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Transsexuality in The Netherlands *

Some Medical and Legal Aspects

A. J. Kuiper, P. T. Cohen-Kettenis and F. Van der Reyt

Institute of Clinical Psychology and Personality Psychology, State University of Utrecht, Trans 4, NL-3512 JK Utrecht, The Netherlands

Abstract. In The Netherlands the treatment procedure for transsexuals can be regarded as comprising three phases: (1) intake, (2) 'real-life' test, and (3) surgery. Social and physical adjustment to the other sex is possible, but to date it is legally not possible to alter the sex at birth. The Dutch parliament is now considering a bill that will make it possible in future to assume a different gender.

Introduction

Transsexuality is a condition in which a person with the internal and external sex characters of one gender has the irrefutable conviction of belonging to the other gender. This conviction is associated with the desire to adapt the body in the best possible way to the sex characteristics of the other gender by means of hormonal and operative interventions.

In The Netherlands this desire can be fulfilled by medical and surgical treatment. Sex reassignment surgery is generally considered to be justifiable provided it has been satisfactorily established that the gender identity, i.e. the subjectively perceived gender, is an irreversible feature.

In this article the authors describe the situation in The Netherlands with regard to sex-reassignment surgery.

Historical Aspects

In 1959 the Dutch medical community was confronted for the first time with the transsexual phenomenon. An article in *Het Nederlands Tijdschrift voor Geneeskunde* (The Dutch Journal of Medicine) described a 34-year-old woman who came to a provincial hospital with the request that her uterus be removed and a penis constructed for her. At that time her breasts and ovaries had already been removed by surgery somewhere abroad. The discussion pursued in this article was characteristic of the general unawareness and consequent attitude to transsexuality of the time. Like the experts described by Green [1], the physicians in this discussion used arguments against the requested surgery that were of an emotional, religious and

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medical-ethical nature. It was nevertheless decided on the basis of this discussion to give the woman the benefit of the doubt and consent to her request for an operation.

Reactions to this decision were unusually strong. Vehement criticism was expressed in letters to the editor. The affair culminated in an attempt to bring legal proceedings against the plastic surgeon on the ground that grievous bodily harm had been deliberately inflicted. The charge was dismissed by the Medical Disciplinary Council of the Royal Society for the Advancement of Medicine in The Netherlands, and the surgeon was acquitted. The reason given for the acquittal was that there was no fitting definition of the crime in the penal code. Immediately after the trial, voices were raised demanding that the law be changed.

In 1960 the Minister for Social Affairs and Public Health called upon the Health Council to draw up a report on surgery performed on transsexuals. This Health Council, which is the highest advisory body to the minister, appointed a committee to deal with transsexualism and made it responsible for drawing up this report. It took the committee, whose members had never before encountered transsexualism, five years to reach a conclusion. The conclusion reached was that it can reasonably be stated that therapeutic effects can in no case be expected from sex reassignment surgery. The report's essential point of departure was the question of the nature of the transsexual problem. The transsexual may be assumed to suffer from a delusion, and a delusion cannot be cured by being indulged. The only way is psychotherapy with all the modern techniques it can offer. Patient and physician must content themselves with what can be achieved by psychotherapy and social care.

Despite the fact that surgical intervention was not penalized on the occasion mentioned above, it is understandable that medical aid to transsexuals was out of the question at that time. In the late sixties, however, some surgeons took the initiative by returning to the controversial treatment. The general social climate, and especially experience acquired by certain well-known clinics abroad, made it possible for the treatment to be presently condoned.

In 1972 the Netherlands Gender Foundation was founded to co-ordinate and encourage the care, support and treatment of transsexuals. Over the years the foundation has grown into the largest and most experienced organization in support of transsexuals.

In order to make the aid more widely available, three smaller treatment centres have been added recently.

Treatment Procedure

The basic principles on which assistance is given by the Gender Foundation can be summarized as follows [5]:

1. The wish for a change of sex can be authentic and legitimate and should not be prejudged to be a symptom of a psychiatric syndrome.

2. Psychotherapy will therefore only be given if the client wishes this or if psychotic symptoms occur.

3. Support will be given to maximize the decision-making process.
4. The positive approach is based on the principle of "Yes, unless". The team reserves the right to delay or refuse treatment if the client is observed to be so unstable as to make his or her motivation and stamina doubtful.
5. Apart from the diagnostic criteria given in D.S.M. III, there are no objective and decisive criteria on which a sound diagnosis could be based.

