8/3/2013

EUROPEAN SOCIAL CHARTER

Comments from the Serbian LGBT Network and ILGA Europe
on the
2nd Report by Serbia on the implementation
of the European Social Charter
(RAP/RCha/SE/2(2013)

Registered by the Secretariat on 18 January 2013

CYCLE 2013

European Social Charter

Submission by Gayten-LGBT[1], Transgender Europe[2] and ILGA-Europe[3] on the 2nd report by Serbia on the implementation of the revised European Social Charter

Article 11 -- The right to protection of health

Sterilisation and other medical treatment as compulsory requirements for legal gender recognition

Introduction

Two of the processes associated with the reassignment of a person's gender are a legal process, in which a person's recorded sex and first name are changed in identity and other documents ("legal gender recognition"), and a medical process, in which the individual's physical characteristics may be brought in line with their preferred gender ("gender reassignment treatment"). Human rights principles require that the two processes should be completely separate and that the extent of the medical process should be determined by the needs and wishes of the individual. It can range from little or no medical intervention, through to extensive gender reassignment surgery.

In many Council of Europe member states these two processes are mixed together, with legal gender recognition being made conditional on a medical diagnosis and medical treatment. While medical treatment is often desired by transgender persons, this is by no means always the case, resulting in a situation where some individuals are faced with the choice of undergoing medical treatment (including in many member states, sterilisation) they do not need or wish, or being unable to obtain legal gender recognition.

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[1] The mission of Gayten-LGBT is contribution to the creation and implementation of legislation, institutional operation and creation of overall societal environment directed toward removal of all forms of violence and discrimination toward LGBTIQ persons, with the full integration, affirmation and respect of LGBTIQ human rights, culture and existence within the society.

[2] Transgender Europe - TGEU, a not-for-profit umbrella organisation working for the full equality of trans persons in Europe, has 64 member organisations in 36 countries, enjoys participatory status to the Fundamental Rights Platform and is elected member of the Platform of European Social NGOs Social Platform. TGEU is in the process of applying for participative status at the Council of Europe.

[3] ILGA-Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe has 391 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 45 European countries.

The human rights situation of transgender persons has been extensively researched in recent years by the Office of the Commissioner for Human Rights and documented in an issue paper, *Human Rights and Gender Identity,* and a report, *Discrimination on grounds of sexual orientation and gender identity in Europe.* Relevant extracts are set out in Appendices I and II.

Human Rights and Gender Identity notes that conditions for legal gender recognition vary widely across Europe. While a small number of member states require no medical treatment, most require that the individual has followed a medically supervised process of gender reassignment, has been rendered surgically irreversibly infertile, and/or has undergone other medical procedures, such as hormonal treatment. The paper notes that "such requirements clearly run counter to respect for the physical integrity of the person …. surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist….. It is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state enforced sterilisation."

Discrimination on grounds of sexual orientation and gender identity in Europe points out that "surgery leading to sterilisation has been identified as a requirement [for legal gender recognition] in 29 member states." It adds that in two other member states, Austria and Germany, the sterilisation requirement has been found unconstitutional, while in four no requirements of sterilisation are enforced. In the remaining 11 states there was either no legislation regulating legal gender recognition, or the situation regarding the sterilisation requirement was unclear.

In 2010 the World Professional Association for Transgender Health issued the following statement:

"No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures."[4]

On December 19 2012 the Administrative Court of Appeals in Stockholm, Sweden followed the example of the constitutional courts in Austria and Germany in finding the sterilisation requirement unconstitutional.[5]

Specific Council of Europe human rights standards

The Committee of Ministers, in its *Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, recommended that member states should review prior requirements for legal gender recognition, including changes of a physical nature, in order to remove those which are "abusive". It also recommended that member states should make possible the change of name and gender in official documents in "a quick, transparent and accessible way", a requirement which rules out the lengthy procedures associated with gender reassignment treatment. The Recommendation's Explanatory Memorandum expanded on the above, noting that in some countries access to gender reassignment services is conditional upon procedures such as irreversible sterilisation, hormonal treatment, preliminary surgical procedures etc, and adding that existing requirements should be reviewed in order to remove those which are

[4] http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf
[5] The text of the ruling is available from ILGA-Europe

"disproportionate". Similar considerations applied with respect to prior requirements for legal recognition of a gender reassignment.[6]

While the Committee of Ministers stopped short of recommending an end to sterilisation and other medical treatment as prior requirements for legal recognition, its statement that such requirements were potentially abusive and to be reviewed was a significant step, given that the majority of member states currently require such procedures.

