

CONTESTING THE TERRAIN OF THE AMBIGUOUS:  
THE STRUGGLE OF GENDER MIGRATION AND THE ISSUE OF SEX  
REASSIGNMENT IN TURKEY

DENİZ ŞAHİN

BOGAZİÇİ UNIVERSITY

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Deniz Şahin

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Contesting the Terrain of the "Ambiguous: the Struggle of Gender Migration and the Issue of Sex Reassignment in Turkey

The thesis of Deniz Şahin  
has been approved by:

Assist.Prof. Ayşen Candaş  
(Thesis advisor)

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Prof. Dr. Hakan Yılmaz

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Assist. Prof. Ayşe Gül Altınay

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## Thesis Abstract

### Deniz Şahin, “Contesting the Terrain of the ‘Ambiguous’: The Struggle of Gender Migration and the Issue of Sex Reassignment in Turkey”

This thesis aims to analyze the puzzle that the sex reassignment is an officially recognized right; however it is regulated in a sense that the applicant individual should confirm his/her adaptation to an archetypal *transsexual* within the scope of regulation. Through the reading of sex reassignment process, this study tries to understand how ‘equal’ citizenship in Turkey turns out to be exclusivist in the case of trans individuals. It argues that despite the legalization of sex re-assignment indicates an emancipatory attempt at the first instance, its practice reflects the lawmaker’s “heteropatriarchal” rationale. In its scrutiny of legal framework of sex reassignment, this study maintains that word of law aims to dissolve ambiguities, and control the process in a way that it leaves the final say to the medical and legal experts.

Furthermore, this study intends to show that trans individuals, in order to be allowed to undergo sex reassignment, endeavor and in a way are forced to persuade the officials that they fit into the frame drawn for the “transsexual” prototype; while they might not want to live within that frame completely. In addition to that, this thesis emphasizes the demand of the trans individuals for a better regulation that would be systematized in consideration, and in harmony with their own definitions and their own needs. Under the light of the combination of legal and theoretical frameworks of the issue of sex reassignment with the fieldwork, this thesis suggests that a politics that would make sense, should on the one hand recognize the right of reassignment, and on the other hand it should reveal and struggle against the heteronormative and heterosexist mental structure that enforces the individuals to fit into the predetermined patterns in the reassignment process.

## Tez Özeti

Deniz Şahin, “Muğlağın Alanını Münazara Etmek: Cinsiyet Göçü Mücadelesi ve Türkiye’de Cinsiyet Geçiş Meselesi”

Bu çalışma Türkiye’de cinsiyet geçiş sürecinin okuması üzerinden eşit vatandaşlık kavramının trans bireyler açısından nasıl sınırlayıcı ve kalıplaştırıcı bir hal aldığını anlamaya çalışır. Tezin bulgularına göre Türkiye’de cinsiyet geçişi, resmi olarak tanınmış bir hak olmasına rağmen, uygulamada başvuranın yasada öngörülen arketipik transseksüele uyumunun imtihanına dönüşmektedir. Bu bağlamda, cinsiyet geçişinin yasallaşması ilk etapta özgürlükçü görünse de, uygulamada yasakoyucunun heteroataerkil zihniyetinin yansması olarak ortaya çıkmaktadır. Sonuç olarak bu tez cinsiyet geçişinin yasal çerçevesini incelerken, yasanın muğlaklığı gidermeyi ve süreci hukuk ve tıp uzmanlarına son söz bırakacak şekilde kontrol etmeyi amaçladığını savunur.

Bununla bağlantılı olarak bu çalışma, trans bireylerin kendi tanımlarına ve ihtiyaçlarına göre yapılacak bir düzenleme taleplerinin altını önemle çizer. Aynı zamanda, trans bireylerin süreci tamamlayabilmek amacıyla uzmanları beklenen transseksüel prototipine uygunluklarına ikna etme çabalarını mesele eder. Yasal ve teorik çerçevelerin saha çalışmasıyla birleşimi ışığında bu tezin önerisi, bir yanılla cinsiyet geçiş hakkını tanıırken öte yanılla heteronormatif ve heterocinsiyetçi zihin yapılarına karşı mücadele eden bir siyasi bakış yönündedir.

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Words are not enough to express my thankfulness to the participants who provided their full support and sincere help in this study. Their kindness to share the most private and most important memories with me means the world to me.

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## PREFACE

Three years ago, I participated in a class research project during which I had the opportunity to go to LambdaIstanbul<sup>1</sup> for the first time, together with two other participants from the same project team. It was also our first acquaintance with an LGBT (lesbian, gay, bisexual and trans) organization. As an undergraduate student, I remember our effort to extract research material from every sentence we heard. However, it took more conversations to understand that an outsider researcher who asks questions as a visitor from another world was the last thing that they needed. Before ringing the bell of organization's apartment, I remember expecting that we would be among a small group of researchers from Turkey who seek to do research in collaboration with LambdaIstanbul. The truth was that issues concerning LGBT individuals had recently become quite popular among university students, and in recent years there might have been more than hundred people who went to the organization for purposes of research.

The irony, however, was in the scarcity of academic studies attainable on LGBT issues in Turkey. Despite the popularity of the issue, questions of heteronormativity and the discrimination against the LGBT individuals were not sufficiently addressed in the Turkish academia and the interest on the subject was fairly recent.

My collaboration with the organization helped me to understand the vitality of addressing these questions in terms of questioning the underlying ground of problems in terms of identity politics in the Turkish context. I shared the movements'

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<sup>1</sup> LambdaIstanbul is the first and the biggest LGBT organization in Istanbul, established as a social association in 1993 and officialized in 2006.

belief in the importance of the issue and its goal of rendering the LGBT individuals visible in the institutional and societal levels. With these motivations on my mind, I decided to be a part of the movement and started to work as a volunteer in the organization. Later on, I joined the organization's LGBT society hotline, which gives consultancy service to individuals concerning the problems due to their LGBT identity. During the training period, I learned that the trans individuals needed to prove permanent infertility to undergo the process of sex reassignment, something that I did not know before. Only after I started to take calls, I realized how complicated the issue was for trans individuals. For me, that was the beginning of a process through which I committed myself to the scrutiny of the experience of sex reassignment in Turkey. The following study is the result of that process and that commitment.

CHAPTER I  
INTRODUCTION

Questions and Remarks on the Significance of the  
Issue of Sex Reassignment in Turkey

“Who else can face such a difficult series of operations? No one could dare if the need to be visible as you feel yourself was not that vital, no one else could dare to be labeled as a weirdo if it was not a matter of life and death”<sup>2</sup> says K., a 26-years-old female-to-male trans individual who has undergone the medical examination process, has his mastectomy<sup>3</sup> conducted and has been receiving hormone treatment for two years. His ultimate aim and the biggest dream is the official change in his identity card. “This was definitely much easier in the past, before the new regulation” he says. “Back then, anyone who needed would get the surgery easily, being ourselves freely has never been easy for us though ...”<sup>4</sup>

According to its Article 10, Turkey’s present Constitution aspires to present itself as a document that encompasses all those who reside within its territory as equal citizens. This alleged ‘all-encompassing’ definition of citizenship prohibits discrimination based on language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations.<sup>5</sup> With the amendment in 2004,

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<sup>2</sup>K., interview by author, tape recording, İstanbul, Turkey, November 20, 2010.

<sup>3</sup> Surgical removal of breasts.

<sup>4</sup>Ö., interview by author, tape recording, İstanbul, Turkey, July 17, 2010.

the equality principle of women and men was added to the Article, and the State was defined as obliged to “to ensure that this equality exists in practice”.<sup>6</sup> Although this late-coming amendment is a significant development in terms of gender equality, *gender diversity* –which means variation in the sexual identities of people and celebration of “other” sexual orientations except for either male or female exclusive heterosexualities –is still not recognized in Turkey’s Constitution. Moreover, “sexual orientation” is not included in the Article 10 of the Constitution, notwithstanding the international pressure and the persistent calls from the LGBT<sup>7</sup> and the feminist movements.

On the other side of the coin, despite the Constitution’s claim of being ‘all-encompassing’ concerning all the people on its territory, the preamble of 40<sup>th</sup> Article<sup>8</sup> of the new Civil Code presents non-heterosexual orientation and the determination of sexual identity as possible threats to the very foundations of conservative family structure and society. Starting with that legal puzzle, through my reading of sex-reassignment process, my aim is to understand how ‘equal’ citizenship in Turkey turns out to be exclusivist in the case of LGBT people, most particularly for trans individuals.

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<sup>5</sup> Republic of Turkey, T.C. Anayasası (Turkish Constitution), no. 2709, 18 October 1982, Article 10.

<sup>6</sup> Ibid., Article 10.

<sup>7</sup> The abbreviation LGBT refers to the umbrella term for Lesbian, Gay, Bisexual, Trans(gender) Identities. Although the abbreviation might recently be extended to include letters I(intersex) and Q(queer) and so on, LGBT as the universally accepted one has been used in this text as a shorthand

<sup>8</sup> Preamble of Article 40 of the present Civil Code asserts that: “With the aim of preventing the breakdown of the institution of the family, which is the foundation of society, by persons whose sex is ambiguous, first of all, the condition that the person is not married is set forth”. For further discussion see the next chapter.

It seems that in the case of LGBT people, establishing 'equality' and recognizing the right to not be discriminated against, entails not only the recognition of gender equality but also the recognition of a carefully defined gender diversity, not defined in terms of heterosexual gender dichotomies: either male or female. The debates on heteronormativity<sup>9</sup> gain vital importance at this juncture, in the sense that heterosexism or exclusionary attitudes toward trans individuals define the LGBT people as the common enemy of each and every political position regardless of which camp they represent. Sacralization of heterosexual normalization and heteronormativity so to speak, constantly results in the narrowing and the binarization of the frame of citizenship. This frame of citizenship is restricted as well as essentialized in terms of ignoring or explicitly excluding trans individuals, which have a different place within the LGBT community itself, too.

That might be due to their inevitable visibility, their social class background or due to their demand to go through arduous sex reassignment operations. Their visibility prevents them from hiding their sexual identities in situations where they are under the threat of ostracization. Thus the trans individuals are confronted with every kind of discrimination and violence; and this visibility renders them a different lieu within the LGBT community. Misrepresentation of the trans person as the object of violence and entertainment through the media, though it accurately represents the popular attitudes toward the trans people, reproduces and further popularizes transphobia at the societal level. Hereby, this causes the trans individuals to suffer from perpetual double othering, as the others of others. Transphobia, an old malady

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<sup>9</sup>Heteronormativity refers to the normalization of heterosexual relationships and the valuation of societal norms according to this normalization, disregarding the other sexual orientations and other forms of sexualities and gender identities.

of societies, is rendered unquestionable by the media's populist attitude toward the trans people, an attitude that echoes the popular attitudes in the streets in Turkey.

With the starting aim of questioning the ways whereby heteronormativity is the main culprit in the way of equal recognition of the trans people, I have specified my research subject as the trans individuals who suffer from this burden of normalization of violence and discrimination based on sexual orientation and sexual identity. In other words, the research subjects of this study are the subjects of of heteronormativity –in its fervently visible and violent ways.

Sex reassignment process gains vital significance especially in this juncture, because reassignment is supposedly legalized, yet it is done in such an arbitrary and exclusivist way that going through the sex reassignment procedures defines the borders within which trans individuals are allowed to have the surgery. Therefore it disallows any possibility to question the frame in which trans individuals are put and circumvents the possibilities to be recognized outside of those borders. Hence my starting aim was the scrutiny of how sex re-assignment surgeries, as a critical turning point of most trans people's lives, indicate that the issue of citizenship jumps into misty waters when trans citizens are on the nail.

