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Putting an end to coercive sterilisations and castrations

Committee Opinion[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Fatiha SAÏDI, Belgium, Socialist Group

A. Conclusions of the committee

1. The Committee on Equality and Non-Discrimination congratulates the rapporteur of the Committee on Social Affairs, Health and Sustainable Development on her comprehensive and thorough report and supports the draft resolution.

2. The committee notes that the rapporteur has adopted a human rights-based approach and that her report is in line with the committee's own principles and themes. It therefore considers that there is no need to propose any amendments to this text.

3. The committee would nevertheless like to include some additional points in the explanatory memorandum, with particular reference to violence against women and the situation of transgender persons.

B. Explanatory memorandum by Ms Saïdi, rapporteur for opinion

1. Introduction

1. I wish to congratulate the rapporteur of the Committee on Social Affairs, Health and Sustainable Development, Ms Liliane Maury Pasquier, on her report which is as comprehensive as it is thorough.

2. A large number of issues within the remit of the Committee on Equality and Non-Discrimination have been addressed in this report: among the groups identified by the rapporteur as the main targets for forced or coerced sterilisations and castrations in the 20th century, three (namely Roma women, transgender persons and persons with disabilities) are victims of various forms of discrimination and have been the focus of our committee's work from a number of angles. I can only endorse the strictly human rights-based approach taken by the rapporteur and concur with her conclusions.

3. In this opinion, I will merely emphasise a few aspects which are particularly relevant to the activities of the Committee on Equality and Non-Discrimination and to the principles it has promoted since its inception, under its extended terms of reference.

1. Reference to committee: Doc 12444, Reference 3739 of 24 January 2011. Reporting committee: Committee on Social Affairs, Health and Sustainable Development. See Doc. 13215. Opinion approved by the committee on 24 June 2013.

2. Sterilisation: a form of gender-based violence

4. Looking at Ms Maury Pasquier's report, it is clear that women have been disproportionately affected by the coerced sterilisations carried out over the past decades. Within the Roma communities, the targets of the sterilisation campaigns have been women. The same is true for people with disabilities. Outside Europe, coerced sterilisations have been carried out on women drug addicts (in the United States, for example) and women with HIV/AIDS. Cases of coerced sterilisation of women with HIV/AIDS have been reported in many countries, including Chile, Mexico, Namibia, the Dominican Republic, South Africa, Venezuela and Zimbabwe. In some Asian countries, doctors encouraged women who were HIV-positive to get themselves sterilised; given the authority that doctors enjoy, especially over individuals who are illiterate and in poor health, the distinction between encouragement and coercion is very subtle.

5. In the CEDAW system (Convention on the elimination of all forms of discrimination against women) operated by the United Nations, coerced sterilisation is considered a form of violence against women. In its Recommendation No. 19, the Committee on the Elimination of Discrimination against Women states that "compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children". It accordingly asks the States Parties to "ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures".

6. While the text as a whole refers mainly to fertility control and access to safe abortion, it seems to me that these principles should also be interpreted as precluding any form of sterilisation that is not voluntary. The "right to decide on the number of children" should, in my view, include the right to begin and continue a pregnancy as well as the right to end it.

7. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic violence (Istanbul Convention, CETS No. 210) provides in Article 39 (Forced abortion and forced sterilisation) that "Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: … performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure". The entry into force of the convention and its application by the Parties will pave the way for effective action against any sterilisation practices that target women. In my view, this prohibition will introduce into various countries' legal culture the general rule that forced or coerced sterilisation is an unacceptable form of violence. That will make it easier to do away with such practices, including in the case of transgender persons, who are not all directly protected under Article 39 of the Istanbul Convention.

3. Transgender persons

8. Transgender persons are consistently subjected to forced or coerced sterilisation. The rapporteur has looked in detail at developments in Sweden, the first country to introduce legislation on sex change in 1972. Under this legislation, anyone wishing to change sex was required to be sterilised.

9. Although, as the rapporteur points out, the law in Sweden has been revised, in many countries sterilisation is still a requirement in such cases. This issue was addressed by Nicolas Beger, Director of Amnesty International's European Institutions Office, at a hearing on the situation of transgender persons in Europe which was held in Paris on 24 May 2013, during the meeting of the Committee on Equality and Non-Discrimination.

10. As Mr Beger pointed out, this is one of the many forms of discrimination that transgender persons still face in Europe today. They are the only group that is still subjected to coerced sterilisations prescribed by law. In 24 European countries, sterilisation is a requirement for anyone wishing to change sex. In 19 countries, divorce is also required.

11. The other guest speaker at the hearing on 24 May, Vanessa Lacey from Transgender Equality Network Ireland, spoke about the discrimination experienced by transgender persons and told her own personal story. Before adopting a female gender identity, she had been married to a woman with whom she had two children. Quite apart from all the other issues, this suggests to me that any sterilisation requirement aimed at "keeping a certain order" in matters relating to parentage is not only unfair and inhumane, but also pointless. Such aims, moreover, belong to a bygone age, when the notion of gay and lesbian parenthood did not exist.

12. A useful reference when dealing with transgender persons is The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, drawn up by an international group of experts in 2006 to protect, and impose an absolute prohibition of discrimination against, LGBT persons. The authority of these principles has been recognised on several occasions by the United Nations and the Council of Europe.

13. Principle No. 3, entitled “The right to recognition before the law”, states that “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity”.

14. I wholly subscribe to this principle, the wording of which seems to me to be very clear. It is worth quoting here some of the recommendations that appear later in the same text. “States shall: … Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity; Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex – including birth certificates, passports, electoral records and other documents – reflect the person’s profound self-defined gender identity; Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned …;”