In 2010 the Parliamentary Assembly called on member states to ensure that transgender persons are able to obtain legal gender recognition "without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy".[7]

The Human Rights Commissioner has likewise called for the abolition of "sterilisation and other compulsory treatment …. as necessary requirements for the legal recognition of a transgender person's preferred gender."[8]

The situation in Serbia

The Report of the Commissioner for Human Rights *Discrimination on grounds of sexual orientation and gender identity in Europe* lists Serbia among the member states which make sterilisation a prior requirement for legal gender recognition.[9]

A co-author of this report, Gayten-LGBT, provides the following additional information:

There are no laws or other procedures to regulate the process of the legal recognition of gender reassignment. Authorities in different parts of Serbia have developed different practices. In general, this means that legal gender recognition is based on a "diagnosis" of gender dysphoria, confirmed by a psychiatrist. Legal gender recognition is generally dependent on removal of reproductive organs and other surgical procedures.

The uncertainties around the procedures create difficulties for transgender persons, who do not know precisely what treatments are required, and difficulties for officials, who fear making a mistake that could lead to a lawsuit.

They also give rise to abusive practices in some cases. For example, when approached by a transgender woman who wanted to change her documents, the officials of the municipality required that she should be examined by doctors and other experts, in order to determine whether the change had really taken place. During the examination they observed and measured her genitals and breasts, although she had all the necessary medical documents.

Gayten-LGBT has made proposals for regulating legal gender recognition by creating and proposing a Model Law together with center for Advanced Legal Studies, under which a person would not have to undergo irreversible sterilisation and other procedures, and would be able to decide the reassignment process on the basis of their needs. In response to this initiative, the Ombudsman of the Republic of Serbia has recently established a working group to analyse legislation that affects transgender persons.

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[6] see Appendix III for further details
[7] see Appendix III for further details
[8] see Appendix II for further details
[9] See Appendix II

The 2nd Report by Serbia on the implementation of the revised European Social Charter makes no reference to this question.

The obligations of Contracting Parties

Article 11 of the European Social Charter requires the Parties to take appropriate measures designed "to remove as far as possible the causes of ill-health." Relevant supporting principles established in the case law of the European Committee for Social Rights ("the Committee") are as follows:

- The applicable definition of "health" is that set out in the Constitution of the World Health Organisation: "Health is a state of **complete physical, mental and social well-being** and not merely the absence of disease or infirmity."
- With regard to the right to the **highest possible standard of health**: "The health system must be able to respond appropriately to avoidable health risks, that is ones that can be controlled by human action".[10]

Requiring some individuals to undergo unwanted and unnecessary sterilisation and other seriously invasive medical procedures as a prior condition for legal gender recognition is in direct conflict with the above. Far from acting to "remove as far as possible the causes of ill health", the state both prejudices the attainment of "complete physical, mental and social well-being" and indeed acts in a manner which puts the health of individuals at risk unnecessarily.

While the Committee has not yet had the opportunity to address such practices specifically, international and comparative human rights standards leave no doubt that they amount to a serious violation of the right to health. The relevant standards with regard to sterilisation are set out in Appendix IV. They lead to the following conclusions:

- Full and informed consent is required for any medical invention. This applies particularly to sterilisation, a point which has been emphasised in the jurisprudence of the European Court of Human Rights.
- Making legal gender recognition contingent on sterilisation fatally undermines consent, giving rise to what amounts to forced sterilisation.
- The prohibition of forced sterilisation is firmly entrenched in international law. Forced sterilisation interferes not only with the right to health, but also qualifies as inhuman and degrading treatment.