To that end, my research aimed to problematize the following argument: *Despite the fact that the legalization of sex re-assignment indicates an emancipatory act in the sense that it recognizes the need and the right to sex change, its regulation and its practice in fact reflect the lawmaker's "heteropatriarchal" rationale, which is based on the exclusivist and discriminatory pre-definitions of an archetypal "transsexual". As the phrase of "transsexual nature" is not defined on paper, medical and legal professionals appear to be in the position of defining transsexuality*

*and deciding arbitrarily on the necessity of the surgery, according to their own subjective criteria of transsexuality –whereas an emancipatory regulation has to be one which takes the subject's individual definition of necessity as central, instead of taking the medical and legal experts' personal opinions and subjective attitudes as central.*

In this regard my endeavor has been to question:

- *How is it possible that legalization of sex re-assignment, which might at first sight appear as the recognition of sexual minorities, in fact turns out to be a program that contradicts the inclusionary claim of citizenship?*
  
- *How is this rationale reflected upon the reassignment experience of the subjects of this process; the trans individuals?*
  
- *Which mechanisms ensure that the subjectivity that counts here does not belong to the trans people but to the legal and medical expert opinions, and how do these subjectivities contribute to the reproduction of heteronormativity?*
  
- *How does the regulation leave the medical and legal professionals in the position of deciding for the necessity of sex-reassignment and how are these medicalized definitions of transsexual necessity perceived by the trans individuals themselves?*

Through the examination of these questions my plan was to observe the modalities through which citizenship notion fed by the sacralization of heterosexual

family reproductivity as well as the denial of ambiguity (as it is stated in the preamble) shapes trans individuals. And consequently I aimed to understand how trans individuals, in order to be allowed to undergo sex reassignment, endeavor and in a way are forced to persuade the officials that they fit into the frame drawn for the “transsexual” prototype, as distant as that frame might be from their own experience and self-understanding. The issue of sex-reassignment is then quite important to examine not only because it connotes an existential meaning for trans individuals, but also because it codes Turkish citizenship in a strict binary: either female or male. The Constitution even on paper does not aim to protect individuals who are ‘neither-nor’ and forces them to choose. But simply choosing is not sufficient in this case; the law also forces you to respect that the right to reproduce and have children is defined and valued according to the sacralization of the heterosexual family. For the trans individual one cost of this obligatory respect is the proof of infertility, in order to be allowed to go through the process of sex reassignment.

### Methodological Framework

In order to meet my goal to to design an original research project on the implementation of the legal regulation on the sex-reassignment surgeries, my plan was to conduct semi-structured in-depth interviews with trans people who have recently completed the surgery process after the new regulation, as well as those who are still in the transition period. I have preferred to conduct in-depth interviews with open-ended questions as I believed that this would be the most efficient method for the purposes of my study to touch upon the first-hand experiences and perceptions of



my research participants. Narrative approach<sup>10</sup> has been my basis, according to which I try to position my self as a “good listener and the interviewee [as] a storyteller rather than a respondent”.<sup>11</sup> In that sense instead of a question-and-answer type of interview, I tried to understand the reassignment experience of my interviewees as they chose to share with me, trying not to interrupt them as much as possible. Anticipating the possibility that my non-trans status has “affected the research design as well as the research”<sup>12</sup> and the reflexivity on the interviews, I tried to remind myself Hale’s suggestions for the non-trans individuals who write on the trans issue. Hale suggests the researchers to refrain from ignoring the self declarations of trans individuals due to the fact that they may lack “academic credentials”.<sup>13</sup> To that end, my concern was to transmit the voice of the individuals, instead of imposing my own voice upon them.

My preliminary conversations with the trans people had indicated that reassignment was a compounded issue to which the individuals attribute a vital privacy and hereby before the final interviews I had acknowledged that a significant number of people whose experiences were crucial might not want to talk to a researcher. Thus, as I could not foresee the exact number of people I would be able to interview, my plan was to reach as many people as possible through contacts with four LGBT organizations (Lambda Istanbul, Istanbul LGBT, Pembe Hayat and Voltrans

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<sup>10</sup>Wendy Hollway and Tony Jefferson, *Doing Qualitative Research Differently: Free Association, Narrative and the Interview Method*, (London ; Thousand Oaks, Calif. : SAGE, rep.2010) in Sally Hines, “(Trans)Forming Gender: Social Change and Transgender Citizenship”, *Sociological Research Online*, 12, no:1, (January 2007), p.2.

<sup>11</sup> Hollway and Jefferson,(2010), p.31.

<sup>12</sup> Hines, (2007,) p.2.

<sup>13</sup> Jacob Hale, “Suggested Rules for Non-Transsexuals Writing about Transsexuals, Transsexuality, Transsexualism, or Trans”, Available[online]:<http://sandystone.com/hale.rules.html> [15 July 2012], also quoted in Hines, (2007), p.2.

Initiative), which are the most important and well-known ones within which trans individuals are organized. At the end of the research I had managed to conduct twenty four in-depth interviews.

Contrary to my expectations, Lambdaİstanbul did not open a channel of reaching my interviewees, except for the two female-to-male trans individuals whom I had met through the coordination meetings of the organization. Lambdaİstanbul, which is the first LGBT organization in Turkey, is certainly one of the best known addresses of the movement. Hence, I expected Lambdaİstanbul to be a good starting point for my research. In time, I learned that there is also a trans liberation movement, which works separately, yet in touch and in mutual support with the already existing LGBT movement. In order to address specific requirements and demands of the trans issue most of the trans individuals had quit organizing under the title of Lambdaİstanbul and founded a new organization called Istanbul LGBT. Istanbul LGBT started as a civil initiative in 2007, founded by trans individuals; mostly by those who have seceded from Lambdaİstanbul. Its institutionalization efforts were finally answered in 2011. Despite the fact that it is a quite young organization, it accomplished the first trans pride in Istanbul in 2010. Just before the submission of this thesis, the third trans pride demonstration was carried out with a broad participation in June 2012.<sup>14</sup> Nevertheless one should note that although the support for them is increasing every year, trans people are still one of the most vulnerable groups in the society, as they are not represented in any legal and institutional recourse while societal violence dominates their everyday lives.

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<sup>14</sup> Bianet, "Trans Onur Yürüyüşü 2012: Dünya Ahlaksızların Olacak", 25 June 2012, Available[online]:<http://bianet.org/bianet/lgbtt/139302-dunya-ahlaksizlarin-olacak> [15 July 2012).

My collaboration with İstanbul LGBT also led me to another organization where trans individuals were quite visible. Cinsel Yolla Bulaşan Hastalıkları Önleme Derneği (The Organization for the Prevention of Sexually Transmitted Diseases) was founded by a group of sex workers and LGBT activists as a civil society movement in 1996. It aimed to raise awareness about the sexual health and tried to deal with transphobia through several projects that are carried out together with other civil society organizations. In 2007, the movement decided to get institutionalized under the name of Kadın Kapısı (The Gate of Women) and started to conduct consultancy service regarding the medical and legal issues for women; and most particularly female trans people. What is crucial to note is that several trans women could find the opportunity to work under the projects of the organization funded by the Human Resource Development Foundation and the others were more or less supported by it.

It was not difficult to observe that the two organizations mentioned above have played a significant role in raising collective awareness among the trans individuals and opening them a channel to express their demands and to render themselves visible. Particularly, the open activities and the frequent demonstrations contribute to the politicizing of the trans subjects and help them in articulating their demands.

During my participation in the organizational activities and my attendance to the general meetings of Kadın Kapısı and İstanbul LGBT, I found the opportunity to conduct in-depth interviews with five male-to-female trans individuals. In addition to my collaboration with the trans organization İstanbul LGBT and Kadın Kapısı where trans women attend mostly, I also contacted Voltrans which is an initiative founded by female-to-male trans individuals. Through that channel, I interviewed another

three female-to-male individuals. For the rest of my interviewees I used snowball sampling and tried to reach people through the intermediacy of trans individuals I had interviewed before. Consequently, in addition to the interviewees from the organizations who have had activism experiences, I had the opportunity to listen to the experiences of trans individuals who were not involved in organized LGBT activism.

Thus, overall I conducted in-depth interviewees with twelve male-to-female and twelve female-to-male trans individuals whose ages range between nineteen and forty-three. Among these twenty four, eight of them had undergone the surgery, seven of them have completed the examination period and were dealing with the bureaucratic procedure before the surgery, seven of them were in the examination period and the remaining two were those who were dismissed from the therapy and plan to restart the process in different hospitals. Even though I had previous affiliation with the organizations due to my collaboration with Lambda, it was difficult for me to convince my interviewees to participate. Thus I did not have the chance to choose among a wide variety of interviewees; nevertheless, I tried to reach interviewees from as many different socio-economic grounds as possible. For the male-to-female trans individuals this was not that possible, as five interviewees out of twelve were/had been sex workers. Out of the remaining seven, one was a state official, one was a belly dancer, one was an actress, one was a student and the remaining three were working in the civil society organizational projects. However for the female-to-male interviewees, the socio-economic backgrounds varied to a larger extent; one of the interviewees worked as a nurse, two of them were students, another two were working in the civil society organizational projects, one of them was a *hodja* (teacher) in Koran courses, one was working in a company another one

was a musician, one of them did not have a job at that moment and the remaining three were self-employed in different jobs.

The empirical research that shaped the conduct of this thesis has taught me the difficulty of studying such a vulnerable group and an issue to which a vital privacy is attributed, because such an issue embodies several paradoxical variables from sexuality to institutional violence. Unlike Hines' research<sup>15</sup> which will be analyzed further in detail, I had great difficulty reaching the interviewees, was rejected by almost as many individuals as I have interviewed, and had to recompose the sample for several times because the prospected interviewees gave up giving interviews. After managing to interview some individuals, however, I understood why it was that difficult to convince the others to give interviews. Individuals most probably did not want to talk about the process, because talking about it would mean to live through the same (often traumatic) experience one more time. Giving interviews would mean to underline their institutional traumas or simply to remember their hard times. During the interviews, there were moments I had to pause the recorder and wait for the interviewee to catch her breath, as talking was rather difficult for him/her due to the memories resurfacing. For the same reasons, it was also difficult for me from time to time, to maintain the researcher distance. Yet still acknowledging that total objectivity is not attainable, I always tried to keep in my mind that "the less possible it is to be neutral in fact, the more crucial it is to strive towards it".<sup>16</sup>

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<sup>15</sup> Hines, (2007).

<sup>16</sup> Lewis Aron, *The Meeting of Minds*, (Hillsdale, NJ: Analytic Press: 1996), p.107, quoted in Hollway and Jefferson, (2010),p. 79.

I conducted the interviews in two steps: The first step was completed between June 2010 and April 2011, and second step was completed between January 2012 and May 2012. During my preliminary interviews with the trans people that I found through my network due to my previous affiliation with LambdaIstanbul, I already had some expectations about the interview process. However after a few months of analyzing the existing data I realized that there are other aspects of the issue that I had not anticipated before, such as the dynamics in the group therapies. Then, I decided to interview more people and reconnected with some of the previous interviewees in order to clarify my confusion about the interviewees' perception regarding the therapies. This section took shape after the second step of interviews, which will be discussed in detail below.

Despite the fact that the interviewees had come from different personal histories and to some extent from different socio-economic statuses, their experiences of re-assignment processes more or less overlapped on certain key issues, according to which I deduced the themes of my overall interviews in the research chapter.

### Conceptual Framework

Gender identity is attributed to the self-conception of one's sense of the gender experience, apart from one's biological sex.<sup>17</sup> As this self-conception varies according to individual's own sense and the own experience of gender, we would have as many definitions and conceptions of gender identity as the number of people on Earth, if it were possible to count all identifications. Acknowledging this, it is

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<sup>17</sup> Biological sex attributes to the differentiation according to the genital organs of the individuals.

crucial to agree on a terminology in order for the movement to voice the demands of sexual minorities.

The term *transsexual* has been used to refer to people whose gender identity does not match with their biologically assigned sex. As a medical term to refer to individuals who demand sex transition surgery, Cauldwell first used it in 1950. Later on, in his famous book *Transsexual Phenomenon*, the term was developed by Harry Benjamin to emphasize the desire to be a member of the opposite sex and this desire was put forward as the most significant indication of *transsexualism*. According to Benjamin's definition "the transsexual (TS) male or female is deeply unhappy as a member of the sex (or gender) to which he or she was assigned by the anatomical structure of the body, particularly the genitals".<sup>18</sup> Benjamin focused on the feeling that "they belong to the other sex, they want to be and function as member of the opposite sex, not only to appear as such"<sup>19</sup> as the key point that consisted the core of *transsexual* identity.

The desire to have physical changes conducted in one's body understood from the demand of the sex reassignment surgery and the hormonal treatment, has been the indications for *transsexuality*, which is differentiated from *transvestitism*, or *crossdressing* in other words.<sup>20</sup> Despite the fact that the term transvestitism is used to refer to a different orientation, it is often confused with *transsexuality* and the term

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<sup>18</sup> Harry Benjamin, *The Transsexual Phenomenon*, (New York: The Julian Press, 1966), p.11.

<sup>19</sup> *Ibid.*, p.11.

<sup>20</sup> Transvestitism or crossdressing refers to the desire of wearing the clothes of the opposite sex. It does not necessarily indicate a conflict in one's biologically assigned sex and the gender identity, therefore it is not necessarily combined with a desire to conduct changes in one's body.

*transvestite* came to be used to refer to pre-operative trans people,<sup>21</sup> whereas the term *transsexual* is often used to refer to post-operative trans people.<sup>22</sup>

In the Turkish context, however, the word *transvestite* is often used in a pejorative manner to refer to trans population. In this pejoration, mainstream media plays a certain role especially by reconstructing a trans image in news with headlines such as “the transvestite terror”,<sup>23</sup> where the trans individuals are represented as monstrous<sup>24</sup> and savage people throwing stones to the police cars and people on the street or cutting themselves with razor blades.

