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QUO VADIS THE STATUS OF TRANSGENDER PEOPLE IN SLOVAKIA? (BRATISLAVA, 29 SEPTEMBER 2023) /

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On September 29, 2023, a scientific conference entitled "Quo Vadis the Status of Transgender People in Slovakia?" was held at Comenius University Bratislava. It was the second conference organised as part of the VEGA project No. 1-0350-21 "Trans-Identity of minors: Ethical and Legal Aspects related to Informed Consent" by the research team led by Prof. Ľubomír Batka and based at the Faculty of Law of the Comenius University in Bratislava.¹

¹ For more details about the grant itself and the members' activities, see here: Trans-Identita pri maloletých. In: *COMENIUS výskum*. Available at: <https://comeniusvyskum.flaw.uniba.sk/2022/07/20/trans-identita-pri-maloletych/> (accessed on 12. 12. 2023). Simultaneously see more in Meteňkanyč and Batka (2022) for the proceedings of the first conference.

The aim of the project is to create and cultivate an interdisciplinary approach to the topic, both on an academic level and on a practical level. For this reason, the organisers have invited a number of experts and practitioners working on the subject from different academic, professional and practitioner backgrounds (law, psychiatry, psychology, sociology, philosophy, ethics, NGOs). This was reflected in the diverse structure of the conference, which was divided into three sections: 1. Experiences from the lives of transgender people, 2. Medical aspects of the care of transgender adolescents, and 3. Legal and ethical aspects.

Welcoming speech with the introductory lecture was given by prof. L. Batka. He opened the topic "Autonomy of transgender adolescents" basing on the principle of self-determination in gender identity of transgender people and sex of intersex people. The capacity to give informed consent is determined by the age of the person, but at the same time it is also conditioned by the individual rational and will capacities of the person. From the development of legal protections and the growth of ethical standards for intersex people, he pointed out the analogy to transgender adolescents (affirmation of sexual and gender identity, self-determination, and the question of age limit for giving informed consent). According to prof. Batka, as autonomy increases, so does responsibility, so irreversible surgical treatments should, in his view, be performed after reaching the age of majority.

The second opening lecture of the conference was "The Copernican Turns in Transgenderism?" by Dr. Lucia Berdisová from the Institute of State and Law of the Slovak Academy of Sciences. The 'Copernican Turns' refer to three phases: depathologising transgender and empowering self-determination. The third turn is the realisation that not only gender, but also sex is socially constructed and the binarity of the sexes is not an immutable structure. Following the ideas of L. Wittgenstein and using Fish's concept of interpretive communities as a foundation, Dr. Berdisová pointed out that even considerations of (binaries of) the sexes are the result of our usage of language, i. e. our construction of the world and ourselves through language and other social practices. In this perspective on law and culture, but also on medical discourse, some of the issues that burden the discourse on transgenderism (e. g. nature v. nurture) also cease to exist, and a wider space opens up for appreciating the contribution of the concepts of non-binarity and gender fluidity and how social institutions can be thought and lived differently once certain issues have "disappeared".

A number of transgender people were invited to the first section of the conference and were able to present their experiences in this way to the legal audience. Zara Kromková from the "Komunitné a poradenské centrum PRIZMA" [Community and Counselling Centre PRIZMA] delivered a lecture "The situation of transgender and non-binary people from the perspective of the counselling centre for LGBTI+ people." The lecture was particularly valuable due to the data on numbers of clinic clientele, as well as due to insight into the difficulties that transgender people face (e.g., refusal to register gender reassignment at registry offices).