Conclusion

The practice in Serbia that transgender persons undergo sterilisation and other medical treatment as a condition of legal gender recognition is clearly inconsistent with Article 11 of the European Social Charter. Accordingly, we respectfully request that the Committee return a finding of non-conformity with Article 11.

29 January 2013

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[10] *FORM* for the reports to be submitted in pursuance of the European Social Charter (revised) - *adopted by the Committee of Ministers on 26 March 2008 - Article 11* – Scope of the provisions as interpreted by the ECSR; http://www.coe.int/t/dghl/monit slip a job oring/socialcharter/ReportForms/FormRESC2008_en.pdf

Appendix I

Extracts from the Commissioner for Human Rights' Issue Paper *Human Rights and Gender Identity* addressing the imposition of medical procedures, including sterilisation, as a condition for the change of sex and name

Conditions for the change of sex and name

Access to procedures to change one's sex and one's first name in identity documents is vital for a transgender person to live in accordance with one's preferred gender identity. Indeed, the ability to live in the preferred gender and be legally recognised as such is preconditioned by identity papers that are used to conduct everyday life, for example when using a health insurance card, a driving licence or an educational certificate during a job application process. The often lengthy and bureaucratic processes for the recognition of sex and name change result in the inability to travel with valid documents, even to visit relatives in a neighbouring country for a weekend. It could also lead to restrictions on participation in education or employment wherever birth certificates are necessary or sex is indicated on national identity cards. It can mean that transgender people without the correct documentation are effectively hindered from meaningful participation in the labour market, leading to unemployment.

There is a need to distinguish between procedures for the change of first name and those for the change of sex. However, both processes frequently require that the individual concerned must first be considered eligible for the procedure by the medical profession.

It should be stressed that the eligibility conditions for the change of sex in documents vary widely across Europe. It is possible to roughly distinguish three categories of countries. In the first category, no provision at all is made for official recognition. As pointed out above, this is in clear breach of established jurisprudence of the ECtHR. In the second and smaller category of countries, there is no requirement to undergo hormonal treatment or surgery of any kind in order to obtain official recognition of the preferred gender. Legal gender recognition is possible by bringing evidence of gender dysphoria before a competent authority, such as experts from the Ministry of Health (in Hungary), the Gender Reassignment Panel (in the UK) or a doctor or clinical psychologist. In the third category of countries, comprising most Council of Europe member states, the individual has to demonstrate:

1. that (s)he has followed a medically supervised process of gender reassignment – often restricted to certain state appointed doctors or institutions;
2. that (s)he has been rendered surgically irreversibly infertile (sterilisation), and/or
3. that (s)he has undergone other medical procedures, such as hormonal treatment.

Such requirements clearly run counter to the respect for the physical integrity of the person. To require sterilisation or other surgery as a prerequisite to enjoy legal recognition of one's preferred gender ignores the fact that while such operations are often desired by transgender persons, this is not always the case. Moreover, surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist. Yet the legal recognition of the person's preferred gender identity is rendered impossible without these treatments, putting the transgender person in a limbo without any apparent exit. It is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation.

It needs to be noted that many transgender people, and probably most transsexual persons among them, choose to undergo this treatment, often including the elimination of procreative organs. The treatment is often desired as a basic necessity by this group. However, medical treatment must always be administered in the best interests of the individual and adjusted to her/his specific needs and situation. It is disproportionate for the state to prescribe treatment in a "one size fits all" manner. The basic human rights concern here is to what extent such a strong interference by the state in the private lives of individuals can be justified and whether sterilisation or other medical interventions are required to classify someone as being of the one sex or the other.

Two important national court rulings support this view. On 27 February 2009, the Austrian Administrative High Court ruled that mandatory surgery was not a prerequisite for gender (and name) change. A transgender woman, who underwent all changes apart from the genital surgery and lived as a woman in all social relations, could establish to the court that her particular employment situation would not be conducive to the several months' sick leave needed for the operation and that she could not leave her family financially uncared for. This led the court to point out that the legislator had to abolish the original requirement since the court was not able to establish any need for this specific requirement pertaining to transsexual women. In Germany, the Federal Supreme Court has indicated in a judgment that "an operative intervention as a precondition for the change of gender is increasingly regarded as problematic or no longer tenable among experts".

