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MEDICAL AND LEGAL MALFUNCTIONS SURROUNDING THE TRANSSEXUAL QUESTION IN FRANCE

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ORIGIN, PRESENTATION AND OBJECTIVES OF THE ASB

France, the country of human rights, yes, indeed, but for what humans?

The assassination of the minister Joseph DOUCE (*Centre du Christ Libérateur*), defensor of the transsexuals, was a huge loss. The affair has remained hushed up legally, politically and in the media.

We created the *Association du Syndrome de Benjamin* in March 1994 with the goal to defend our interests. The ASB is open to all, transsexuals or not.

We have written a law proposal which we hope will be voted through.

On December 6th 1997, the first French transsexual march which we organized brought together 60 people in Paris. We will repeat this effort on December 6th 1998. We have named this march "*l'ExisTrans*"; (*the ExisTrans*).

We wish to extract transsexualism from the field of psychiatry, as it is a problem of identity, not of mental illness.

MEDICAL AND JUDICIARY MALFUNCTIONS

We would like to draw your attention on some of the malfunctions we have noted concerning medical teams, the judiciary system and expert appraisements in France.

MALFUNCTIONS RELATING TO FRENCH MEDICAL TEAMS:

Certain medical teams wish to protect their monopoly when their proceedings leave a lot to be desired. At present, they cannot offer equitable treatment to all: a given transsexual person who would consult several different teams would receive very different answers relating to length of the observation period, proposed treatments, surgical techniques and functional and esthetical results of surgery. In France, there are at present too many post-surgical problems.

The different teams very rarely collaborate with each other, due to rivalry or disagreement... It is very difficult for a patient to change medical teams. The medical files often do not follow and one must start from scratch with the new team. Thus, transsexuals cannot freely choose their physician.

There are two specialized teams in Paris in contrast with the provinces where far too little authorized medical assistance is available. This leads many to undertake lengthy trips in order to obtain a follow-up.

Misunderstandings can occur in the heart of a given team. The psychiatrist may deliver a diagnosis of transsexualism which will not be taken into account by the endocrinologist who will not prescribe hormonal treatment. In that case, why consult a psychiatrist in the first place?

Different medical teams do not adopt the same protocole. Moreover, no French team uses the European protocole.

The wait for a diagnosis as well as the time between the start of hormonal treatment and surgery are often much too long (several years). Such an unnecessarily a too long waiting period can generate iatrogenic psychological disorders. Certain patients can't stand to wait

so long and thus consult abroad or resort to private practitioners. Others, in an anxiety attack linked to such a lengthy waiting period, can mutilate themselves or commit suicide. This situation hinders socio-professional insertion and leads to precarious sources of revenue, prostitution and suicide.

The opinion of the psychologist, psycho-analyst or personal therapist of the transsexual person is never taken into account.

The patients lack information on medical and surgical treatment, their length, risks as well as on progress in the field.

It is often impossible to consult their own medical files or to obtain a copy of them.

Patients over 55 years of age, or who have children, or are HIV-positive or suffer from AIDS are not operated on in France.

A person followed by a given medical team was unable to obtain a medical certificate from the psychiatrist and was denied change in civil status. This, notwithstanding the fact that the diagnosis of transsexualism had been made and hormonal treatment initiated by the team's endocrinologist. After three years, as he had still not obtained a surgical appointment, this MTF person went to Belgium to be operated on. The person had been married and had had children. Medicine and Justice held against her the fact that she had not waited for his children to be brought-up and married before acting out her transsexuality.

Recently, a MTF, after two years for a diagnosis without care (hormonal treatment, removal beard and vocal re-education), can be operated in November. The «real life test» is not possible because she is not credible.

The French teams rarely attend scientific meetings on the subject. Certain teams make no effort towards progress in the field.

Medical teams can provide suitable services providing there are more of them, that they collaborate with each other and that their follow-up of patients does not last for years, severely hindering the socio-professional insertion of persons said to be transsexuals.

