioning.

CONCLUSIONS

The topic of transsexualism has created a strong ideological and political current.

Although the number of individuals who have changed their gender identity or intend to do so is small in comparison to the world population, the reactions generated are often perceived as amplified. Are the inclusion or protection policies for transsexual persons created to offer them special advantages? Are the rights of the majority being violated through the protection and promotion of transsexual rights?

We must recognize that there are no national legal frameworks for the protection of these individuals and that the elimination of discrimination against transsexual persons remains almost a purely theoretical concept. There are no information campaigns for raising awareness of their rights, nor for their inclusion in the community, particularly in traditionally religious countries like Romania.

Discussions regarding transsexualism, changes in civil status records concerning gender changes, or marriages and legal partnerships of transsexual persons, are likely to remain contentious in the absence of clear and coherent regulatory frameworks.

The intersection between transsexuality and new forms of family structures reflects the evolving nature of our society. It is essential to approach this issue with sensitivity and respect for individual rights. However, it remains a delicate topic, with a need to analyse proportionality and balance: on one side, the interests of transsexual persons, their right to define their sexual identity, and their physical and psychological integrity; on the other side, the state's concern for all citizens, particularly for those who subject themselves to major risks and jeopardize their health.

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[80] E. Vandenbussche, *Detransition-Related Needs and Support: A Cross-Sectional Online Survey*, "Journal of Homosexuality" 2022, vol. 69(9), pp. 1602–1620.

[81] L. Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, "Archives of Sexual Behavior" 2021, vol. 50(8), pp. 3353–3369.

[82] K.J. Zucker, *Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues*, "Archives of Sexual Behavior" 2019, vol. 48, pp. 1983–1992.

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ABSTRAKT

Artykuł ma charakter koncepcyjno-prawny i poświęcony jest złożonym oraz często spornym zagadnieniom dotyczącym równości, niedyskryminacji i tożsamości płciowej. Centralny problem badawczy koncentruje się na rosnącym prawnym uznaniu płci subiektywnie odczuwanej przez osoby transpłciowe oraz na szerszych konsekwencjach społecznych, jakie ta zmiana może pociągać. Choć wiele państw członkowskich Unii Europejskiej zmierza do większej inkluzywności, ewolucja ta nie pozostaje wolna od kontrowersji ani od wpływu na prawa, przekonania i uzasadnione oczekiwania innych grup społecznych. Główna teza artykułu głosi, że rozszerzanie praw osób transpłciowych może generować konflikty z utrwalonymi normami społecznymi, przekonaniami religijnymi oraz prawami kobiet i dzieci, zwłaszcza w takich obszarach jak edukacja, prawo rodzinne i przestrzeń publiczna. Celem badań jest krytyczna ocena wyzwań prawnych i etycznych, jakie stawiają aktualne tendencje w zakresie uznawania tożsamości płciowej, a także zbadanie, czy zachowana jest właściwa równowaga między wolnościami jednostki a interesem zbiorowym. Artykuł wnosi oryginalny wkład do badań, wskazując na brak konsensusu w europejskich systemach prawnych oraz podkreślając napięcia społeczne, które mogą powstawać, gdy zmiany polityczne są napędzane przez agendy ideologiczne lub polityczne, a nie przez szeroką debatę publiczną.

Słowa kluczowe: tożsamość płciowa; prawne uznanie; skutki społeczne; detranzycja