Because the term *transsexual* has come to be used to refer to trans people who have undergone the genital operation, it has been largely abandoned as it connotes a differentiation based on the condition of undergoing the surgery. Instead of it, since the late 1980’s, the term *transgender* has come to be used as an umbrella term that is attributed to *transsexuals*, *transvestites*, *intersex* people and *drag kings/queens* instead of referring to a single sexual orientation and a single identity.

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<sup>21</sup>It indicates the stage before the genital operation.

<sup>22</sup>It indicates the stage after the genital operation.

<sup>23</sup> For some sample articles, see Sabah Newspaper, “Travesti Terörü”, 28.07.2001 Available[online]: <http://arsiv.sabah.com.tr/2001/07/28/g08.html> [15 July 2012].

Hurriyet Newspaper, “Travesti Terörü”, 03.10.2003 Available[online]: <http://webarsiv.hurriyet.com.tr/2003/10/03/352075.asp> (15 July 2012).

Haber Vitrini, “Travesti Terörü”, 26.05.2006 Available[online]: <http://www.habervitrini.com/haber/travesti-teroru-222491/> (15 July 2012).

Milliyet Newspaper, “Travesti Terörü”, 08.01.2002 Available[online]: <http://www.milliyet.com.tr/2002/01/08/yasam/yas11.html> (15 July 2012).

For detailed information on this subject, also see the documentary film by Aykut Atasay, “The Transvestite Terror”, 2005.

<sup>24</sup> KaosGl, *Trans Erkek / Kadından Erkeğe Transeksüellerin Deneyimleri*, edited by Aras Gungor (Ankara: Ayrıntı Basımevi:2012),p.19. Also available [online]: <http://www.scribd.com/doc/92758953/Kitap-Transerkeklik01> [17 July 2012].



As these definitions do not connote clearly defined identities, most individuals, particularly those who are at the process of transition, might prefer to use the term transgender regardless of the fact whether they have undergone the surgery or not. Despite the fact that the term is not that widespread in the Turkish literature, it has started to replace the term *transsexual* quite recently, especially in the literature of the LGBT organizations.

Besides the rejection of the differentiation according to whether or not someone has undergone the surgery, the replacement of the term *transsexual* with *transgender* is also related to the confrontation between the two competing schools in LGBT studies, which will be analyzed in detail further in the third chapter. In this sense the intentional rejection of the term *transsexual* refers to the rejection of the sex reassignment phenomenon by the *transgenderist* school of thought, since sex reassignment is criticized to contribute and even reconstruct the existing gender dichotomies.

Following Cromwell,<sup>25</sup> Aizura uses the term *trans* “to describe a range of identities encompassing ‘transgender’, ‘transsexual’, ‘genderqueer’ and diverse gender variant practices”.<sup>26</sup> Following the same path, in this thesis, instead of choosing between the terms *transsexual* and *transgender*, I have employed the term *trans* to apply to the individuals who are at various stages of transition, in hormonal

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<sup>25</sup> Jason Cromwell, ‘Transsexual Discourses and Languages of Identification’. In Linda Alcoff and Eduardo Mendieta, *Identities: Race, Class, Gender and Nationality*, (Oxford: Blackwell, 2002), as quoted in Aren Z. Aizura, “Of borders and homes: the imaginary community of (trans)sexual citizenship”, *Inter-Asia Cultural Studies*, 7, no: 2, (2006), p.291.

<sup>26</sup> Aizura, (2006), p.291.

treatment period, in medical examination period, or in (post) surgery period.<sup>27</sup> The fact that the majority of my interviewees used the term was another motivation in my explication of the term as an “inclusive short hand”.<sup>28</sup> The term *transsexual* has not been as widespread as it was in the past because the individuals did not want to identify themselves with the concept, as it reveals their condition of undergoing the surgery. The term *transgender* on the other hand was not that widespread among the non-activist trans individuals, although it has recently come to dominate the language in the LGBT organizations. For these reasons, the application of the term “trans” has been crucial for the purposes of my study.

In this text, therefore, *female-to-male trans* individuals or *trans men* refer to those who “are birth-assigned females but grow up identifying as male”<sup>29</sup> whereas *male-to-femaletrans* individuals or *trans women* indicate those who “are birth-assigned males but grow up identifying as female”.<sup>30</sup> However I paid attention to apply the term used in the original text in my quotations and references, on the whole the term *trans* in this study applies to the individuals who are at various stages of transition, in other words the individuals who are engaged in the process of sex reassignment.

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<sup>27</sup>In reference to the texts or in quotations from interviews, the original terms are used.

<sup>28</sup> Ilga Europe, “Transgender Euro Study: Legal Survey and Focus on the Transgender Experience of Health Care” written by Stephen Whittle Obe, Lewis Turner, Ryan Combs, Stephenne Rhodes, (Corelio Printing, April 2008),p.12.

<sup>29</sup>Sam Winter, Pornthip Chalungsooth, Yik Koon Teh, Nongnuch Rojanalert, Kulthida Maneerat, Ying Wuen Wong, Anne Beaumont, Loretta Wah Ho, Francis “Chuck” Gomez, Raymond Aquino Macapagal, “Transpeople, Transprejudice and Pathologization: A Seven-Country Factor Analytic Study”, *International Journal of Sexual Health*, 21, no: 2, (2009), p.97.

<sup>30</sup> Ibid., p.97.

Nevertheless, it is important to keep in mind that there is the possibility that individuals might exist who have undergone the sex reassignment process, yet might not identify themselves with trans identity. In this sense, one must recognize that the term does not address every individual who has the experience of sex reassignment and should “remain sensitive to its cultural specificity”<sup>31</sup> by acknowledging the individuals who would reject the term.

### Outline of the Thesis

The following two chapters provide an analysis of legal and theoretical framework on which the issue of sex reassignment can be located:

The next chapter offers the history of the legalization of sex reassignment in Turkey, divided into three sections. Starting from the pre-1982 period when reassignment was not legally recognized, the chapter will focus on the textual and practical modifications until today. In this chapter, the scrutiny of the current regulation is embedded in the detailed examination of its implementation. This chapter aims to reveal how the legal structure concerning the regulation paves the way of arbitrariness in the implementation of the reassignment, and discusses whether the recognition of the right of sex reassignment means the recognition of sexual minorities in the Turkish context.

In the third chapter, the issue of sex reassignment is located into the theoretical framework of this thesis. The theoretical framework of the thesis is divided into two parts. In the first section, the issue of sex reassignment is scrutinized

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<sup>31</sup> Aizura, 2006, p.291.

within the framework of citizenship debates. Starting with the critique of mainstream citizenship perceptions, relationship of the reassignment with the issue of citizenship is considered, particularly in the Turkish conjuncture. The second section of the third chapter enlightens the existing academic debate and the division on the issue of sex reassignment. This section notes the contrast between the two camps; one of which argues that sex reassignment contributes to the reconstruction of gender dichotomies while the other one argues in favor of the necessity to defend the right of sex reassignment and the enhancement of the concerning conditions. Considering this camp, this chapter argues that a political strategy will only make sense; based on the collaboration of recognition of the right to sex reassignment and the struggle against the heteronormativity that enforces the predetermined heterosexist norms on the individuals.

The fourth chapter analyzes the fieldwork of this thesis in the light of the above mentioned theoretical and the legal background. The research chapter is divided into sections according to the prominent themes of the fieldwork analysis. It underlines how the legal regulation of sex reassignment gives birth to the arbitrariness in its implementation and tries to find out the various mechanisms that stems from this implementation, as well as the different layers under which this process is reflected upon the trans individuals.

The last chapter provides a brief summary of the expectations prior to the conduct of the fieldwork in comparison with the findings following the analysis of theoretical and legal frameworks together with the research step. Reciting the questions and the conclusions of this thesis it puts forward the acknowledged

shortfalls of the current study and offers a set of questions and pinpoints for further research.

CHAPTER 2  
CONTEXTUALIZING THE CURRENT REGULATION &  
IMPLEMENTATION IN TURKEY

Introduction

The previous chapter presented the main motivations and the goals of this study, in relation with the questions it aims to elaborate. This chapter offers the informative ground on which these questions are formed. It provides the detailed analysis of the history of current regulation, divided into three sections: the situation in the pre-1988 period, the 1988-2002 period and lastly the current situation. Following the historical background of the regulation, the chapter offers an analysis of the preamble of the concerning law in the Civil Code, and scrutinizes the layers of implementation led by the regulation as well as the issue of coverage under the social security. Lastly, it briefly locates the issue in the framework of the international agenda.

· Legal Background in Turkey

As briefly mentioned in the previous chapter, there is no inscription in the present Turkish Constitution concerning the gender diversity or the embracement of sexual minorities. There is no mentioning of sexual orientations other than assumed (but unnamed) heterosexuality, nor sexual identities that fall outside of the male-female binary. The Constitution puts forward “language, race, color, sex, political opinion,

philosophical belief, religion and sect, or any such considerations”<sup>32</sup> as the grounds on which the discrimination against its citizens are prohibited. In addition to that, under the amendment brought in 2004, the State is held responsible by the Constitution to ensure the principle of equality of women and men “exists in practice”.<sup>33</sup> However non-heterosexuality and trans identities are still ignored within the legal framework in the Turkish context.

Issues related to sexual minorities have started to be discussed recently, given the struggle of the LGBT movement, which is almost 20 years old in Turkey. LambdaIstanbul was the first LGBT organization, established as a social association in 1993 and finally managed to be official in 2006, after thirteen years of struggle and has since faced several closure lawsuits.<sup>34</sup> Within this time period, other LGBT organizations were established both in İstanbul and in other cities such as Ankara (KaosGI), İzmir (Siyah Pembe Üçgen LGBTT), Eskişehir (MorEl) and Diyarbakır (Hewjin). Some of them, too, were subject to closure lawsuits however they have continued to voice the demands of the LGBT people, and rendered the issue more visible at the societal level. Nevertheless, sexual minorities are still the most vulnerable group in Turkey, as it is the common other of each identity group, and even the very existence of non-heterosexuality is still unrecognized in several manners. Trans individuals, as a part of this identity group are subject to several

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<sup>32</sup>Republic of Turkey, T.C. Anayasası (Turkish Constitution), no. 2709, 18 October 1982, Article 10.

<sup>33</sup> Ibid., Article 10.

<sup>34</sup> For the first time in 2007 The Office of the Governor of Istanbul ordered the closure of LambdaIstanbul. After a several times of hearings, Court rejected the complaint and in 2008 Third Civil Court of First Instance in the Beyoğlu district of Istanbul ordered the closure of LambdaIstanbul. The case was rejected again. Yet in between, again in 2008, police officers busted into the office of LambdaIstanbul claiming that the organization encouraged prostitution. So far, LambdaIstanbul has won all the appeals against its closure.

Human Rights Watch, “Turkey: Court Shows Bias, Dissolves Lambda Istanbul”, (2008) Available [online]: <http://www.hrw.org/news/2008/06/01/turkey-court-shows-bias-dissolves->

forms of discrimination, and have to construct their lives upon vital struggles. Besides coming face to face with transphobia in social levels, which also leads to hate crimes,<sup>35</sup> trans individuals complain that they are often arrested due to the Misdemeanor Law under which they have to pay a fine. According to this law, trans individuals simply by being who they are, disturb other individuals. However, what is paradoxical here is that despite the demands and calls of LGBT people are still unanswered and unrecognized, sex reassignment has been legal in Turkey since 1988. In order to understand the legal structure beneath, the regulation of sex reassignment in Turkey will be analyzed in three time periods:

#### Pre-1988 Period

Sex reassignment had not been a legally recognized issue in Turkey, until 1988. “Arbitrary” sex change was not allowed, and the only case that the surgery could be undertaken legally was in the case of intersex (hermaphrodite) individuals whose situation was regarded as urgent.<sup>36</sup> Those individuals, who were not intersex and who had the operation conducted abroad, were expected to face the results of their actions. In these situations, no legal action was to be taken, and a change in the birth register or ID cards was not allowed.<sup>37</sup> The following phrase in the decision of Court of

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<sup>35</sup> Twenty eight trans women were murdered in 2011. See Bianet, “Bir Haftada İki Nefret Cinayeti”, (6 May 2012), Available [online]: <http://bianet.org/bianet/bianet/137456-bir-haftada-iki-nefret-cinayeti> [17 July 2012].

<sup>36</sup> Yesim M. Atamer, “The Legal Status of Transsexuals in Turkey”, *International Journal Of Transgenderism*, 8, no: 1,(2005), p. 65.

