

The Right to Become a Pregnant Man: Critiquing the Sterilisation Requirement in Legal Gender Recognition

Within human rights scholarship and practice, there is increasing support for a right to legal gender recognition. Transgender (trans) persons should be acknowledged in their preferred gender for all legal, economic and social purposes. The exact requirements for recognition (i.e. the conditions which trans persons must satisfy to access recognition), however, remain a source of considerable debate. Should individuals have to divorce, achieve the age of majority or undergo surgery before they can amend their legal status? The ‘conditions for recognition’ are now a primary flashpoint in the wider movement for trans equality.

Since Sweden first recognised preferred gender in 1972, sterilisation has been a common feature of national recognition regimes. In order to be acknowledged by the law, trans persons must often forfeit their reproductive capacities. In Europe alone, more than 25 jurisdictions require infertility as a pre-condition for recognition. Sterilisation is typically justified on the basis of avoiding ‘unnatural’ or ‘abnormal’ procreative scenarios. In particular, policy makers and judges have expressed concern at the idea of ‘legal males giving birth’.

This paper explores the operation of sterilisation within the legal gender recognition process. It critiques sterilisation through the lens of human rights, and asks whether the requirement is compatible with fundamental protections and guarantees.

The paper proceeds in three parts. Part I introduces the historical relationship between sterilisation and the trans community. It explains the application of infertility conditions for gender recognition, either through standalone requirements or as part of a broader obligation to access surgery. Part I outlines the traditional rationales for sterilisation, including the spectre of the ‘pregnant man’, the threat of peer discrimination and fears over children’s wellbeing. Part I offers a concise overview of the ‘how’ and ‘why’ of sterilisation.

In Part II, the paper questions whether sterilisation is consistent with existing human rights standards. While Part II focuses on the right to bodily integrity, there is also consideration of non-discrimination, the right to found a family and the highest attainable standard of health. Part II argues that, by requiring medical interventions which may be neither desired nor necessary, sterilisation requirements violate physical integrity and the principle of ‘informed consent’ in medical law. In particular, the paper suggests that, where infertility is a pre-condition for legal recognition, forfeiting reproductive capacities cannot be considered as a voluntary act.

Finally, in Part III, the paper challenges the rationales for sterilisation. While there is growing consensus that forced-infertility breaches human rights, there has been comparably little scrutiny of the existing justifications. Many courts and policy makers concede that sterilisation pursues legitimate social goals, but conclude that those aims are insufficiently pressing to curtail transgender bodily rights. However, many of the most historically influential justifications for sterilisation rely upon highly questionable reasoning. Allowing this logic to stand unchecked, even if it cannot ultimately compromise reproductive capacities, reproduces, and even promotes, misinformation and misassumptions about trans identities.