The key point here is that there is no inherent need to enforce one set of specific surgical measures for the classification of an individual to be eligible for changing sex. Similar reasoning lies behind the Spanish Ley de Identidad de Género and the British Gender Recognition Act. Both laws have recognised that the protection of the majority's assumed unease with the procreation of transgender people – which is, due to hormonal treatment and the wishes of most concerned individuals, extremely rare – does not justify a state's disregard of their obligation to safeguard every individual's physical integrity. States which impose intrusive physical procedures on transgender persons effectively undermine their right to found a family.

Regarding conditions to be eligible for the change of first name, there is a similar pattern to some of the procedures for change of gender described above. The process can be easy or require lengthy and/or costly procedures and medical interventions, or it can be denied entirely. In some countries names can only be changed upon medical testimony that the (full) gender reassignment has taken place, including genital surgeries which are not accessible or wished for by persons for a number of different reasons. In other countries such proof is not necessary but instead, or in addition, people need to have a gender dysphoria diagnosis and two years of hormonal treatment to qualify for the name change.

Appendix II

Extracts from the Report of the Human Rights Commissioner *Discrimination on grounds of sexual orientation and gender identity in Europe* addressing the imposition of medical procedures, including sterilisation, as a condition for the change of sex and name

Recommendations

5. Privacy: gender recognition and family life

2) Abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person's preferred gender.

Chapter 5 Privacy: gender recognition and family life

Surgery leading to sterilisation as a requirement for legal gender recognition

Some countries require surgery leading to sterilisation before they legally recognise the new gender. It should be stressed that this requirement would also apply in the absence of a medical necessity or the applicant's wish for such surgery. Surgery leading to sterilisation has been identified as a requirement in 29 member states (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Italy, Latvia, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Romania, San Marino, Serbia, Slovakia, Sweden, Switzerland, Turkey and Ukraine). In two member states, Austria and Germany, the "sterilisation requirement" has been declared unconstitutional by their respective constitutional courts, but no new legislation has been proposed or adopted. In four member states – Hungary (administrative practice), Portugal, Spain and the United Kingdom (by law) – no requirements of sterilisation are enforced. In the Russian Federation there is also no legal basis for sterilisation, though some civil registry offices or courts have reportedly required sterilisation in order to recognise the new gender. In the remaining 11 member states there is either no legislation regulating legal gender recognition or the situation regarding the sterilisation requirement is unclear.

Appendix III

Specific Council of Europe human rights standards on sterilisation and other compulsory medical treatment as requirement for legal gender recognition

I. Committee of Ministers

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity[11]

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

Explanatory Memorandum to the Recommendation

20-21. [….]

As affirmed in Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

In some countries access to gender reassignment services is conditional upon procedures such as irreversible sterilisation, hormonal treatment, preliminary surgical procedures and sometimes also proof of the person's ability to live for a long period of time in the new gender (the so called "real life experience"). In this respect, existing requirements and procedures should be reviewed in order to remove those requirements which are disproportionate. It should be noted, in particular, that for some persons it may not possible, for health reasons, to complete every hormonal and/or surgical step required. Similar considerations apply with respect to the legal recognition of a gender reassignment, which can be conditional to a number of procedures and prior requirements, including changes of a physical nature.

35-36 [……]

Concerning the conditions governing gender reassignment procedures, international human rights law provides that no one may be subjected to treatment or a medical experiment without his or her

[11] Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

consent. Hormonal or surgical treatments as preconditions for legal recognition of a gender change (see §19 above) should therefore be limited to those which are strictly necessary, and with the consent of the person concerned.