<sup>37</sup> For the preamble of The Court of Cassation decisions, see Prof Michael R Will and Prof Bilge Öztan, “Hukukun Sebebiyet Verdiği Bir Acı”, *La Presse Medicale*, no: 1983 (1992), p. 231. Also quoted in Atamer, (2005), p.65



Cassation well reflects the perception that was prevalent then, regarding that situation:

Seeking solutions on an emotional basis will not be appropriate. Because, as far as the rights are concerned law is merciful but at the same time unmerciful in the case of mistakes. The ones who lost their manhood and did not manage to be a woman at the same time, are to be pitied. Yet it is not possible to push the laws aside and provide opportunity for them<sup>38</sup>.

Authorization of the permission for sex change of those who are not intersex individuals was argued to result in same-sex marriages, abuse of social security principles,<sup>39</sup> and exemption from military service. In that sense sex reassignment was disallowed by any means.

#### The 1988-2002 Period

The above-mentioned decision belongs to one of the several lawsuits of Bulent Ersoy, a famous female trans singer, who demanded change in her birth register after her surgery in 1981, in the UK. Her struggle was answered after seven years when a new regulation in the Civil Code was brought in 1988, thanks to the reflections of her case in the media and her personal relations with the-then president, Turgut Özal. The legalization of sex change was with the amendment of Article 29<sup>40</sup> of the

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<sup>38</sup> Court of Appeal, 2, HD. 27.03.1986, E. 1986-651, K.1986-3256 in Will and Öztan,(1992), p.231.

<sup>39</sup> It was claimed that there might a significant number of people who would undergo the (male to female) sex reassignment process just in order to benefit from social security provided to women.

<sup>40</sup> Republic of Turkey, Türk Kanunu Medenisi (Civil Code of Turkey), No:743, 17 February 1926, Additional Clause of the Article 29(1988) of the previous Civil Code asserts that: "In the concerning lawsuits if the person whose official sex is changed, is married, the spouse is involved in the hostility of the situation. In the case of children Court determines the aftermath of the custody. Marriage is officially dissolved in the date of finalization statement." (my translation)

previous Civil Code, which asserted that anyone who has the medical committee report confirming that the applicant had had the surgery could demand change in their birth register: “In cases where there has been a change of sex after birth documented by a report from a committee of medical experts, the necessary amendments are made to the birth certificate”.<sup>41</sup> The only indication was that in the case that the applicant was married, the marriage would automatically be dissolved with the decision of sex change, and if the couple had children, court is to decide for the custody of the children.

The amendment was the first regulation that allowed sex change to be legally recognized, and it was certainly a big step for the trans individuals who had formerly been searching for illegal ways of sex reassignment. However, the regulation gave birth to debates among the legal professionals, as it was found problematic in legal doctrinal terms.<sup>42</sup> The main critique was due to the fact that the amendment had not specified the required conditions for the operation. In that sense, it introduced the possibility that a married person could undergo the surgery, and the marriage would in turn become one between same sex partners. This possibility was argued to threaten the continuity of the family, as the institution that lies at the very foundation of the society.<sup>43</sup>

Another critique was based on the argument that the lack of any pre-requirements could lead to arbitrary and inaccurate implementation of the regulation.

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<sup>41</sup> Deniz Kandiyoti, “Pink Card Blues: Trouble and Strife at the Crossroads of Gender” in *Fragments of Culture: The Everyday of Modern Turkey*, edited by Deniz Kandiyoti and Ayşe Saktanber, (New Brunswick, New Jersey: Rutgers University Press, 2002), p.279, (her translation).

<sup>42</sup> See Öztürel(1980), Atamer(2005), Will and Oztan(1992), Güven(1997), Sağlam(2004).

<sup>43</sup> Atamer, (2005), p.66.

Official identity change required medical committee report stating that the sex change was conducted, but the details and the criteria about the time to deliver this report were not specified. As there was not any supervision concerning the sex reassignment process, it was argued that inexperienced doctors could conduct the surgery, or individuals, who had not been psychologically prepared to the process, could undergo the process and regret the operation afterwards. Kandiyoti, in that sense, reminds that because there had been no supervision regarding the operations, individuals were undergoing negligently performed surgeries, such as castration instead of vaginal reconstruction in non-medical conditions.<sup>44</sup>

Moreover, regulation did not specify an age restriction, which was criticized in the sense that it could lead to application of those who were under the age of eighteen. Malpractice<sup>45</sup> in the conduct of sex reassignment was quite common because it was a recent phenomenon in those days in Turkey. In this sense, it was true that a new regulation that would control the process and enhance the health conditions of the trans individuals was essential.

#### Post 2002 Period

Finally in 22 November 2001, under the coalition government of a left wing and two right wing parties,<sup>46</sup> a new regulation was introduced and came into force under the New Civil Code in 2002. Instead of adding a statement to the existing article, which

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<sup>44</sup>Kandiyoti, (2002), p.279.

<sup>45</sup>Atamer, (2005), p.66.

<sup>46</sup> Fifty seventh Government of the Republic of Turkey (Coalition Government with DSP, MHP and ANAP under the prime ministry of Bulent Ecevit)

was done in the previous Civil Code, Article 40 of the new Civil Code<sup>47</sup> was amended to regulate the procedure of sex reassignment. Now the recognition of sex change was made dependent on several pre-conditions, which rendered the official recognition of sex change and gaining the new identity card much more difficult, unless one has the operation abroad as in the case of well-to-do trans cases. Even in the case that the applicant has undergone the surgery abroad; the change in the identity card is put at risk, because undergoing the surgery without the permission of the court means the violation of the law.

In addition to the condition of being over eighteen-years-old and being unmarried, the applicant has to prove the following conditions through an official medical report taken from an education and research hospital:

- he/she is transsexual by nature.
- he/she is obliged to undergo sex reassignment in terms of his/her mental health.
- he/she is *permanently* infertile.

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<sup>47</sup> Republic of Turkey, Turk Medeni Kanunu(Turkish Civil Code), No:4721, 22 October 2001, Article 40 asserts : A person who wants their sex reassigned can demand permission from the court for the reassignment of the sex by applying to the court in person. However, for the permission, the person should be above the age of eighteen, [and] not married. Furthermore the person should have a transsexual nature and the person must document this with a formal report issued by a health council at an educational and research hospital stating that the sex reassignment is necessary for the spiritual health and that the person must be have a permanent loss of reproductive capacity. When the sex reassignment operation is proved to have taken place with permission [from the court] and conducted in accordance with the aim and medical methods, the court makes the decision to make necessary corrections in the population record. (Kurtoğlu's translation, in Ayça Kurtoğlu, "Sex Reassignment, Biological Reproduction and Sexual Citizenship in Turkey", *Reproduction*, 2, no. 2 (2009), p.84.)

During the preparation of the Article 40, the former Transsexual Law in Germany<sup>48</sup> was taken as a judicial text source, and the phrase of *permanent infertility* is borrowed from there. However it is also important to note here that Germany implemented a one step system, which means that individuals applied to the court for the birth register after they had the surgery conducted. In other words, proof of infertility prior to the surgery was not a pre-requirement for sex change operation. Instead, it was required after the surgery.<sup>49</sup> Yet in Germany, the Law caused widespread pressures on the government on the issue. The opponents of the Law criticized it in the sense that the Law was regulated in 1981 –when the reproductivity options for the trans individuals who had undergone the surgery were out of the question. Hence it was revised in 2011, and the pre-requirements were removed accordingly. As a matter of fact, in practice, in Germany, infertility had not been sought after the surgery even before this recent revision in the law.<sup>50</sup>

Ironically, the former Transsexual Law of Germany has been adapted to the Turkish Civil Code in a way that the Article 40 was regulated to require infertility both before and after the surgery as a pre-condition of reassignment. As the conditions of sex reassignment have to be met before and in order to have the surgery, unlike the German regulation, then one is not allowed for sex reassignment if s/he cannot prove permanent infertility.

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<sup>48</sup> Federal Republic of Germany, *Transsexuellengesetz (Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen, Law concerning the change of given names and gender recognition in special cases)*, 211-6,1 January 1981.

<sup>49</sup> Ipek Sağlam, “Türk Medeni Kanunu Madde 40 Üzerine Bir Değerlendirme”, *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 8, No: 3-4, (2004), p.465.

<sup>50</sup> Gregory A. Knott, “A Definition and History of Transsexualism in Germany”, *Saint Louis University Law Journal*, 8, (2008), pp. 997-1034.

## Preamble of the Article 40

The new regulation is constructed upon the lawmaker's goal to preclude the possibility that the courts turn out to be merely the certifying authority regarding the sex change operations<sup>51</sup>. While the previous implementation did not allow any other authority, except for the applicant, to have a say in the reassignment operation process, now the implications of the new legal regulation are designed so as to hinder any possibility of *attack* or *threat* that might be directed against to the moral codes of Turkish society, most particularly to the high valuation of the *Turkish family structure*. The asserted preamble<sup>52</sup> clearly reflects the concern of the lawmaker:

With the aim of preventing the breakdown of the institution of the family, which is the foundation of society, by persons whose sex is ambiguous, first of all, the condition that the person is not married is set forth.<sup>53</sup>

The law then aimed to prevent any possibility that a married individual might have undergone the surgery and continued his/her marriage. The underlying rationale, as it is stated, is the understanding that any ambiguity regarding the Turkish family structure is unacceptable, for ambiguity means a threat that is directed towards the

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<sup>51</sup> The preamble of the Article 40 of the Present Civil Code asserts: "With the aim of preventing the breakdown of the institution of the family, which is the foundation of society, by persons whose sex is ambiguous, first of all, the condition that the person is not married is set forth. This condition is included in order to prevent the person from maintaining the marriage on the one side and changing the sex on the other while the marriage is ongoing; because psychological and moral setbacks of this can be done while cohabitating with the spouse or the children. Another condition set out is that the bearer of the request is to be transsexual in nature. Sex reassignment must be found necessary for the psychological health of the person, and the person should permanently be without the ability to reproduce. In this way, sex change is conditioned not only to biological but also spiritual necessity." (Kurtoğlu's translation, in Ayça Kurtoğlu, (2009), p.84.)

<sup>52</sup> Republic of Turkey, Turkish Civil Code 2001, Article 40 preamble Available [online]: [http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss723\\_Madde\\_Gerekceleri\\_1.pdf](http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss723_Madde_Gerekceleri_1.pdf) [17 July 2012].

<sup>53</sup> Kurtoğlu's translation, in Ayça Kurtoğlu, (2009), p.84.

very foundation of the society. It also assumes the existence of a single definition of family, which is founded by a heterosexual man and a heterosexual woman. By the same token, if an individual demands sex change, s/he has to guarantee that s/he will not give birth to a child after s/he undergoes the reassignment process. Legal scholars also discuss the possibility that the phrase of “permanently infertile” might be interpreted to expect the applicant to be infertile from birth,<sup>54</sup> which would obstruct the individuals who already have children, to undergo the process. In that situation as well as having a sanction on the post-sex change, with the phrase “permanently infertile” the new regulations now have a say on the pre-operation period.

All in all, the working mechanism of the process is strictly defined not only on paper but also necessarily in practice because the state does not merely want to certify but to decide on the necessity of the procedure as well. And here we are not referring to a subjective necessity that is to be articulated by the person who is to have the operation, but a subjective necessity that is to be concluded by the medical experts. These medical experts are asked to decide that the person under consideration is transsexual ‘by nature’, a question that does not admit of ‘objective’ tests. Thus, it is obvious from the text of the law that the medical and legal experts’ personal opinions will have the final say on the issue.

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<sup>54</sup> Atamer, (2005), p.67.

## Sex Reassignment and Social Security

After the legal sex change in the official records of the trans applicant, the individual is subject to the social insurance according to the gender transitioned. However, even though the estimated rate of the individuals who can benefit from the insurance among the whole trans population is not high, the relation of sex reassignment process vis-à-vis social security is not yet easily resolved. Financed health care services and exceptions are regulated under the Articles 63 and 64 of the current Social Insurance and Universal Health Insurance Law.<sup>55</sup> Although the other conditions are asserted in detail, sex reassignment is not mentioned either in the financed services or in the exceptions. The question whether or not the sex reassignment process is covered under the social security is thus a highly debated issue, because there is no explicit explanation in the concerning legal code.

For instance, while the financing and the procedural steps concerning the *in vitro fertilization*<sup>56</sup> are explained in the same article in detail, there is no indication regarding sex reassignment that is not interpreted as an ordinary operation by the medical authorities. Sub clause of Article 63 could be interpreted as the only indication according to which sex reassignment operations can be covered: "... operations and treatments to be applied based on the diagnosis".<sup>57</sup> However the exceptions stated in the Article 64 give a significant initiative to Ministry of Health to decide what could or could not be counted as a health care service: "Health care

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<sup>55</sup> Republic of Turkey, *Social Insurance and Universal Health Insurance Law*, 5510, 1 October 2008.

