Transgender Persons and Family Life

The issues of Sterilisation and Loss of Child Custody Rights

Master thesis

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Orlando had become a woman – there is no denying it. But in every other respect, Orlando remained precisely as he had been. The change of sex, though it altered their future, did nothing whatever to alter their identity. Their faces remained, as their portraits prove, practically the same. His memory – but in future we must, for convention’s sake, say ‘her’ for ‘his’, and ‘she’ for ‘he’ – her memory then, went back through all the events of her past life without encountering any obstacle. Some slight haziness there may have been, as if a few dark drops had fallen into the clear pool of memory; certain things had become a little dimmed; but that was all. The change seemed to have been accomplished painlessly and completely and in such a way that Orlando herself showed no surprise at it.

Virginia Wolf, *Orlando*, 1928
I want to thank my family, boyfriend and close friends for their strong support and endless patience throughout this year and half around Europe.

I am truly grateful for everything and I would have never come this far without you.

Now… charge your batteries for my upcoming adventures!

Special acknowledgments must be addressed to Dennis for your support and guidance, Nina for your supervision and our ‘motivation’ meetings and, to Sangeeta for your help.

Thank you.

Finally I want to thank all the interviewees for your time and cooperation.

It was a pleasure meeting you all.
<table>
<thead>
<tr>
<th>ABBREVIATIONS</th>
<th>\textit{Definition}</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CFREU</td>
<td>Charter of Fundamental Rights of the European Union</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>ECHR</td>
<td>Convention on the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>EctHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ILGA-Europe</td>
<td>European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WPATH</td>
<td>World Professional Association for Transgender Health</td>
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<td>Yogyakarta Principles</td>
<td>Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity</td>
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This thesis deals with the compatibility of requirements to access legal gender recognition with international human rights law, in particular the pre-condition to be rendered permanently infertile and the possibility of losing child custody rights of biological children who were born before the application for legal gender recognition. Through the analysis of relevant European jurisprudence, domestic and international legislation, international declarations and statements and, with a personal input provided by interviews conducted with relevant stakeholders, this thesis provides an overview of the current legal status of transgender persons. In addition, given the lack of information available, through comparisons with parallel situations, namely with documented cases of Roma women sterilised and of homosexual parents’ loss of child custody rights, it provides a clear portrait of the constraints that such requirements pose on transgender persons’ full enjoyment and exercise of human rights.

The principal conclusions to be drawn is that legislation imposing sterilisation as precondition to access legal gender recognition violate one’s right to found a family, to family life, to physical integrity, to the highest attainable standard of health and to consent or refuse medical treatment. Legislation requiring the person to be unmarried/divorced or domestic practices forcing transgender parents’ to waive their parental rights in order to have their legal gender recognised violate the parent and child’s right to family life and the child’s rights not to be separated and to maintain contact with her/his parents.
TABLE OF CONTENTS

INTRODUCTION ................................................................................................................. 1
CHAPTER I – WHERE DO WE STAND? ................................................................. 3

1. Introduction ................................................................................................................. 3
2. Concepts Definition ..................................................................................................... 4
3. International Human Rights Law ............................................................................. 9
4. European Legal Framework .................................................................................. 15
   4.1. Case-law .............................................................................................................. 25
       A. European Court of Justice ............................................................................. 25
       B. European Court of Human Rights .............................................................. 28

CHAPTER II – WHY IS IT RELEVANT? .............................................................. 42

1. Introduction ................................................................................................................. 42
2. Sterilisation .................................................................................................................. 43
   2.1. Rights at Stake ..................................................................................................... 44
   2.2. Sterilisation of Roma Women .......................................................................... 50
   2.3. Sterilisation of Transgender Persons .............................................................. 56
3. Loss of Child Custody Rights ................................................................................... 61
   3.1. Rights at Stake ..................................................................................................... 62
   3.2. Homosexual Parents’ Loss of Child Custody Rights ...................................... 66
   3.3. Transgender Parents’ Loss of Child Custody Rights ...................................... 68

CHAPTER III – WHAT IS YOUR OPINION? ......................................................... 72

1. Introduction ................................................................................................................. 72
2. Interview Analysis ..................................................................................................... 73

CONCLUSION .................................................................................................................. 82
BIBLIOGRAPHY .................................................................................................................. 84
ANNEX ................................................................................................................................. 99
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