II. Parliamentary Assembly

Discrimination on the basis of sexual orientation and gender identity - Resolution 1728 (2010)

> 16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:
>
> > 16.11.1. [.......]
> >
> > 16.11.2. documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy;

Appendix IV

International Human Rights Standards on Forced Sterilisation of Transgender Persons[12]

National legislation and/or practice making legal gender recognition contingent on the individual concerned undergoing medical procedures resulting in their sterility are in breach of Article 11 of the Social Charter on the right to the protection of health. Although the Committee has not yet had the opportunity to address this issue specifically, this conclusion may be derived from international and comparative standards on the right to health more generally. In interpreting the provisions of the Social Charter, the Committee takes into account "the principles established in the case-law of other human rights supervisory bodies"[13], and in particular the case-law of the European Court of Human Rights.[14] Since the Social Charter is **"**a living instrument", it "must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments."[15]

Forced sterilisation is a blatant breach of the right to bodily integrity and of reproductive rights. UN Treaty Bodies and Special Procedures have repeatedly affirmed that the right to health comprised the right of individuals to retain control and sovereignty over their bodies. For example, the ESCR Committee stated that "[t]he right to health contains both freedoms and entitlements, including the right to control one's health and body, […] the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation".[16] The right to health also protects an individual's "sexual and reproductive health". [17]

The prohibition of forced sterilization is firmly entrenched in international law. The UN High Commissioner for Human Rights affirmed that the right to health included the "right to be free from […] forced sterilization."[18] The CEDAW Committee similarly stated that "[c]ompulsory sterilization…adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children."[19] In addition to interfering with the

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[12] The authors of this submission are indebted to the International Centre for the Legal Protection of Human Rights (INTERIGHTS) for permission to use their research material in the preparation of this Appendix.

[13] See for example Complaint No. 30/2005, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, 6 December 2006, at para. 196.

[14] For example, the Committee stated that the right to protection of health guaranteed under Article 11 should be read in conjunction with the standards developed under Articles 2 and 3 of the European Convention on Human Rights, (Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11§5).

[15] Complaint No. 18/2003, *World Organisation against Torture (OMCT) v. Ireland*, Decision on the merits, 7 December 2004, at para. 63.

[16] ESCR Committee, General Comment No 14, E/C.12/2000/4 (2000) at para 8. See also Report of the Special Rapporteur on Economic, Social and Cultural Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, E/CN.4/2003/58 (13 February 2003) at para 24.

[17] Report of the Special Rapporteur on the right to health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/66/254 (3 August 2011), at para 6 accessible at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf; Also see Article 16§1(e) of the CEDAW, which provides that states must protect the individuals' right to "decide freely and responsibly on the number and spacing of their children". Similarly, the ESCR Committee stated that reproductive health entailed the freedom to "decide if and when to reproduce", ESCR Committee, General Comment No 14, E/C.2./2000/4, (2000) footnote 12.

[18] Office of the United Nations High Commissioner for Human Rights and World Health Organisation, *The Right to Health*, Fact Sheet No. 31 (2008) Geneva, available at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

[19] Comm. on the Elimination of Discrimination against Women ("CEDAW"), General Recommendation No.19 *Violence against women*, U.N. Doc. A/47/38 (1993) at 22. See also CEDAW, General Recommendation No. 24, *Women and health*, U.N. Doc. A/54/38 (1999) at 22: "acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives." Human Rights Committee in its Concluding Observations on Slovakia, U.N. Doc. CCPR/C/SVK/CO/3 (2011) at para 13: "While welcoming the investigation into the forced sterilization of Roma women and the adoption of Act No. 576/2004 Coll. on health care and services, which introduces the notion of informed consent, the Committee is concerned at the narrow focus of the investigation and the lack of information on concrete measures to eliminate forced sterilization, which, allegedly, continues to take place (arts. 7 and 26)."

right to health, forced sterilization may amount to inhuman and degrading treatment.[20] Sterilisations performed on various groups including women,[21] persons with disabilities,[22] and intersex people[23] have been condemned on a number of occasions. The International Federation of Gynaecology and Obstetrics (FIGO) and the World Health Organization (WHO) have also condemned the practice of forced sterilisation, [24] as well as the World Medical Association (WMA) and IFHHRO – International Federation of Health and Human Rights Organizations, the latter with specific reference to transgender persons.[25]