<sup>56</sup> "In Vitro Fertilization (IVF) is the process of fertilization by manually combining an egg and sperm in a laboratory dish". Available[online]: <http://www.americanpregnancy.org/infertility/ivf.html/> [17 July 2012].

<sup>57</sup> Republic of Turkey, *Social Insurance and Universal Health Insurance Law*, 2008, Article 63, Subclause b.



services not permitted or licensed by the Ministry of Health and health care services not accepted to be a health care service in medical terms by the Ministry of Health”.<sup>58</sup> In that sense although the Article 63 could open a way for the coverage by insurance, trans individuals have difficulty in procuring acceptance of the financing of the process, most particularly the financing of the genital operation.

Even in the case that the operation is covered under the Health Insurance, individuals have to pay contribution fees that could rise up to ninety percent of the whole operation cost, especially in the private hospitals, which are often preferred instead of the state hospitals due to the complexity of the operation.<sup>59</sup> As a result, the financial burden of the operation often falls on the shoulders of the trans individuals themselves.

### Implementation

While the previous regulation allowed the applicants to have the operation first and to apply for the change in the birth register afterwards, the present regulation brought a more complicated order. First of all, the individual must apply to the court and then will be directed to the hospital to get the relevant medical reports. In the hospital s/he is directed, the individual will be under the medical examination process.

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<sup>58</sup> “Sağlık Bakanlığınca izin veya ruhsat verilmeyen sağlık hizmetleri ile Sağlık Bakanlığınca tıbben sağlık hizmeti olduğu kabul edilmeyen sağlık hizmetleri”, Republic of Turkey, *Social Insurance and Universal Health Insurance Law*, 2008, Article 64, Subclause b.

<sup>59</sup> Sinem Hun, “ Trans Geçiş Süreci ve Hukuka Genel Bir Bakış” in KaosGl, *Trans Erkek / Kadından Erkeğe Transeksüellerin Deneyimleri*, edited by Aras Gungor (Ankara: Ayrıntı Basımevi:2012),p.141. Also available [online]: <http://www.scribd.com/doc/92758953/Kitap-Transerkeklik01> [17 July 2012].

Unlike the other countries, Turkey implements a two-step system for the regulation of sex reassignment. It indicates that, in order to undergo the sex reassignment process, the individual should apply to the court first, and in order to get the permission for the surgery, s/he has to prove that he/she fulfills the above-mentioned requirements. The court then directs the applicant to an education and research hospital where the individual needs to obtain a report from a committee composed of the following medical units: *psychiatry, urology, gynecology, medical genetics and endocrinology*.

From the *psychiatry* department, the applicant has to bring a report stating that the individual is *transsexual bynature* and that sex reassignment is compulsory for the individual's mental health. A committee of psychiatrists gives the report after a final medical examination. An important issue here is that the individual is subjected to a therapy process; either group therapy or individual therapy depending on the hospital.

The average duration of the therapy period is about one and a half years, again depending on the operation mechanism in the hospital and depending on the individual's adaptation to this operation mechanism. As individual therapy is more difficult in the education and research hospitals, which are overcrowded by the patients despite the small numbers of doctors, group therapy is frequently the implemented type of therapy. It is the situation in most of the psychiatry departments in the few hospitals, which provide this service. Usually the central hospitals in the cosmopolitan cities provide therapies, such as Çapa Medical Faculty in İstanbul, Hacettepe University Hospital in Ankara, Dokuz Eylül University Hospital in İzmir and Osmangazi University Hospital in Eskişehir. The other education and research

hospitals direct the applicants to these university hospitals, if they could not provide such a service. Individual therapies are often conducted in Hacettepe and the group therapies are often conducted in Çapa where the number of participants could rise to sixty people in one session. In the other hospitals it depends on the number of the applications in an application season.

The details of the duration of this therapy period as well as the criteria are not defined by the legal code. Therefore the internal structure of the hospital, which the applicant goes to, turns out to be the determining factor in the working of the process. Even though DSM IV is not mentioned anywhere in the legal documents, and even though it is abandoned by most of the countries- because the fifth version of it is on consultation-, in Turkey it is still mostly taken as the guide during the medical examination in the psychiatry departments.

According to DSM IV *transsexualism* is based on the existence and combination of three criteria:

1. The desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make his or her body congruent as possible with the preferred sex through surgery and hormone treatment;
2. The transsexual identity has been present persistently for at least two years;
3. The disorder is not a symptom of another mental disorder or a chromosomal abnormality.<sup>60</sup>

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<sup>60</sup> The Harry Benjamin International Gender Dysphoria Association's Standards Of Care For Gender Identity Disorders, Sixth Version, February, 2001, p. 5.  
Available [online]: <http://www.wpath.org/documents2/socv6.pdf> [17 July 2012].

The contribution of these criteria to the arbitrariness of the process is most particularly due to the first phrase, according to which the individual is expected to show the desire to live as a member of the opposite sex. For, “measuring” the extent of the expression of this desire is dependent on the psychiatrists’ already existing expectations and definitions concerning gender roles. After a therapy period the duration of which is not defined beforehand, in the case of the fulfillment of expectations, individual gets the report from a committee of psychiatrists. The report has to declare that the individual has *transsexual nature* and the operation is necessary for the applicant in terms of his/her mental health. Concerning the psychiatry stage, there is also the possibility that the individual can directly start with the application to the psychiatry department of one of the research and education hospitals, where the psychiatric examination and group/individual therapy is available. Once the individual gets the necessary report after that psychiatric examination period, he/she can apply to the court and follow the required steps afterwards.

With the report from the psychiatry department, the next step for the individual is the urology (for female-to-male trans individuals)/gynecology (for female-to-male trans individuals) departments to get a report stating that the individual is permanently infertile. In medical terms, there is no obstacle for a trans individual to procreate after the sex-change operation, if the operation does not include the final genital operation that is the removal of the genital organs of the individual’s biological sex. Therefore, according to the legal code, the individual has to undergo the infertilization operation before applying to these departments, in order to get the medical report. As the requirement is *permanent infertility* under the law, a simple sterilization operation is not enough to gain medical report. Thus the removal

of the reproductive organs is obligatory for the process,<sup>61</sup> despite the physical integrity principle in the Constitution, which states that “the physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law”.<sup>62</sup>

The permanent infertility phrase has two other significant implications related to the obligatory castration of the individual. First of all, female-to-male trans people who have undergone the genital operation are medically able to reproduce, as hysterectomy<sup>63</sup> is not medically obligatory in female-to-male sex re-assignment surgeries.<sup>64</sup> However the legal codes render hysterectomy obligatory, as permanent infertility is required under the Article 40.<sup>65</sup> Therefore, a trans man is by no means allowed to be reproductive with female organs, while it is medically possible, because the legal code requires the individual to be deprived of such a possibility. Second implication is the possibility that depending on the interpretation of the judge, applicant might be denied permission for the surgery if s/he already has a child, in the sense that s/he cannot prove permanent infertility.

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<sup>61</sup> Vazectomy and Tube ligation are also sterilization operations, however for permanent infertility that the regulation requires a castration operation is needed.

<sup>62</sup> Republic of Turkey, Turkish Constitution 1982, Article 17 asserts that “The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his or her consent.”

<sup>63</sup> Hysterectomy is the medical term for the surgical removal of uterus.

<sup>64</sup> See. Dailymail, “Britain's first 'male mother': Man born a woman is first in UK to give birth despite having sex change”, 2012. Available [online]: <http://www.dailymail.co.uk/news/article-2100036/Man-born-woman-Britain-birth-despite-sex-change-operation.html> [17 July 2012]. Ynetnews, “Israeli man gives birth”, 2011. Available [online]: <http://www.ynetnews.com/articles/0,7340,L-4169089,00.html> [17 July 2012]. Abc news, “Exclusive: 'Pregnant Man' Gives Birth to Second Child”, 2009. Available [online]: <http://abcnews.go.com/2020/story?id=7795344&page=1#.UAaSHRx5Wzk> [17 July 2012].

<sup>65</sup> Republic of Turkey, Turkish Civil Code 2001, Article 40.

Once the above-named requirements have been met, the individual also gets a report from the medical genetics department where the chromosomes of the applicants are examined in order to eliminate the possibility that the applicant might be an intersex individual. Lastly, a report from the endocrinology department is required. This report documents the hormonal health condition of the individual who might have started taking hormones during or after the psychiatric examination period.

After the completion of these steps, the individual presents the medical reports to the court and the judicial process restarts. If the applicant can get all the required reports, then s/he presents it to the court. After the permission from the court, the surgery is legally allowed. The procedure of the collection of the required reports continues until the court permits the individual to undergo the surgery.

Finally, the applicant who has the permission from the court is legally allowed to undergo the genital operation. In order to complete the process and identity change in the official records, the individual presents the medical report stating that the surgery is conducted. With the confirmation of this report, the individual is directed to a research and education hospital to get through the aforesaid steps for the last time. Last step in the medical department is the post-operative medical examination, where the last details concerning the surgery, such as vaginal depth, are investigated before the final report.<sup>66</sup> Once all of the examinations are conducted, the medical report regarding the conduct of the surgery and the relevancy of required conditions is prepared by the medical experts of the concerning

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<sup>66</sup> Kandiyoti, (2002), p.280.

departments. At the end, as the last step, the individual presents this final report to the court.

If the court finds the report appropriate and does not ask for any other documents or any witnesses, sex change in the official records and identity change in birth register is carried out. However as it is in most of the cases, there is also the possibility that the court could demand more documents, if the judge is not convinced with the situation of the applicant. In a very recent case for instance, the Supreme Court, after the claim of Ministry of Justice, reversed the judgment by the domestic court, which decided for the sex change in the identity card and the official records of a male-to-female trans applicant. In that decision, the Supreme Court puts forward that the criminal record of the applicant as well as the police records (stating whether the individual is wanted by the police) should be presented to the court.<sup>67</sup>

In addition to the above-mentioned sequence, there is also the possibility that the individual has undergone the surgery abroad or by illegal ways without an official record. These options are not preferable ways for the trans individuals, because unofficial surgery complicates the process of identity change in the official documents. As the applicant has violated the laws, the judge can either dismiss the case or prolong it as much as possible. Therefore the official sequence turns out to be the inevitable destiny for the individual who desires identity change.

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<sup>67</sup> Republic of Turkey, T.C. Resmi Gazete, no. 28148, 20 December 2011 (Yargıtay İkinci Hukuk Dairesi Karar no: 2011/14833). Available[online]:<http://www.resmigazete.gov.tr/eskiler/2011/12/20111220-7.htm> [17 July 2012].

Relying on the written codes, then, it is understood that along with the applicant's single marital status; the other musts of the surgery are the proofs of permanent infertility and the report indicating the 'transsexual nature' of the applicant, as well as the proof of the necessity of reassignment in terms of the applicant's mental health. However there is no objective criterion, standard test or a mechanism that would establish or verify the decisions for the definition of that transsexual nature. Despite the fact that a committee of doctors composed of different departments prepare the final report; the criteria for transsexual nature is not defined –and cannot be defined –anywhere on paper in the existing law.

Individuals who went through the surgical procedure mainly claim that this examination process is dependent on the perceptions and the discretion of the legal and medical professionals. Some of the doctors can give the report easily while some others extend the examination process for more than two years. The applicant can choose the hospital s/he goes to; but is not allowed to choose the doctor s/he is directed to. Unless the doctor withdraws from the case, the applicant has to carry on with that doctor. Similarly, some of the judges end the suit immediately after the required documents are presented, while other judges from the same court could ask for more documents and extend the lawsuit as long as possible.



## Sex Reassignment in the World

Prohibition of discrimination based on sexual orientation is included in the Constitutions of several countries.<sup>68</sup> At the level of international human rights law and practice, international human rights organizations have been campaigning for the recognition of the necessity to prevent discrimination based on sexual orientation and sexual identity via anti-discrimination measures, which are geared towards both the word of the law as well as the implementation process. For the first time in 1994, in the case of *Toonen v Australia*,<sup>69</sup> the UN Human Rights Committee held that “sexual orientation” was a status protected under the ICCPR from discrimination. As the first time that sexual orientation was mentioned in an international treaty, European Union authorized European Council to “take appropriate action to combat discrimination based on sex, racial, or ethnic origin, religion or belief, disability, age or sexual orientation”<sup>70</sup> with the Treaty of Amsterdam in 1997. The European Union Charter of Fundamental Rights also prohibited discrimination based on sexual orientation in 2000.<sup>71</sup> In the 14<sup>th</sup> Comment of the UN Committee on Economic,

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<sup>68</sup> Canada, Denmark, Finland, France, Iceland, Ireland, Israel, The Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, and Sweden. For further information see, European Union Agency For Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States”, (2009).

