



European Master's Degree in Human Rights and Democratisation
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Marta Pallos de Azevedo Pascoal Ramos

Transgender Persons and Family Life

The issues of Sterilisation and Loss of Child Custody Rights

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Supervisor: Dr. Nina-Louisa Arold

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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

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ABBREVIATIONS

CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	Convention on the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EctHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA-Europe	European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association
UDHR	Universal Declaration of Human Rights
UN	United Nations
WPATH	World Professional Association for Transgender Health
Yogyakarta Principles	Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity

ABSTRACT

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.

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