The treatment procedure – as far as we can infer from publications and personal contacts – is roughly similar to that in most clinics outside the Netherlands. The most noticeable difference between the various procedures is the explicit demand by some foreign teams that the applicants for sex reassignment should first receive psychotherapeutic treatment. As already stated, this is not required by the Gender Foundation.

The treatment procedure can be regarded as comprising three phases. The initial phase starts with a preliminary interview for the purpose of noting the client's wishes, expectations, background, motivation and so forth with regard to sex reassignment surgery.

A biographical questionnaire is used. During this phase the client is informed about the treatment procedure and the far-reaching consequences of the decision to be made.

A physical examination is also part of this first phase. In addition to a general examination, special attention is given to sexual development, with a hormone test to assess the sex hormones and a chromosome analysis to establish the genetic sex. As a rule people with intersexual problems are not given treatment by the Foundation, but are treated elsewhere. The first phase concludes with the decision to accept or refuse the client for treatment. About 35% of all persons who approach the Gender Foundation are accepted for treatment. Only very occasionally does someone who has been denied treatment apply again or go to another center for help.

There is no ground to support the commonly-heard claim that the number of transsexuals will grow in proportion to the increased publicity given to this phenomenon. In spite of the still growing interest of the media, the number of new transsexuals treated each year is still about 40. The ratio males to females is 3 to 1. The incidence of new applicants per year per 100,000 inhabitants is 0.4 for the male-to-female transsexuals and 0.13 for the female-to-male transsexuals. For both groups together the incidence is 0.21. This figures correspond perfectly with findings in Sweden [6], England [2] and in Denmark [4].

The second phase consists of the "real-life diagnostic test" [3] and averages from one and a half to two years. This is the period during which hormone treatment is started and the social role change takes place.

Those who show both willingness and a capacity to maintain the new gender role for an extended period of time will be accepted for further treatment. Being heavily understaffed, the Gender team is unable to give transsexuals intensive support in their daily lives. If more support is considered necessary the client is referred to the official mental health care system. As far as possible, however, members of the team talk with close relatives, employers and so forth, and mediate between the client and beauticians and speech therapists. If the client needs social

security benefit, the legal advisers contact the social security services. In some cases they help with divorce procedures and apply for a change of name.

The form taken by the hormonal treatment, regardless of individual differences in sensitivity to hormones and the effect required, is as follows. The typical program utilizes 50 mg cyproterone acetate and 50 μg ethinylestradiol twice a day for male-to-female transsexuals and 250 mg testosterone enanthate intramuscularly every three weeks or 40 mg testosterone undecanate 3 times a day for female-to-male transsexuals. Every two or three months bloodpressure, liver functions, thrombosis, prolactin, etc., are examined. The hormonal treatment is usually interrupted two weeks before the surgical intervention in view of the risk of thrombosis.

The third and last phase consists of surgery. In male-to-female transsexuals, castration, penectomy and construction of the neo-vagina are carried out in an single operation if possible. In female-to-male transsexuals both breasts are removed during the first operation, and ovaries and uterus are removed later. In view of the considerable risk of complications, and often disappointing results of penis construction, this part of the operation has so far been performed on only four persons. In the course of the past year (1983), however, the plastic surgeon has dared to construct another penis by means of a new technique which entails a smaller risk of complications and gives a more satisfying result, because the penis is fairly firm.

The expenses of the complete treatment, including additional or corrective surgery such as augmentation of the breasts, corrections of the nose, surgery on the vocal cords etc., and the expenses of speech training, are refunded by the various insurance companies. This is less the case with the expenses of electrolysis for depilation. Psychological aid is not refunded at all, unless one lives by social security benefit.

Legal Situation

The legal complications of transsexuality are in sharp contrast to the medical potentialities. For a good understanding of the legal position of transsexuals in The Netherlands it is important to know that the Napoleonic system of civil registration in this country differs fundamentally from the Anglo-American system. It was designed by Napoleon in connection with his introduction of military conscription and has more or less persisted in every country he once ruled.

The basic item of this system is a birth certificate enrolled in a public register, from which an identity record is made that travels with the individual to the civil registry office of each of his successive places of residence. This identity record is consulted on a variety of occasions: for summons to military service, for elections, for the issuing of a passport, a driving license, etc.

Only an alteration of the birth certificate can lead to a change in the identity record. In the Napoleonic system it is thus impossible to assume a different name or surname, or to marry under a different name or to claim a different gender than the one indicated on the birth certificate, and therefore on the identity record.