<sup>69</sup> *Toonen v. Australia*, UN Human Rights Committee (HRC), CCPR/C/50/D/488/1992 4 April 1994, Available [online]: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [17 July 2012].

<sup>70</sup> European Communities, “Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts”, Luxembourg: Office for Official Publications of the European Communities, 1997, Article 6a Available [online]: <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> [17 July 2012].

<sup>71</sup> European Convention, “The Charter of Fundamental Rights of the European Union”, C 364/01, 2000, Article 21 Available [online]: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) [17 July 2012].

Social, and Cultural Rights it was declared that ICCPR, that Turkey signed and ratified too, should be taken as a the basis to prevent

... any discrimination in access to health care and underlying determinants of health, as well as to the means and entitlements for their procurement, on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), *sexual orientation*, civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.<sup>72</sup>

Legal regulation regarding the sex reassignment and the legal status of trans people vary across the world. Although there are a few countries where there is no legal certainty on the issue despite the conduct in practice,<sup>73</sup> sex reassignment is regulated by laws in most countries across the world. On the other hand, in countries such as Iran and Egypt, the legalization (and even the coverage under the social security in the case of Iran) of sex reassignment is perceived and allowed as treatment and the cure for homosexuality.<sup>74</sup> This situation illustrates that the official recognition of sex reassignment does not necessarily indicate the recognition of sexual minorities, depending on the context and the conduct of the regulations.

For the last few years, the trans liberation movement has been initializing a campaign against the pathologization of the trans identity, and for the declassification of transsexuality as an illness, which succeeded in some countries

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<sup>72</sup>Committee on Economic, Social, and Cultural Rights, "General Comment", No:14, 2000, (My emphasis). Available [online]: [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) [17 July 2012].

<sup>73</sup>e.g. Ireland, Greece, Cyprus, Latvia, Lithuania, Malta, Romania, Slovenia, Slovakia.

<sup>74</sup> Danielle M. Lockwood, "Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey", (MA Thesis, Utrecht University, 2007), p.125.

such as France, Sweden and the UK. Also in several countries including the United States, Germany, UK, Spain, Austria, Hungary, Finland, Portugal, South Africa, genital operation is not required prior to sex change in ID cards. According to Article 3 of the Yogyakarta Principles, “no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity”.<sup>75</sup> Even in countries such as Sweden, Belgium and Denmark where sterility is required, “laws that mention infertility require it as a condition for registering the sex change, not as a condition for the SRS (sex reassignment surgery) itself”.<sup>76</sup> Yet Turkey has a strict regulation regarding the permission of legal sex change, and requires permanent sterilization not only prior to sex change in the official records but also prior to the application for the operation.

### Concluding Remarks

This chapter offered the historical legal framework of the issue of sex reassignment in Turkey, situating it within the global context. Historical sequence of the issue gains significance in the sense that it gives us the clues of the mindset, which underlies the legalization story of sex reassignment. The evaluation of the time period from 1988 to 2002, and 2002 to the current day, in addition to the loophole and the uncertainty concerning the coverage under social security, reveals one thing:

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<sup>75</sup> The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity were developed in a meeting of International Commission of Jurists, International Service for Human rights and several human rights experts and activists, in 2006 with the participation of 25 countries including Turkey. Available [online]: [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) [17 July 2012].

<sup>76</sup> Atamer, (2005), p.70.

The development in the regulation neither aims to be liberationist in terms of embracing the trans individuals, nor can it be explained as the recognition of sexual minorities, especially when the preamble of the current law is taken into account. Word of law, in the context of sex reassignment, aims to dissolve ambiguities and control the process in a way that it leaves the final say to the medical and legal experts. Among the countries that recognize sex reassignment, Turkey has one of the most stringent legal frameworks, especially in comparison to many European countries where the strict regulations and requirements concerning sex reassignment, are mostly abandoned at least in practice, if not yet on paper. Overall, these different layers support the idea that the current regulation does not belong to a logic that aims at the liberation and the equal recognition of trans individuals. Instead, they highlight the heteronormative spirit of the law, which draws a certain route for the individuals who demand to undergo this process, and who are necessarily shaped according to that route in order to be recognized. The conditional recognition for the trans individuals, therefore, is based on their performance of adaptation to this route already drawn for them under this legal spirit.

CHAPTER 3  
THEORETICAL FRAMEWORK: EVALUATING THEORIES OF CITIZENSHIP  
AND DEBATES OF REASSIGNMENT FOR THE TURKISH CASE

Introduction

Regarding the aim of addressing heteronormativity as the main obstacle on the way of the equal recognition of the LGBT population in Turkey, the social and legal status of trans people is of vital significance. It is because the trans people suffer from heteronormativity in the most visible and cruel ways. Sex re-assignment process in Turkey gains importance in the sense that it is an officially recognized right. Yet it is implemented in an exclusionary way. The regulation and the process of sex reassignment procedures determine the frame within which trans individuals are allowed to have the surgery. In that sense the regulation prevents any escape from that frame for the recognition of one's demand of sex reassignment and change in the official records accordingly.

As covered in detail in the previous chapters, sex reassignment has been legal in Turkey since 1988. Under the scope of the first regulation there had not been any prerequisites of undergoing the sex change operation and anyone who had the medical report stating that he/she had undergone the surgery could apply for a new identity card, which indicates the transitioned sex identity. The only statement was that in the case that the applicant was married; the marriage would be dissolved after the official sex change. In 2001, the new Civil Code bound sex change to certain

conditions including the proof of applicant's transsexual nature, the proof of the necessity of sex reassignment in terms of the applicant's mental health as well as the proof of the applicant's permanent infertility; besides the 18 age quota and the requirement of unmarried status of the applicant. If these conditions are not met, the individual is not permitted to undergo sex change operation and change his/her identity card. In other words, the applicant will not be recognized with the gender he/she aims to migrate to, without the verification of these prerequisites. The recognition of the identity that the applicant feels to belong in is therefore possible only within the borders defined through the conditions set by the law.

The status of the trans population in Turkey is an issue that embodies vital paradoxes and involves life and death struggles. There are various scopes of this issue, which could be read through different literatures with different questions. Specifying on the regulation of sex reassignment in Turkey, however, my fieldwork study and the related analysis of the current legal structure is related to the academic debate in terms of two scopes, in the rest of this chapter:

Under the first scope, I have read the issue of sex reassignment in Turkey through the lens of sexual citizenship debates. The concerning regulation prescribes the determination of the necessity of the sex reassignment, not interpreted by the applicant individual but by the medical and legal experts. After having the requirements of the reassignment confirmed, the individual can utilize civil, political rights and dubiously also social rights; once s/he manages to have the official identity changed. On the contrary, s/he cannot utilize the citizenship rights due to the discrepancy between the appearance and the official identity, if he/she cannot have it changed. In that sense citizenship discussions gain significance as this issue shows

how the definition of citizenship in the Turkish context, far from being inclusive, turns out to be dictating a binary sex identity. Thus the only way to survive, as a part of it, is to fit oneself inside these predetermined definitions and conceptualizations of citizenship.

This debate leads my theoretical work to the second scope, where the discussions concerning the pathologization of trans identity and the debates regarding the social construction of the need for sex reassignment could be located. These debates are based on the very basic conceptual differentiation between “passing” and “transgressing”, or between the term transsexual and the term transgender that will be elaborated in detail, further in this chapter. Throughout and under the light of these discussions, my aim is to show the vital meanings that can be attributed to the issue of sex re-assignment. It also helps me to understand how this vitality leads the trans individual to raise the consciousness in developing the strategies of reaching one’s own ways of survival.

Thus, with the underlying goal of uncovering the various layers of the issue of sex change in Turkey through my fieldwork, I have focused on the discussions regarding the conceptual analysis of sex- reassignment and the citizenship debates on which there is a considerable literature.

## The Issue of Sexual Citizenship

The definition of citizenship as described by Turkish Constitution assumes that;

All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.<sup>77</sup>

In other words, this citizenship that an individual is not to be deprived of unless he or she commits an act of disloyalty to the motherland<sup>78</sup> is characterized through an embracing notion that disregards any differences that might exist between the individuals who are defined as Turkish citizens. Together with other considerations that may give birth to the differences, the sex of the citizen is put forward as a feature due to which individuals cannot be dispossessed of access to their rights that stem from their citizenship tie to the State. As part of the amendment in 2004, the equality principle between women and men was added to the Article, and the State was defined as obliged “to ensure that this equality exists in practice”.<sup>79</sup> However the question is whether recognizing women’s identity as separate, different but equal would amount to gender neutrality and more importantly, does it have an impact on other gender categories and sexual identities?

When the presumed equality is considered between men and women (whose new status in the forthcoming Constitution is still unknown), although it is a start to recognize positive discrimination, it fails to be enough to meet the promise of

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<sup>77</sup> Republic of Turkey, *T.C. Anayasası (Turkish Constitution)*, no. 2709, 18 October 1982, Article 10.

<sup>78</sup> *Ibid.*, Article 66.

<sup>79</sup> *Ibid.*, Article 10.



ensuring that each and every individual have equal access to these so-called equal rights. It is because the provision of equal access to equality requires the change in the gender relations and the abandonment of patriarchy, instead of transforming its form. To illustrate it, Walby argues that the socialization of previously privatized domestic labor by welfare state ended up in the transition to another form of patriarchy from private to a public form,<sup>80</sup> and thus it did not remove patriarchy. As such, the provision of equal access of equal rights of each citizen in Turkey requires more than giving lip service of the equality principle of men and women, also because men and women are not the only available gender categories or sexual identities for that matter. In that sense, without the challenge against all forms of (hetero) patriarchy, the entitlement of citizenship cannot go beyond the promise of “transition from private to public patriarchy”.<sup>81</sup>

The relation of gender and citizenship had not been subjected to questioning in the social sciences until the late 60's. Consideration of sexuality together with the issue of citizenship was based on the critique of the Marshallian definition.<sup>82</sup> According to Marshall, citizenship should be conceptualized as the combination of civil or legal, political and social rights. However his critiques argued that this conceptualization was too simplistic to observe that the “access to citizenship is a highly gendered process”.<sup>83</sup> In addition to this conceptualization, the idea that citizenship is supposed to be defined through its social membership to a nation-state, has been widely accepted. If the citizen is defined as someone who is the member of

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<sup>80</sup> Sylvia Walby, “Is Citizenship Gendered”, *Sociology*, 28, No: 2, (1994), p.391.

<sup>81</sup> *Ibid.*, p.379.

<sup>82</sup> T.H. Marshall, *Citizenship and Social Class*, (Cambridge: Cambridge University Press, 1950).

<sup>83</sup> Diane Richardson, “Sexuality and Citizenship”, *Sociology*, 32, No: 1 (February 1998), p. 85.

a given nation, then the question, as Richardson raises, is how nationhood is defined.<sup>84</sup>

As an answer to this question, Richardson argues that the “claims to citizenship status, at least in the West, are closely associated with the institutionalization of heterosexual as well as male privilege”.<sup>85</sup> Through her reading of the Marshallian set of rights, she puts forward that LGBT individuals are located into the “partial citizenship” being excluded from a considerable body of rights. Thus the claim that each and every citizen owns this set of rights equally, and the entitlement of these rights to LGBT individuals are in fact based on the condition that the LGBT individuals remain in the private sphere. As *good citizens* who are supposed to belong to a minority, as Richardson puts it, “they are granted the right to be *tolerated* as long as they stay within the boundaries of that tolerance whose boundaries are maintained through a heterosexist public/private divide”.<sup>86</sup> In other words, they are accredited with citizenship, only if they agree to vanish in the public sphere. Thus non-heterosexuality is rendered “tolerable only as long as it did not leak across boundaries of the private into the public”.<sup>87</sup> While how sexualized the notion of the private is the subject of another debate, the formally granted citizenship which is withdrawn from the public sphere loses its significance for LGBT individuals.

In *Bananas, Beaches and Bases*, Cynthia Enloe argues that “nationalism has typically sprung from masculinized memory, masculinized humiliation and

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<sup>84</sup> Ibid., p.85.

<sup>85</sup> Ibid., p.88.

<sup>86</sup> Ibid., p.90.