A discussion followed, moderated by Assoc. Prof. Matej Horvat, together with Liberty Blake Simon, Charlotte Srnčíková, Alena Srnčíková (Charlotte's mother) and Zara Kromková. The discussion focused on several aspects of transgender people's lives, with particular emphasis on personal problematic experiences in changing name and gender information in documents at some Slovak registries. The panellists highlighted the unclear and inconsistent application of the Slovak Ministry of Health's Expert Guideline on the unification of procedures for the provision of health care for gender reassignment prior to the issuance of a medical opinion on the gender reassignment of a person administratively registered in the registry office. The debate participants mentioned the

shortcomings in access to health care. Generally, they were critical towards the conditioning of transitions on the diagnosis of F 64 (according to the ICD-10), as the World Health Organization has already reclassified the original "disease" of transgender people from the mentioned transsexualism to gender incongruence in its 11th revision of the International Classification of Diseases (ICD) in 2019. During the discussion, the participants repeatedly emphasised that the human rights framework of the debate is not sufficiently respected in Slovakia, and they also stressed the need to show empathy to transgender people in the country.

The second session focused on the medical aspects of health care of transgender adolescents and children. MUDr. Dana Šedivá, vice-president of the Slovak Society of Sexology, discussed the topic "Transsexualism-diagnosis and management of health care" based on the still valid ICD-10 and DSM-5. In her contribution, MUDr. Šedivá presented a comprehensive approach to the diagnosis of transsexualism (based on the current situation in the Slovak Republic). She advocates for a non-moralising, non-pathologising and non-discriminatory approach to transgender people. Rates of persistence of gender dysphoria from childhood into adolescence or adulthood range from 2.2% to 30% for MtF, and 12-50% for FtM. She also pointed to Rapid Onset Gender Dysphoria (ROGD) with an abrupt onset in adolescence and underlined the importance of differential diagnosis here.

MUDr. Barbora Vašečková from the Psychiatric Clinic of University Hospital Bratislava in Ružinov (Slovakia) gave a lecture "Challenges of transgender healthcare in Slovakia." In her thesis "Transition is a journey where you stop where you feel good" she emphasised the importance of the self-determination principle. She compared possible surgical procedures, waiting periods, type of health care and health insurance reimbursement in Slovakia and in different EU countries. Based on the study *The State of Trans specific Healthcare in the EU* (<https://tgeu.org>), she also noted the long-term delay of Slovakia in the provision of comprehensive healthcare. The minimum age for the treatment with puberty blockers and for the administration of hormone therapy varies across the EU: from Tanner 3, Tanner 3, age 16, or age 18. In Slovakia, these therapies are unavailable for adolescents.

MUDr. Eva Katrílková (Department of Paediatric Psychiatry, The National Institute of Children's Diseases) also drew attention to adolescents in her lecture "Transgender child and adolescent in the health care system". She pointed out that children can already distinguish their identity at preschool age. She mentioned various data on the likelihood of persistence of gender dysphoria from childhood to adulthood: from 2 to 27%, depending on the study. Using data from the Department of Paediatric Psychiatry (DPP), she documented an increase in the number of patients diagnosed with F 62.4/F62.0/F66.0 between the years 1993-2022: while in the period 1993-2011 there were 7 patients, from 2011-2022 there were 47 patients registered at the clinic. More than ¾ are girls in the last decade (FtM). More than ¾ in that period have comorbidities, and nearly half of the patients monitored at the DPP from 2011-2022 had suicidal ideation. She also pointed to studies on the topic of ROGD, and on the incidence of intersex persons in the Slovak Republic: about 10 new-borns per year may have ambiguous genitalia on the basis of DSD, and in puberty and adolescence, between 2-5 DSDs per year may be detected.

MUDr. Klára Dzuríková from OZ Psychiatrická klinika v Trenčíne (Psychiatric Clinic in Trenčín) presented her own study based on research among psychologists in Slovakia in her lecture "The role of psychotherapy in transgender adolescents". Although psychotherapy is not a prerequisite for diagnosis or an obligatory part of the medical management of transsexualism, it can provide support not only during the whole process

of transition, but also before it starts and in follow-up care: e.g., in reducing minor stress, in processing traumatic experiences. Research among 40 psychotherapists and therapists and 88 other people who work with transgender people showed that: on the topic of access to psychotherapeutic care, a third of the respondents think that transgender people have more difficulty finding a therapist than other clients. The most frequent topics in therapy are psychological problems (anxiety) 92.5%, relationship problems 75%, minority stress 52.5%, discrimination 47%, suicidal thoughts 45%. MUDr. Dzuríková fundamentally rejected the use of conversion therapy; on the grounds that it is contrary to the recommendations of world health agencies and good therapeutic practice (*lege artis*).

