

SOME ISSUES ON THE IDENTITY AND PROPERTIES OF THE TRANSSEXUAL

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Outline

1. Gender identity, transgender person, and transsexual
2. Cases where the transsexual are recognized
3. Some issues on the identity and properties of the transsexual in Viet Nam
4. Overall legislative solutions



1. GENDER IDENTITY, TRANSGENDER PERSON, AND TRANSSEXUAL

GENDER IDENTITY

Is the *personal sense* of one's own gender (which can correlate with or differ from a person's assigned sex at birth).

Gender identity patterns are a natural part of the society.

TRANSGENDER PERSON

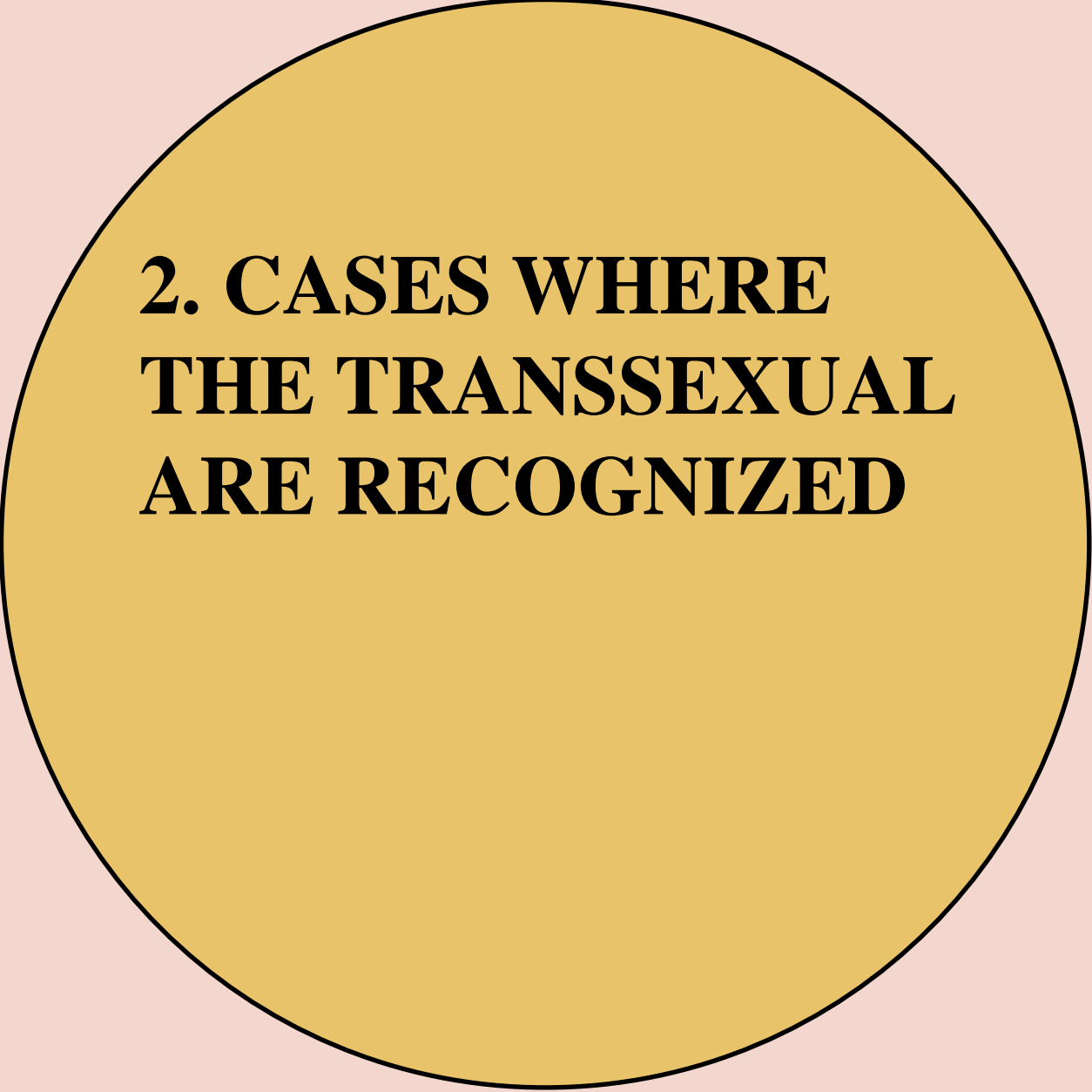
Transgender is an umbrella term (a person is still considered a transgender whether that person goes through a medical intervention).