QUALITY OF SEXUAL-REDETERMINATION SURGERY (SRD):

Medical teams resort to different surgery techniques leading to different results. They operate on few patients (less than 20% of requests). Certain teams rapidly interrupt their services and are replaced by others with no transmission of expertise, leading to repetition of the same mistakes and to the same trial and error processes... Are patients mere guinea-pigs?!

At present, results of surgery are quite debatable compared to the state of the art in Europe. In the past, transsexuals were only too happy to rid themselves of their sexual organs and to acquire an acceptable physical appearance. They abandoned all ideas of sexual pleasure. But now, the younger patients know about the existence of surgery in Europe leading to aesthetics, functionality and pleasure and thus demand such results.

If someone refuses an imposed surgeon, they can no longer be operated on. They must change medical teams or finance their surgery outside of France.

In case of a surgery failure, the transsexual person can have no claim whatsoever. The rights to quality or to suitable results non-existent.

In France, transsexuals wish to be able to choose their surgeon, to be able to discuss treatment with him and obtain all information concerning him and his techniques.

They also wish to be able to choose any surgeon in Europe and that the subsidy obtained from the Social Security system be equivalent to the same operation performed in France.

As is the case for interruptions of pregnancy, doctors must be volunteers and act in accord with their conscience. They must help transsexuals as human beings. They must be convinced that they are genuinely helping them and not have mere pity as their motivation.

The ideal would be the constitution of a single surgical center which would gather all the necessary specialists. People could choose an endocrinologist and a psychiatrist close to their home, both volunteers to follow and accompany the person during the "real life test" and medical undertakings. The real life test under hormonal treatment would be the only evidence required for surgery. Surgery would always remain optional, the person being able to interrupt the process at any moment. Such a surgery center would acquire optimal expertise if it grouped all operations performed in France. Voluntary physicians and surgeons would be trained, attentive to the needs of the transsexuals and categorised as specialists. They would be trained to the best techniques, would keep informed on new developments in the field, could transmit their expertise and collaborate with their French and foreign colleagues.

MEDICAL QUESTIONS WHICH DO NOT CONCERN THE MEDICAL TEAMS:

Another important problem in FRANCE concerns beard removal, re-education of voice, face plastic surgery. Those cares are considered as being subsidiary by the medical team. The TS person's have to pay for it because official teams consider that it is esthetism.

MALFUNCTIONS RELATING TO JUSTICE:

The National Order of Physicians is informed by a medical team of a surgical operation. The Social Security takes in charge this operation, provided it is performed in a public hospital and in France. But then is a paradox because the doctors can be prosecuted in a court of Justice[1] as well as by the Order of Physicians[2], by a patient or a third party.

In Paris, the decree of January 27 1907[3] on transvestism is still valid. The MTFs are assimilated to transvestites by the police.

The INSEE (the organisation which attributes national numbers of identity) must reflect the civil status registry[4], which renders impossible the use of temporary INSEE numbers. Social Security uses the argument of this INSEE number to refuse a temporary social security number to

[1] Article 22 of the deontology code: no mutilation of any sort can be performed in the absence of a very serious medical indication.

[2] Article 310 of the Penal code: voluntary wounds followed by permanent infirmity, punished by 5 to 10 years of criminal imprisonment; or article 309 of the Penal code: stikes and violence having provoked in the victim a personal working incapacity longer than 8 days, punished by 2-3 months of prison and/or 2-20 000 F; or article 316 of the Penal code: crime of castration. But paradoxically, hysterectomies are often performed, at no risk... except for the FTMs!

[3] Decree from the prefect of the Paris police Louis LEPINE, who decided that, except on Sundays, Mondays, and holidays such as Mardi gras, it was not allowed to appear in the street in disguise, unless one had a special permanent authorization. The penalties are described in article R.26-15 of the Penal Code.

[4] Article 6 of the decree n° 82-103 of January 22th, 1982 concerning the national identification repertory of physical persons which only authorizes the alteration of the identification number if the information it provides no longer correspond to the registers of the Civil Status.

transsexual persons. Nevertheless, certain Social Security centers have attributed temporary numbers to very few transsexual persons.

The procedure needed to change social status varies from one court of justice to the other, in length (from 6 months to over 4 years), in number of experts nominated (0 to 4), a situation which is reflected by variations in legal fees (400-1200 pounds).