Mgr. Viera Hincová from the A-Centre elaborated on the topic "Gender dysphoria and gender euphoria on the background of the culture of neurodiversity". Neurodiversity is about neurological variations that affect how people think and interact. According to a 2020 study (Dataro) there is a 3-6 higher likelihood that autistic people will develop transgenderism. Mgr. Hincová stated that depending on the response to culture (normativity as a cultural phenomenon), not only gender dysphoria but also gender euphoria emerges. A culture of neurodiversity implies an awareness of the differences of neurominority when interacting with the environment. Gender-sensitive language in communication contributes to the elimination of minority stress and leads to respect for a person's individual culture, identity, and uniqueness.

MUDr. Šedivá, MUDr. Vašečková, MUDr. Kartlíková and MUDr. Dzuríková participated in the panel discussion. The participation of endocrinologist MUDr. Z. Pribilincová, from Faculty of Medicine, Comenius University Bratislava was also beneficial. The discussion centred around the issues of the appropriateness/inappropriateness of blocking puberty at the Tanner 2 stage, the conditions for the possibility of giving informed consent of adolescents, and the incidence and prevalence of transgenderism/transsexualism among adolescents. MUDr. Pribilincová presented the possibilities of hormonal treatment for persons younger than 18 years of age in order to block puberty (Gonadotropin-Releasing Hormone Analogue (GnRH)). From the therapeutic point of view, the procedure would be possible at an earlier age, but after two years it should be followed by hormone therapy, which is not available for adolescents in the Slovak Republic. The consensus in the discussion consisted of an emphasis on building a functioning health system and on high-quality diagnostics. However, there was uncertainty about whether adolescents can give fully informed consent.

The third thematic section focused on human rights and ethical aspects was moderated by Olexij M. Meteňkanyč. The introductory speech was delivered by Assoc. Prof. Andrea Erdősová from the Faculty of Law at the Pan-European University in Bratislava, in which she focused on the case-law of the European Court of Human Rights and its evolutionary development in the context of transsexualism. She analysed in more detail selected fundamental decisions of the ECtHR (Rees v. UK, Ch. Goodwin v. UK, van Kück v. Germany, A. P., Garçon, Nicot v. France, X and Y v. Romania), while presenting the gradually formulated position of the Court in relation to transgender persons, where the ECtHR assumes that gender identity constitutes one of the most intimate spheres of private life, and therefore Member States have only a limited margin of discretion in this area. The case-law of the Court itself has developed in particular in relation to Article 3 (prohibition of torture), Article 8 (right to respect for private and family life), Article 12 (right to marry) and Article 14 (prohibition of discrimination) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Another legally tuned contribution was presented by Dr. Maroš Matiaško from the Forum for Human Rights in Prague, Czech Republic. He focused on the analysis of the case law of the Court of Justice of the European Union (CJEU). The creativity of his approach consisted in the fact that in his paper entitled "The perspective of the Court of Justice of the EU in cases of transgender and non-binary people: Current Situation and Possible Future Developments", he modelled a number of case studies that may affect transgender and non-binary people, particularly in the Czech Republic, in the context of the application of the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. In the context of the model cases (relating to homeless transgender and non-binary people, access to mental health and reproductive health services), he analysed the pitfalls in complying with the principle of non-discrimination in the provision of services and goods to transgender and non-binary people, which arises from the Directive in question and the case law of the CJEU, as many EU Member States continue to recognise selected goods and services as "gender exclusive", which should be perceived as violating the principle of non-discrimination on the basis of gender/sex.