<sup>87</sup> Diane Richardson, “Locating Sexualities: From Here to Normality”, *Sexualities*, 7, No: 4 (November 2004), p.404.

masculinized hope”.<sup>88</sup> In that sense nation building is the outcome of the construction of men’s experience<sup>89</sup> that is the rooted reference of heteropatriarchy, on which the society is grounded.<sup>90</sup> In this construction, any other practices that do not belong to that masculinized memory are bound to be silenced. Following Richardson’s formulation; if we read citizenship as membership to a nation, these individuals who challenge the masculinized experiences of heteropatriarchy are “normally excluded from the construction of ‘nation’ and nationality”.<sup>91</sup> The *nation*, which is based on the heterosexual family structure, consequently does not call for the inclusion of the non-heterosexuals who, as a matter of fact, threaten its continuity. For, as Rubin argues, gender structure within that construction “is not only an identification with one sex; it also entails desire be directed toward the other sex”.<sup>92</sup> In that sense any possible challenges to that sacralized gender structure is faced with “obligatory heterosexuality”,<sup>93</sup> under which any other sexual orientations and gender identities are obliged to be transformed into the institution of heterosexuality and fade into that heterosexual family structure.

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<sup>88</sup>Cythia Enloe, *Bananas, Beaches & Bases: Making Feminist Sense of International Politics*, (Berkeley: University of California Press, 1990), p.44.

<sup>89</sup>Enloe, (1990), quoted in Sylvia Walby, “Woman and Nation”, *International Journal of Comparative Sociology*, 33, 1-2 (January 1992), p .87.

<sup>90</sup>Heteropatriarchy refers to the imposition of norms that flourish the predominance of heterosexual male authority. In *Encyclopedia of Feminist Theories* heteropatriarchy is defined to include “the invisibility of lesbians, the construction and tolerance of dominant male violence together with intolerance of female violence against abusers, blaming the ‘feminine’ victim, and targeting a group of men as predators against whom dominant men can ‘protect’ chosen women...” Sarah Lucia Hoagland in Lorraine Code, *Encyclopedia of Feminist Theories*, (Routledge: 2000), p.245.

<sup>91</sup>Enloe,(1990),p.90.

<sup>92</sup> Nancy G. Rubin, “The Traffic in Women: Notes on the Political Economy of Sex” in Rayna R. Reiter eds., *Toward an Anthropology of Women*, (Monthly Review Press, 1975) , p.180.

<sup>93</sup> Ibid., p.182

Richardson's analysis well applies to Turkey. Turkey's Constitutions and laws one after the other put the patriarchal family as the most basic natural and sacred institution.<sup>94</sup> The construction of nation thus creates its own gender order, a prominently heteronormative one in the Turkish context, which excludes the sexual minorities who cannot be located into the previously drawn borders of the definitions of its citizens.

The questions concerning the inclusion of sexual minorities is also another problematic issue that leads to debates regarding the issue of right demands of the LGBT people. The frequently asked question is whether the extension of demanded rights in fact leads the LGBT movement itself to be lost within heteronormativity. The question stems from the assumption that the mere recognition of the demanded rights confirms rather than challenge the heteronormative structure of society. With this consideration in mind, Richardson draws a framework of sexual rights within which this debate can lead to emancipate the LGBT movement from falling prey to heteronormativity. She puts forward:

*Conduct-based rights*, to start with, correspond to the rights regarding the “various forms of sexual practice in personal relationships”.<sup>95</sup> For example, in various countries, the attempts to ban homosexuality altogether are obviously an attack against conduct-based rights, and aim to regulate the private sexual conduct of individuals. While these attempts are against the conduct-based rights of the

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<sup>94</sup>Present Constitution of Turkey defines the family as “the foundation of the Turkish society” and authorizes the state to “take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved...”  
Republic of Turkey, *T.C. Anayasası(Turkish Constitution)*, no. 2709, 18 October 1982, Article 41.

<sup>95</sup> Diane Richardson, *Constructing Sexual Citizenship: theorizing sexual rights*, Critical Social Policy, 20, 2000, p.109.

individuals, even the recognition of the right to participate in sexual activity –which means non-heterosexual, non-reproductive sexual activity- is further discussed in terms of whether the grant of this right is to be read as the recognition of homosexuality after all. Although these rights apparently hold the promise to allow one to engage in relationship with someone of the same sex, it accounts for toleration of same-sex relationship that occurs in the private and does “not seek public recognition”.<sup>96</sup>

*Identity-based rights*, on the other hand, include the right to self-determination, self-expression and the right to self-realization. Here the movement develops strategies to challenge discrimination against people who define themselves on the grounds of a gay or lesbian identity.<sup>97</sup> These right discourses directly address the public visibility and public expression of homosexuality, through the language of sexual freedom, instead of discussing toleration to same-sex activity in privacy. It involves writing, filming, broadcasting, expression of sexual identity and sexual orientation related feelings, thoughts, opinions or artwork and literary or political expressions. In other words, this set refers to LGBT-specific freedom of expression of rights. In that sense this set of struggles involve the politicization of sexual identity and sexual orientation in the public sphere.

Because the discourse of private is employed by heterosexism, coming out in terms of public visibility has vital significance regarding the fight against heterosexist limits of privacy and regarding the struggle for freedom of sexuality and the embodiment of LGBT rights. What is important to note here is Richardson’s

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<sup>96</sup> Ibid., p.110.

<sup>97</sup> Ibid.,p.116.

emphasis that the claim to identity-based rights cannot go beyond lip service if they do not accompany the struggle of conduct-based rights in the public level. After all what is the meaning of reflecting or freely deliberating on LGBT identity and its political significance, if the sexual act itself is banned?

Lastly, *relationship-based rights* have gained importance in the struggle of the LGBT movement in recent years. This struggle involved the recognition of rights within the social institutions and the validation of non-heterosexual relationships by the state. This scope in fact corresponds to the embodiment of first two rights at the social institutional level and these set of rights are related to the entitlement of the concerning demands an institutional recognition. The most important element of this category of rights is “the right to publicly recognized sexual relationships”,<sup>98</sup> which includes the right to same-sex marriage, the right to parenthood and the right for same-couples to adopt children.

In brief, the *conduct-based* rights include the rights that are related to practicing sexual activity and having the self-control on the bodily autonomy, the *identity-based* rights include the rights that are related to self expressions and self definition of one’s identity, whereas the *relationship-based* rights include the right to self-control on the sexual relationships, the recognition of these relationships and the right to enjoy civil rights as a part of this recognition.<sup>99</sup>

The key point concerning this categorization of rights is the significance the collaboration of three makes. The sheer defense of *identity-based* rights will not be

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<sup>98</sup> Richardson,(2000), p.126.

<sup>99</sup> Julienne Corboz, “Sexuality, Citizenship and Sexual Rights”, Australian Research Centre in Sex, Health and Society, 2006, p.4.

enough without the *conduct-based* and *relationship-based* rights in terms of struggling against the existing discriminatory practices, and only the struggle of the set of three rights altogether will help to dissolve the settled heteropatriarchal mental structure of the society and the heteropatriarchal framework of citizenship. Thus, the three classes of rights will only make sense in terms of the demands of LGBT movement, provided that the three categories are defended altogether.

The struggle of the LGBT movement against the current regulation of sex reassignment in Turkey voices the demand of recognition of trans individuals' *relationship-based* rights in Richardson's formulation. It is because the movement directly calls for a better regulation in the institutional level of the already recognized right to sex change in Turkey. The movement also demands the recognition of *conduct-based* rights, in terms of trans individuals' wish to decide on their bodily autonomy. Sex reassignment in Turkey is legally allowed, however the implementation shows us that the legal and medical experts are entitled with the initiative to decide on the consequence concerning the demand of identity change, instead of the trans individuals themselves, as further illustrated in the next chapter. In that sense, the legal recognition of the right to sex reassignment does not mean that trans people fairly enjoy their *conduct-based* rights.

On the other hand, since non-heterosexuality is not legally banned in Turkey, it can be argued that the *conduct-based* rights already exist at least in principle. *Identity-based* rights suffer though, LGBT organizations are frequently disbanded, and publications and Internet sites are almost always banned. Yet gay pride parades, press conferences, and some LGBT organizations are not meddled with so far and are expressing their identity based rights and even meet with the Constitution

Negotiation Commission to relate the demands of the LGBT population to the MPs. Thus it is no wonder that the entirely missing right in Turkey is the relational, institutional recognition aspect of LGBT rights. Of course we will see how the new Constitution, which is under preparation, will act towards *conduct-based* and *identity-based* rights of the LGBT individuals.

Considering the regulation of sex reassignment in Turkey, the borders of *good trans citizens* in Richardson's formulation starts at the point where the individual accepts to be an applicant that meets the requirements that are stated in the Article 40 of the Civil Code. In this sense the individual, with the identity he/she claims to belong in, is entitled to the citizenship with the sex of his/her own choosing, only with certain compromises such as the sacrifice of the capacity to reproduce for the sake of official recognition of the individual with the transitioned identity. When the current regulation is concerned, we can conclude that sex reassignment in Turkey is a recognized right. Yet it is only on the condition that the applicant fulfills the criteria that are listed in the Article 40. On the surface, regulation means the recognition of trans individuals as it allows sex reassignment. However its practice shows that the issue still needs to be dealt in terms of all three categories of rights for a complete recognition of trans individuals with their real identities. And more importantly, the heterosexist culture will have to be transformed, and the violence that is justified at the cultural level of daily practices has to be totally eradicated.

On the other side of the coin, in general, it is argued that the struggle for these rights in the social and institutional levels contributes to the heteronormative institutionalization of pre-determined boundaries between public and private, and to the categorizations of sexually deviant and immoral non-heterosexuals. This



argument is similar to the wide spread feminist concern that women's inclusion and the extension of their rights will not solve the underlying problem of patriarchy. Here it is significant to remember Pateman's argument that the issue has not been the exclusion of women from public life, it was the way their inclusion has been grounded in patriarchal beliefs and practices.<sup>100</sup> Hence, the *rights struggle* could be read to contribute the liberationist movement, only if it could be grounded on the deconstruction of patriarchal beliefs and practices.

The separation of public life from the private is not independent from the separation of the "natural" and the sacred sphere of the institution of heteropatriarchal family. On the contrary, it is directly related to rendering family "separate from and irrelevant to, the conventional relations of civil society".<sup>101</sup> This family, which lies at the very center of the civil society, is presented as the sacred institution that has to be protected from the threats of public. However, at the same time the heteropatriarchal moral codes that are embedded into the family values define who can exist in both spheres. Therefore the critics of the rights movement argue that a rights struggle, which is carried out with the terms of heteropatriarchal family, has no use for either the feminist movement or the LGBT movement. For these critics it is because a meaningful struggle must be based on the deconstruction of these terms.

Consequently, the critics of the rights discourse argue that the rights movement gives birth to the possibility of undermining the initial goal of the LGBT

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<sup>100</sup> Carole Pateman, *The Disorder of Women: Disorder, Feminism, and Political Theory*, (Cambridge: Polity Press, 1989), p.132.

<sup>101</sup> *Ibid.*, 132.

movement; which is to fight against the heteronormative morality structure. Neil Cobb touches upon the same point where he scrutinizes what he calls “bed and breakfast” paradigm regarding a debate about the Equality Act in UK, which referred to the gay couples that are refused accommodation in holidays in its consultation paper.<sup>102</sup> Concerning the regulation, Cobb argues that alas the aim is the extension of rights of LGBT individuals, “the rise of the paradigm further masks more obviously pervasive and egregious, but hidden, discrimination experienced by sexual minorities”.<sup>103</sup> In this case rendering LGBT individuals visible in the public debate without deconstructing the existing heterosexist mindset of society, this simple visibility is to be hollow. For this representation cannot go beyond the area of “limited thinkability”.<sup>104</sup> The proponents of this argument, therefore, read this “rights demands” process as mere lip service that most probably leads to more unexpected results, instead of contributing to the movement to a fair extent.

However to look at the issue from a different angle, it is important to remember: Although the call for the enactment of LGBT rights does not directly promise the deconstruction of heteronormative structure of the society in the short run, this right struggle must be read as the answer for the urgent needs of the LGBT

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<sup>102</sup>Parliament of the United Kingdom enacted the Equality Act, which outlawed discrimination on the grounds of sexual orientation in 2006. In the ‘Getting Equal’ Consultation Document concerning the legislation it was asserted: “There have been several accounts in our national newspapers of same-sex couples being turned away from hotels, bed and breakfasts or by tour operators, or who are refused shared accommodation when they request it.” as quoted in Neil Cobb, “Gay Couple’s Break Like Fawley Towers’: Dangerous Representation of Lesbian and Gay Oppression in an era of ‘Progressive’ Law Reform”, *Social Legal Studies*, 18, no:3, (2009), p.337.

See also: The Commission for Equality and Human Rights UK, Equality Act, 2006. Available [online]: [http://www.legislation.gov.uk/ukpga/2006/3/pdfs/ukpga\\_20060003\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/3/pdfs/ukpga_20060003_en.pdf) [15 July 2012],

The Office of the First Minister and Deputy First Minister UK, Getting Equal Consultation Document, 2006, Available [online]: <http://www.ofmdfmi.gov.uk/gettingequal.pdf>, [15 July 2012].