Transgender person: A person whose gender identity differs from the biological sex assigned at birth.

TRANSSEXUAL

After medical interventions, transgender persons are called by a more complete term, the *transsexual*.

A complete transsexual:
Medical interventions +
Legal gender recognition.



**2. CASES WHERE
THE TRANSSEXUAL
ARE RECOGNIZED**

02 BASIC GENDER-AFFIRMING INTERVENTIONS

Hormone therapy for a certain period of time.

- Feminizing/Masculinizing hormone therapy - is a medical intervention intending to cause feminization or masculinization in the human body using exogenous hormones
- Treatment standards; physiological and physical changes; risks.

Surgery

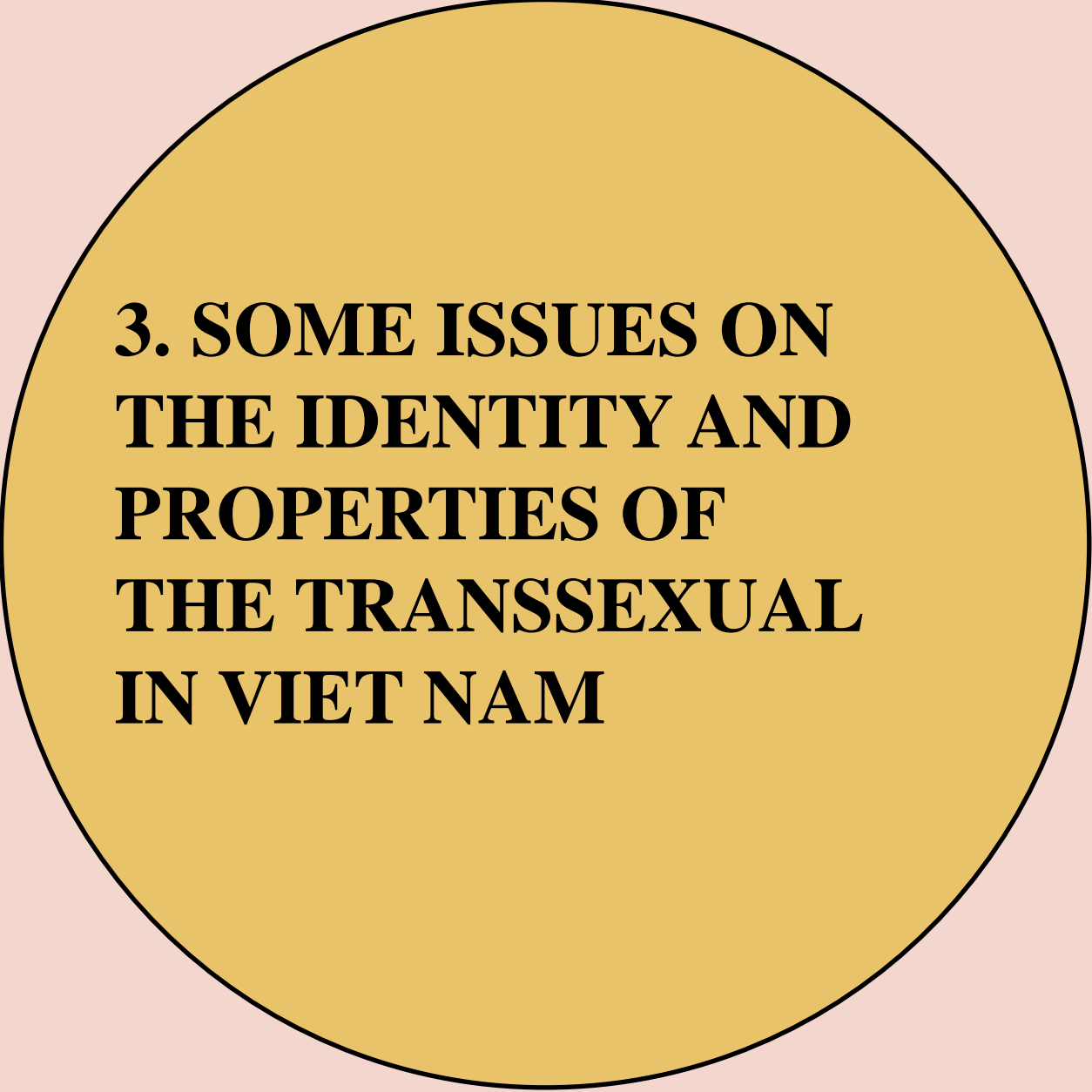
- Surgical intervention - particularly genitourinary surgery - is typically the final step, which receives the most careful considerations during the treatment of gender dysphoria.
- Treatment standards; physiological and physical changes; risks; the most important factors of gender transition (genital organ, reproduction, hormones); hormone therapy/top surgery have certain advantages.