The perspective of the NGOs appeared in the presentation of Niko Nagy on the topic "Shortcomings of the Slovak legal regulation concerning the legal transition in relation to International Human Rights Law". Niko Nagy summarised the many problematic points of the Slovak legal system at the level of legal transition, the weak reflection and reception of globally recognised human rights standards in the field of protection of the rights of LGBTI+ people (especially transgender and non-binary people), as well as in comparison with international legal standards, Amnesty International Slovakia's position was also presented, which has for a long time advocated the principle of self-determination (also for transgender adolescents), depathologisation of transgender and non-binary people, as well as the need to promote and protect the human rights of all citizens of Slovakia, irrespective of their difference.

Dr. Nikolas Sabján discussed the topic of non-binarity: 'Law and gender (non-) binarity: an analysis of recent court decisions in the field of legal recognition of the third gender'. The presentation addressed the question, which rights do courts rely on when deciding on issues related to the legal recognition of the third gender. Dr. Sabján analysed the case-law of the highest judicial authorities in European and non-European countries and divided them into three categories: (1) there are issues with non-recognition/refusal of non-binarity, or the possibility of socio-legal transition (e.g., Czech Republic, UK), (2) partial recognition (e.g., Germany, Austria, India, Nepal, Pakistan), (3) full legal recognition of the third gender (Belgium, Colombia, Netherlands, Inter-American Court of Human Rights). Dr. Sabján concluded that the right to gender identity is generally recognised and stems from human dignity, the right to free development and/or the protection of private life. Its non-recognition is a violation of the right to protection against unwarranted interference with private life and contrary to the principle of non-discrimination. The existence of intersex and non-binary people obliges the search for legislative options for the legal recognition of the third gender and/or the removal of gender from some documents.

The final lecture touched on the topic of transgenderism from a philosophical-anthropological perspective on how the perception of transgender identity depends on cultural factors. Slovak philosopher Dr. Renáta Kišoňová talked about the topic "Prejudice in contemporary social reality". The phenomenon of prejudice in relation to gender non-conforming persons can be analysed in its etymological and semantic context. Prejudice as a preliminary decision carries the danger of a mistaken generalisation spreading further in society. In the context of gender non-conforming persons, it is a range of

negative attitudes that lead to hostility in interpersonal relationships. The tolerant perception of transgender people by Two-Spirit People, Fakakeiti People, Hirja in India, or Virdžina, tobelija in Albania, Montenegro shows that prejudices in culture can be changed.

In the final discussion, the floor was opened for debate on the previous contributions. A number of topics and problematic issues were raised, and the perspectives of the conference participants on selected aspects of transgenderism and non-binarity in our society overlapped in some respects, but often diverged and varied as well. The legal, human rights and medical discourse appeared to move on different levels and needed to be mediated already at the level of language, where several disagreements among the conference participants present became apparent. However, the very fact that so many experts from the fields of medicine, law and ethics came together and demonstrated a sincere effort to argue their positions signals the adequacy and necessity of organising an event of this type. Problems related to the health care and quality of life of transgender and non-binary people can only be addressed comprehensively, which is why the conference had an interdisciplinary character. The organisers also valued the participation of transgender people at the conference, who shared their unique experiences with the academic community.

The importance of the organised scientific conference is underlined by the fact that in the near future a collection of papers will be published, in which a significant number of the presented papers will be included, as well as other research papers of the persons who chose to participate passively in the conference in question. We believe that this will result in scientifically valuable publications with recent content, which can become an useful source of reference for the academic community, as well as their topicality can be of interest to practitioners who are involved in the subject in their professional activities.

In conclusion, the conference fulfilled in many ways the expectations set by the conference organisers. Although the question posed in the title of the conference "Quo vadis status of transgender people in Slovakia?" remains open, yet the participants of the conference were able to listen to a number of erudite contributions that addressed the situation of transgender people in Slovakia as it was, is and should be. As the visions of what should be did not always coincide, as well as alongside the discussion there were raised other, still unanswered questions, the mentioned motivates the organisers to continue to host more events of this type.

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