Any medical intervention, including sterilisation, requires the full and informed consent of the individual in question. Making legal gender recognition contingent on forced sterilisation fatally undermines consent. The European Court has had the opportunity to rule on the issue of informed consent in a case concerning the sterilisation performed on a Roma woman immediately after giving birth.[26] Although the applicant formally consented to the operation, the Court held that consent was invalid. This was because the applicant gave consent during labour, while at the same time she lacked the information necessary to make an informed decision. Echoing this position, the UN Special Rapporteur on the Right to Health highlighted the fact that informed consent should not be confused with "mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right to be involved in decision-making".[27] Best practices and medical literature on the issue of informed consent share the same position.[28] An individual should be able to refuse a medical procedure "without losing rights to other medical health or other services or benefits". [29] The European Court of Human Rights has defined the right to refuse medical treatment as a component of an individual's "inalienable right to self-determination".[30]

[20] Committee against Torture ("CAT"), Concluding Observations on Czech Republic, CAT/C/CR/32/2 (2004), at para 5(k)) regarding the forced sterilization of Roma women. See also CAT, Concluding Observations on Slovakia, CAT/C/SVK/CO/2 (2009) at para 14 as well as the Concluding Observations on Peru, CAT/C/PER/CO/4 (2006) at para 23; European Court of Human Rights, *V.C. v. Slovakia*, Application No 18968/07, Judgment of 8 November 2011 (Violation of article 3, sterilization without valid consent of a woman of Roma origin). See also *María Mamérita Mestanza Chávez v. Peru*, Inter-American Commission on Human Rights, Case 12.191, Report 71/03, Friendly Settlement Agreement (2003) available at https://www.cidh.oas.org/annualrep/2003eng/Peru.12191.htm.

[21] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *A.S. v. Hungary*, Communication No. 4/2004 , CEDAW/C/36/D/4/2004, (29 August 2006) available at: http://www.unhcr.org/refworld/docid/4fdb288e2.html; *V.C. v. Slovakia* (2011) *supra* FN8.

[22] UN Committee on the Rights of the Child, Concluding Observations on Australia, CRC/C/15/Add268 (2005) at para 46(e). See also, ESC, General Comment No. 5, U.N. Doc E/1995/22 (1995) at para 31 (infringe article 10 (2) of the ICESCR, "Special protection should be accorded to mothers during a reasonable period before and after childbirth.") and CERD, Sessional/Annual Report of Committee, UN Doc A/59/18(SUPP) (2004) at para 389.

[23] Committee against Torture ("CAT"), Concluding Observations on Germany, CAT/C/DEU/CO/5 (2011) at para 20.

[24] WHO, *Declaration on the Promotion of Patients' Rights in Europe,* EUR/ICP/HLE (1994) (informed consent is a prerequisite to medical intervention); FIGO new guidelines on "Female Contraceptive Sterilization", at para 2 and 6 (2011) available at http://www.stoptortureinhealthcare.org/sites/default/files/figo-sterilization-guidelines_0.pdf.

[25] World Medical Association and International Federation of Health and Human Rights Organisations, "Global Bodies call for end to Forced Sterilisation" (Media Release, 5 September 2011) available at http://www.wma.net/en/40news/20archives/2011/2011_17/index.html.

[26] *V.C. v. Slovakia,* at 118-119 (2011) *supra* FN8.

[27] Report of the Special Rapporteur on the right to health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/64/272 (10 August 2009).

[28] See FIGO new guidelines on "Female Contraceptive Sterilization", para 7, available at http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf and FIGO Committee, *Figo Ethical Issues in Obstetrics and Gynaecology for the Study of Ethical Aspects of Human Reproduction and Women's Health* (2009) on page 14, accessible at http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf as well as American Medical Association (AMA) position on informed consent, available at http://www.ama-assn.org/ama/pub/physician-resources/legal-topics/patient-physician-relationship-topics/informed-consent.page.

[29] World Health Organisation (Hatcher, R.A. and others), The Essentials of Contraceptive Technology. Baltimore, lohns Hopkins Bloomberg School of Public Health, Population Information Program, (1997) at page 9/10-1, available at http://whqlibdoc.who.int/publications/2003/1885960018_eng_part2.pdf

[30] European Court of Human Rights, *Pleso v Hungary,* Application No 41242/08, Judgment of 2 October 2012, para 66.