GLOBAL CASES WHERE THE TRANSSEXUAL ARE RECOGNIZED

- (1) Without medical interventions:** A person who wants gender transition without medical interventions only needs to submit an application to the competent authority, which specifies the wish to be acknowledged as a transsexual, attached with the Written Confirmation from a psychologist.
- (2) With medical interventions:** Which can be either partial interventions (hormone therapy/top surgery/genital and reproductive surgeries) or complete interventions (top, genital and reproductive surgeries with optional hormone therapy).





**3. SOME ISSUES ON
THE IDENTITY AND
PROPERTIES OF
THE TRANSSEXUAL
IN VIET NAM**

CONTENT



BACKGROUND

1. Personal and property relations are fundamentally the same for all cases with/without medical interventions. Partial medical interventions have some unique features.
2. Personal and property relations are affected by the recognition of the transsexual: Psychological, legal, medical counselling before gender transition; Medical and health care before and after medical interventions; New gender recognition; Birth certificate (and other documentation); Changes in a person's full name; Contract, ownership, inheritance; Marriage and family; Several other relationships (labour, social security, military service, body/physical search, detention, custody; imprisonment enforcement; cultural, sports issues, etc.)

CONTENT



PERSONAL RELATIONS: CIVIL STATUS CHANGE

1. Documents on gender affirmation should specify:
Competent authority + Procedures for recognizing the new gender.
2. After recognizing the new gender → Write in the Civil Status Book → Provide a copy of the Birth Certificate arising from the Book. Birth Certificate is the original civil status document.
3. Other personal documents:
 - Consider changes in some documents and information.
 - Other documents: Remain unchanged, if a change is needed, make corrections → request the issuing agency.
 - Continue to review documents and whether current laws require changes/reissuance upon gender affirmation. → Specific legislative options.
 - Other solutions: Decision on gender recognition/birth certificate attached with old documents when doing related procedures.

CONTENT



PERSONAL RELATIONS: FULL NAME CHANGE

1. Change last name: Apply to all citizens (conditions, procedures: Articles 27 and 37 of the 2015 Civil Code + Civil Status Law);
2. Change name (including middle name): Regulations on gender affirmation only mention that a recognized transsexual has the right to change name (including middle name) to suit the new gender. Conditions, processes, and procedures (Article 28 of the 2015 Civil Code; Articles 26, 45, 46, 47 of the 2014 Civil Status Law, etc.).
➔ After changing the full name (including the middle name), the transsexual has the full right to request the name to be written in the Civil Status Book and receive a copy of the Birth Certificate according to the changed details.

CONTENT



PROPERTY RELATIONS

1. Contractual relations: Gender affirmation is not the grounds for terminating a contract, according to the 2015 Civil Code. In reality, there are cases where the new gender affects the entered contract → civil liability → Legal documents on gender affirmation do not govern this.
2. Ownership relations: It is necessary to change and correct documents confirming property ownership (or at the minimum, having legally valid documents on gender affirmation).
3. Inheritance relations: (i) Gender affirmation happens before the testator dies → consider the right to legacy; (ii) Gender affirmation happens after the testator dies → does not compromise the right to legacy. → Civil laws + legal documents on gender affirmation.

CONTENT



MARRIAGE AND FAMILY RELATIONS

1. Right to marriage: Age of marriage (not changed by the new gender); Genders of the couple (single? + consider partial medical interventions and marriage (bodies have the same-sex characteristics though they have different sexes on legal documents));
 2. Relationship with the partner: Single at the time of gender affirmation?
 3. Relationship with the child(ren): Have a child/children before or after gender affirmation? No children, sterilization?
 4. Relationship to the child(ren): Biological child(ren), synthetic pregnancy, adoption?
- ⇒ *Points 2 and 3 needs to be more specific.*

CONTENT



SOME OTHER RELATIONS:

1. Labour, social security: Labour rights; Maternity and paternity leaves (varied by type of medical intervention); Rights and responsibilities of employers; Retirement age (according to the new gender, no retrospective application to the retired)
→ *Need specific regulations for the transsexual.*
2. Perform military service; body/physical search according to administrative procedures, criminal proceedings; Detention, custody, imprisonment enforcement, etc.
→ *Need specific regulations for the transsexual.*



**4. OVERALL
LEGISLATION
SOLUTIONS**

CONTENT



WHAT ARE THE RIGHTS AND OBLIGATIONS OF THE TRANSSEXUAL AFTER NEW GENDER RECOGNITION?