The expert appraisal is performed even when the transsexual person has been followed for many years by a medical team, the members of which are themselves experts in court.

MALFUNCTIONS CONCERNING EXPERT APPRAISEMENTS:

Criteria for transsexualism vary according to the expert. For some, the existence of a successful phalloplasty or vaginoplasty will lead to a positive appraisal, the partial or total failure of such operations to a negative one. Very few are the genuine experts of transsexualism.

At present, expert appraisements for a change in civil status occur after surgery. Thus, a psychiatrist can, in less than two hours, contradict the two years of patient follow-up performed by another psychiatrist (sometimes himself an expert at court) who previously had given his accord for treatment. The change in civil status will then be refused, based upon a negative appraisal.

Surgical techniques applied to FTMs vary in different regions: France is separated in two:

In the North, the only compulsory operations are mastectomy and hysterectomy with removal of annexes. Due to frequent urinary complications, the vagina is often conserved, or, more rarely, partially removed. A more or less complete phalloplasty is performed. This operation, the results of which are often debatable, is quite complex and is fraught with huge problems and complications.

In the South, in order to obtain a change in civil status, removal of the vagina and phalloplasty are compulsory, even though these operations are not perfectly mastered. It is only at such conditions that the Southern experts will deliver a favorable appraisal. Court always follows the opinion of the experts.

As far as the physical appraisal, it is in fact a legal form of rape, which, moreover, is committed by doctors. By rape, I mean:

Certain experts check by touch whether the clitoris of the MTF is functional. They insistingly search all parts of the vagina in order to appraise its depth. Will appraisal be favourable if vaginoplasty has failed or if the vagina does not present the required depth?

In FTMs, if the vagina is totally or partially present, the experts insert a finger to check if hysterectomy has indeed been performed. But they cannot check for the presence of ovaries. So why do they not resort to echography to verify all these elements? Are they conscious of the potential psychological consequences of such acts? Or do they omit them on purpose?

Certain experts even resort to committing forgery. We have documents to prove it (documents in French available on demand). For instance, a urologist wrote an expert's

appraisal when he hadn't even seen the person. He omitted existing physical elements. A psychiatrist quoted elements which dated from after the day the appraisal was made. How had he obtained such elements? What was his right to see them? The report, signed by three doctors was favorable. However, the psychiatrist retracted and wrote a second report which was in contradiction with the first one he had signed! This latter report arrived at the court clerk's office the day before the judgement, was not signed and was written on a blank sheet of paper. The lawyer could have rejected such a report: he didn't. The prosecutor would systematically oppose the change in civil status of transsexuals whenever possible. He thus was able to validate this second report, leading to rejection of the change in status. How can one prosecute these experts and lawyers who claim to serve Justice when they only are making money at the expense of the transsexuals?

What is the value and interest of expert appraisements? Whom does it profit to? Operated organs do not grow back, so there is no sense in psychiatric appraisal following surgery.

Only appraisal performed in a humane fashion makes some sense. It should limit itself to ascertain the impossibility to procreate in the sex of birth. Why aren't the medical certificates established by physicians taken into account by the courts of Justice?

One single solution: to abolish expert appraisal.

MALFUNCTIONS CONCERNING EUROPE:

The European Convention for Human Rights does not sufficiently protect transsexuals who cannot win their case in court when their rights are openly violated. The French and British states exploit this situation to maintain their transsexual citizens in the fringe of society, as sub-citizens.

Legal assistance is refused to someone who received a first negative judgement, even though this MTF person has the right to such an assistance. She can thus not take the procedure to appeal. The European Commission for Human Rights will not suit this person under the argument that she has not resorted to every mode of appeal in France. Inasmuch as French Justice does not allow this, the person remains in a dead-end.

All these difficulties lead to conclude that transsexuals cannot benefit from the same rights as other citizens and they are submitted to daily violations of their private lives. They cannot enjoy the fundamental freedom linked to their citizenship. French transsexuals cannot vote without undergoing humiliations and violations of their private lives. Such a situation is in complete contradiction with Human rights and with the rights of the Citizen.