Jurisprudence on marriage of transsexuals as it has evolved under Anglo-American law, cannot develop in the Napoleonic system because a transsexual cannot marry in his/her new gender role. This unfavorable legal position was

explicitly affirmed when the Dutch Supreme Court of Justice (like its equivalents in Belgium and France) declared alteration of the birth certificates of transsexuals to be inadmissible.

However, the system also has its advantages. If, for instance, in the Napoleonic system alteration of the birth certificates of transsexuals would be made possible by an amendment of the law, then the consequences would prevail in all other legal areas. In the legal sense, all problems would be resolved. The system has created an all-or-nothing situation, which has so far been confined to nothing: transsexuals are liable to military conscription, cannot marry as a person of the newly assumed gender; anyone can expose "false" gender claims on the basis of data from the public civil registries; and the "true" gender is also immediately evident from the Christian names given on passports or driving licenses.

Understandably, transsexuals experience it as most hurtful and unjust that they should be registered officially as someone they feel they really are not. They experience this not only as a denial of their feelings, but often also as a denial of their very existence.

However, parliament is now considering a bill which proposes to end this situation and allow – after judicial examination – the making of a note on the birth certificate which makes it possible in future to assume a different gender. This "new" gender is automatically passed on by the civil registration official to the agency holding the identity record, and thus the change proceeds through all levels of civil registration. In this way nobody can continue to doubt the gender of the person involved, who will be able to function socially as a member of the other sex.

This solution is legally tenable and effective, even though its effect is not retrospective (in connection with the legal position of previously born children, previous marital partners, etc.).

Of course the important question is: who may be considered apt for such a change?

A substantial prerequisite is that one "has the conviction of belonging to a different gender than the one mentioned in the birth certificate and has been physically adjusted to the desired gender so far as this is medically or psychologically feasible and justifiable". We point out that the operative word in this prerequisite is "conviction", which ultimately can be based only on "self-diagnosis" and self-acquired insight and firmness of purpose.

This should be apparent from visible signs of physical adaptation, but only in so far as this is consistent with somatic and psychological health requirements. In some this can go much further than in others. The limit set is that a person should accept all interventions required to ensure that he/she is no longer fertile. A final requirement is that the person involved is not married at the time of the request for the change. A previous marriage is no objection. After the change a marriage in the new situation is possible. Not only Dutch nationals but also foreign-born citizens with more than three years' residence in The Netherlands can request such a change. The procedure involves few formalities, but one should be mentioned explicitly: a supporting expert report is to be produced in which one expert confirms the above-mentioned personal conviction of the applicant, while other experts report on the physical adaptations and the nonfertility. The construction decidedly avoids introducing team responsibility for this reporting; every expert

reports on his particular area of expertise. Evidently, however, this set-up does invite team work.

The bill now in parliament sets no age limit. It is left to the experts giving medicopsychological guidance to determine at which age the person's conviction is sufficiently firm to give justifiable aid ensuring the development he desires. The legislator is prepared to take into account that the overall prognosis is better when the procedure is started early. In this decision-making process the legislator gives the experts counseling the applicant wide scope. Moreover, the entire bill respects the autonomy of medical-psychological judgment.

The future legal position of transsexuals in The Netherlands seems promising. This future may become reality within a year, because parliament has already intimated a majority vote in favor of it. Enactment of the bill will provide a sound solution to the problems of transsexuals. For the time being, however, many lower court judges are inclined to be lenient with transsexuals, but the appeal court judges block this development. Appeals to the European Court for human rights have so far failed to bring solace.

Concluding Remarks

Aid to transsexuals in The Netherlands has professionally developed in the past few years, and has passed the stage of well intended amateurism. Government policy so far can nevertheless be described as rather inconsistent, if not half-hearted. On the one hand treatment intended to change physical gender is tolerated, but on the other hand there are no provisions for a legal change of gender. The consequence is that a person who used to feel a woman in a man's body, is manoevered into the position of a man in a woman's body (the reverse of course applies to the woman who feels she is really a man). It cannot be surprising that having to live in such a split situation exposes the person in question to heavy psychological stress. One exists in a no-man's-land between what one was and what one wants to be, on a road that is closed at either end. It is therefore a good thing that a bill is now ready for acceptance in parliament which can put an end to this uncertain situation.

Quite apart from the fact that a legal change of gender will optimalize treatment results, we are convinced that the right to sex reassignment surgery implies the right to a change in the birth certificate.

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