1. Make an overall review of legal documents related to the rights and obligations of the transsexual and classify them into: (i) Documents which do not need to be amended or supplemented; (ii) Documents which need to be amended or supplemented and general principles are needed for regulations on the gender affirmation to ensure the rights and obligations of the transsexual; (iii) Documents requiring amendment or supplementation, no provisions are needed for regulatory documents on gender affirmation.

CONTENT



WHAT ARE THE RIGHTS AND OBLIGATIONS OF THE TRANSSEXUAL AFTER NEW GENDER RECOGNITION?

2. For relevant legal documents which need to be amended or supplemented:

(i) If the quantity of documents to be amended or supplemented is not too large, it can be addressed in the Transitional Provisions of the documents on gender affirmation without having to wait for other laws to be amended or supplemented. The advantage of this solution is that it can be specified in the regulatory documents on gender affirmation and serves as the legal grounds to issue a revised law (Article 12 of the 2015 Law on Promulgation of Legislative Documents, revised in 2020), to which the provision “*The amendment, supplementation, replacement, and repeal are closely related to each other to ensure the consistency with the newly-issued documents*” can be applied. However, this can be a disadvantage because despite the legal grounds, the fact that one law amends other laws can, in reality, lead to a complicated legal system if not done carefully.

CONTENT



WHAT ARE THE RIGHTS AND OBLIGATIONS OF THE TRANSSEXUAL AFTER NEW GENDER RECOGNITION?

2. For relevant legal documents which need to be amended or supplemented:

(ii) If the quantity of documents to be amended or supplementation is large:

- Option 1: Request to issue 01 separate document to amend many other laws. Pros and cons are similar to case (1).

- Option 2: Issue a regulatory document on gender affirmation, then amend and supplement relevant documents.

Advantage: In some cases, it can ensure a consistent and transparent legal system. Disadvantage: It takes more time for the transsexual to enjoy the benefits and exercise relevant rights and obligations.

An illustration of a person's hands holding a clipboard. The person is wearing a dark suit jacket over a teal shirt. The clipboard has a silver clip at the top and a white sheet of paper. The word "CONCLUSION" is written in large, bold, black capital letters at the top of the paper. Below the title are several horizontal grey bars representing lines of text. At the bottom of the paper, there is a stylized black signature.

CONCLUSION

1. The extent of medical interventions to recognize transgender people affects the choice of solutions to stipulate some rights and obligations of transgender people after new gender recognition. In case of medical interventions, partial interventions will lead to more legal and social issues to be addressed than complete interventions. While complete interventions, or at least, genital surgery (including the internal reproductive organ of a transgender male) are the most suitable for the nature of transgender functioning.
2. The choice of the extent of medical interventions to recognize the transsexual and design regulations on their rights and obligations should aim towards the consistency and transparency of the legal system and avoid too much disturbance to existing social relations before gender affirmation. In the current context, the drafting of regulatory documents on gender affirmation should take solid and appropriate steps to create consensus as there are different viewpoints on this issue, which are influenced by many special factors.

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CONCLUSION

3. Whether the transsexual with or without medical interventions are recognized, the grounds for their relevant rights and obligations must result from the affirmed gender. Once the transsexual are acknowledged and their new genders are recognized, they must be treated in accordance with the affirmed gender, except for some special cases.

4. Regulatory documents on gender affirmation should consider the design and selection of solutions to the extent of medical interventions. It can be a partial medical intervention and should prioritize surgeries of the entire genital and relevant internal reproductive organs (of transgender males). This helps to reduce legal problems arising in the current context and contributes to ensuring the long-term well-being of the transsexual. Moreover, if a transgender female undergoes genital surgery, of course she will have surgery on her external reproductive organs (testicles, vas deferens, scrotum), but if a transgender male is allowed to keep the ovaries and uterus (internal organs), it will cause unfairness in the interventions. The issue on children can be addressed by storing eggs and sperm, expanding the scope of surrogacy, etc.

Thank you

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