<sup>103</sup>Cobb, (2009), p.335.

<sup>104</sup>Ibid.,p.340.

community, such as the provision of public self-expression at least on paper. Even though the inclusion of these rights on paper does not guarantee their applicability, protection by the laws will lead to step by step conduct, and at the end of the day, in a way it will contribute to the deconstruction of heteropatriarchal societal norms according to these conduct in the long run.

Thus before rejecting the rights agenda completely, it is important to raise Richardson's question "what concept of citizenship operates for such groups who, despite varying forms of exclusion, have developed lesbian and gay 'communities'?"<sup>105</sup> Seidman, in this sense, offers a third way approach, where he puts forward the right-based approaches as the point to start. He nevertheless reminds us to be alert to the misleading stance of promoting "a wider agenda of sexual and social justice".<sup>106</sup> A more liberationist position that will be flourished against the heteronormative domination, will contribute to the rights-based approaches. In that sense it will reduce the side effects of exclusively universalist agendas. Hereby the right-based approaches are supposed to play a significant role in terms of leading societal change; however "an anti-normalising politics" is essential to be employed and embedded as an answer to the need of deconstruction of heteronormative domination.<sup>107</sup>

A struggle that is carried out by the feminist and LGBT movement need not be carried out in heterosexual terms, or in terms of the sacralization of

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<sup>105</sup> Diane Richardson, "Sexuality and Citizenship" *Sociology*, 32, no:1, (February 1998), p.96.

<sup>106</sup> Steven Seidman "From Outsider to Citizen". In E. Bernstein and L. Schaffner (eds.) *Regulating Sex: The Politics of Intimacy and Identity*, (New York and London: Routledge, 2005) p.233 quoted in Corboz,(2006), p.16.

<sup>107</sup>Corboz, (2006), p.13.

heteropatriarchal family. Would not this be emancipatory in the feminist and LGBT demand for inclusion and equality on the basis of the recognition of their needs become victorious in having their demands accepted by the society? Would not this constitute the very act of deconstructing heteronormativity and its sacred family?

In terms of being alert against the trap of universalism in formulation of rights-based agendas, it is important to acknowledge Lister's argument in favor of a *differentiated universalism*. It is crucial in order to refrain from the side effects of equality vs. difference debates and in order to embrace the "tension between difference and the (false, exclusive) universalism that stands at the heart of citizenship".<sup>108</sup> In its application to consideration of citizenship, the particularization of rights will be embedded in the respect for differences; while this particularization will also be based on the maintenance of universalism and equality.<sup>109</sup> By this way a rights movement, as Seidman puts forward, will be carried out interrelated to a new understanding of citizenship, in order to avoid the promotion of false universalist agendas.

As an answer to Richardson's question through another scope, disagreeing with the view that gender-blind conceptualization of citizenship is also gender-neutral; Lister also suggests reconsidering the public - private divide. In this sense she argues in favor of a different form of a gendered conception of citizenship. This new conception of citizenship initially aims to touch upon the public-private divide, which underlies the power relations, and those power relations constantly reshape

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<sup>108</sup> Ruth Lister, "Dialectics of Citizenship", *Hypatia*, Special Issue: Citizenship in Feminism: Identity, Action, and Locale, 12, no:4, (November 1997), p.23.

<sup>109</sup> *Ibid.*, p.23.

and redraw this divide.<sup>110</sup> Lister's reference to the idea of sexual citizenship is thereby an engendered one. This idea is based on the reconsideration of how gender-blind conceptualizations of citizenship have so far turned out to favor heteropatriarchy, which is not gender-neutral at all.

The definition of sexuality through the shield of *privacy* is withdrawn from the discussions of the public sphere, where it is attributed irrelevance and instead is locked into the sphere of the private. Citizenship, on the other hand, is assumed to belong to the public sphere where the debate of the rights and responsibilities of the citizen is located. In that sense, any challenge to the heteropatriarchal structure of society and its definitions of sexuality remains unanswered; as long as the categorization that locates sexuality into privacy is endured. Thus this new conceptualization Lister puts forward, should be one that can bridge the two conceptualizations; one locked into private and the other dominating the public sphere. Being rescued from the servitude to privacy, the new sexual citizen, "therefore, is a hybrid being, breaching the public/private divide".<sup>111</sup>

Then what is necessary for such a conceptualization to be settled into the mind sets of people, besides the daily practices of state policies, is the moment of *transgression* as Weeks put it. This *transgression* entails the abolishment of *nons* that labels LGBT individuals as non-heterosexuals and it launches the "constant invention and reinvention of new senses of the self and new challenges to the inherited institutions and traditions that hitherto excluded these new subjects".<sup>112</sup> This

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<sup>110</sup> Ruth Lister, "Citizenship engendered" *Critical Social Policy*, 11 ,no:32, (September 1991), p.65.

<sup>111</sup> Jeffrey Weeks, "The Sexual Citizen", *Theory, Culture & Society*, 15, no: 3-4, (1998), p.36.

<sup>112</sup> *Ibid.*, p.36.

reinvention of new senses of the self is to be started at the very point where the new sexual citizen is to break the bondage of the private sphere. Thus the sexual citizen is enabled to participate in the public sphere, where the private choices are respected and protected this time in an inclusive manner.

What has previously been thought as the public and private divide is now a matter of constant questioning. This, at the end of the day, signifies a break with the past; a break with the traditional definitions of responsibilities and obligations, a break with the traditional forms of categorizations and socializations. The “detraditionalization” as the architect of the creation of new subjectivities is hereby the author of “new culture of responsibility”.<sup>113</sup> Cultural belongings as well as pre-determined norms and institutions are dislocated within the very existence of this new subjectivity. Thus the new sexual citizen is the byproduct of the transcendence of the boundaries of public and private. It is the embodiment of dissolution of existing definitions and categorizations that had previously locked individuals into the boundaries of those definitions. The new sexual citizen is the “hybrid being”,<sup>114</sup> as it calls out to public and the private at the same time, and it utilizes their constant engagement by the very act of going beyond the traditional definitions of public-private divide. Now with this very new culture of responsibility, individuals themselves are both the actors and the creators of new subjectivities. Within the politics of everyday life, individuals reflectively shift identities throughout their

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<sup>113</sup> Ibid.,p.44.

<sup>114</sup> Ibid.,p.36.

collective experiences and with the help of the counter-discourses that they give birth to.<sup>115</sup>

The problem with the conceptualization of sexual citizenship, however, is the above mentioned universality trap that most scholars fall into. It is not possible to voice demands of all sexual minorities through one channel of representation, and it is not possible to attribute them homogeneity. Sexual citizenship debates are vital and leading in terms of the political struggle of the LGBT movement and they are invincible to be employed for the goal of deconstructing the heterosexist conceptualization of ideal citizenship. However they remain insufficient in addressing the more specific questions concerning the status of trans people. Corboz accurately reminds that the trans people rarely fit into the generalized models drawn under the title of gay and lesbian citizenship, where the former are rendered absent even within the debates regarding the LGBT individuals.<sup>116</sup> The situation of trans individuals requires distinct analysis in terms of the socio-economic divergence of trans people from the other LGBT individuals and especially in terms of the issues of sex reassignment and conditions of sex work.

Thanks to the increase in the number of trans organizations and their struggles to voice their demands within the movement as well as the public sphere such as the purposive divergence of transpride from gaypride, the issue and the status of trans people has begun to settle into citizenship studies, quite recently. Even though the category of trans individuals might also entail diverse demands and interests within itself; the scrutiny of their status and the voicing of their demands

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<sup>115</sup> Ibid., pp.46-48.

<sup>116</sup> Corboz, (2006), p.12.

will contribute to the conceptualization of sexual citizenship to a significant extent. In this sense for the purposes of my study, I locate the status of trans individuals on the sexual citizenship literature through a reading of analyses concerning the issue of sex reassignment.

### The Debate of Sex Reassignment

A systematic reading of the legal regulation regarding sex reassignment in Turkey well reveals how the trans issue is settled into the question of citizenship. The regulation of sex reassignment is a multifaceted issue. Putting aside the other requirements that pave the way of several ambiguities regarding how to decide one's *transsexual nature*, regulation concerning sex change in the Civil Code requires *permanent fertility* of the applicant. On that regard, as for Mackie, surgeries and the state's relation to the trans issue "reveals about state attitudes to citizens' control over their reproductive capacity".<sup>117</sup> Mackie argues that the issue of sex reassignment is, by its very existence, problematic for the state, because it deals with the issue of fertility. And fertility means the alteration of the individual's reproductive capacity. Reproductive capacity is an issue that is rendered under control by the state, as it is directly related to the family, to which the continuity of the nation-state is attributed. Then the acknowledgment that "participation in the heterosexual nuclear family system is one of the expectations of the citizen"<sup>118</sup> leads us to the same conclusion that the trans individuals cannot fit into the archetypal

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<sup>117</sup> Vera Mackie, "The Trans-sexual Citizen: Queering Sameness and Difference", *Australian Feminist Studies*, 16, no: 35, (July 2001), p.186.

<sup>118</sup> *Ibid.*, p.189.



definitions of citizenship “with a stable place in the sex and gender system”.<sup>119</sup> And this understanding renders it nearly impossible for the trans people “to access stable employment, another profile of the archetypal citizen”.<sup>120</sup>

The next issue, which is touched upon by several scholars, is that; for the individuals who cannot define themselves through the *either male or female* categorization, sex reassignment process turns into a certification mechanism. In this certification mechanism, the applicant is, in a way, supposed to prove sufficiency to fit into the gender he/she wishes to transition to, according to the norms that define that archetypal citizen. Most prominent aspect of this certification mechanism is the fact that, the initiative of testing the sufficiency of the applicant belongs to the legal and medical authorities.

Current regulation in Turkey –in its demand of the proof of transsexual nature, of the proof of necessity of reassignment in terms of mental health and of the proof of permanent infertility –gives the initiative to the medical professionals who will decide on the medical necessities, and the very final say to the legal professionals who will be the last resort to allow the official sex change. Hereby, through this implementation, in Foucauldian terms as Mills notes it, “those who are seen to be ‘experts’ are those who can speak the truth”.<sup>121</sup> Regulation recognizes the ‘experts’ as the decision making mechanisms, which have the priority over the individuals’ self-definitions regarding their sexual identities. In this sense medical experts play

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<sup>119</sup> Ibid., p.189.

<sup>120</sup> Ibid., p.189.

<sup>121</sup> Sara Mills, *Michel Foucault*, (Routledge, 2003), p.58 as quoted in Danielle M. Lockwood, “Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey”, (MA Thesis, Utrecht University, 2007), p.11.

the role in the determination of *transsexuality* before the court, whereas law here “plays a vital role in defining sex/gender by determining what it is/is not, in order to avoid confusion when confronted by ambiguities”.<sup>122</sup>

The only option for the trans individual then, is to go through these medical and legal stages drawn under the law, in order to get official recognition. At the end of the day, this “heavily medicalized and judicialized process”, in Kurtoglu’s terms, “starts out with getting a permission from a judge and finishes with the approval of a judge”.<sup>123</sup>

Through the scrutiny of the recent legal regulation in the UK,<sup>124</sup> Sally Hines similarly tries to show how that archetypal citizen definition underlies “the legislative understandings of transgender [which] remain tied to a medical perspective”.<sup>125</sup> The medical model drawn defines the properties that the applicant is supposed to attain. And on the other side of the coin, it labels the others who cannot or reject to own those properties as “non-citizens” who have to remain at the margins of the pre-defined borders of citizenship.

Hines’ study is based on the two-step in-depth interviews with a number of trans people who are at different stages of transition. Interviews were conducted in

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<sup>122</sup> Megan Bell, “Comments-Transsexuals and the Law”, *Northwestern University Law Review*, 98, vol.4 (Summer 2004), as quoted in Lockwood, (2007), p. 15.

<sup>123</sup> Ayça Kurtoglu, “Sex Reassignment, Biological Reproduction and Sexual Citizenship in Turkey” *Reproduction*, 2, no: 2, (December 2009), p.86.

<sup>124</sup> Parliament of the UK enacted Gender Recognition Act(GRA) in 2004 and it came into force on April 2005. Under the new regulation sex change in birth register was allowed and the trans people were given the right to sex reassignment.

See also: Parliament of the United Kingdom, 2004, Gender Recognition Act, Available[online]: <http://www.ofmdfmi.gov.uk/gettingequal.pdf>, [15 July 2012].

<sup>125</sup>Sally Hines, “(Trans)Forming Gender: Social Change and Transgender Citizenship”, *Sociological Research Online*, 12, no:1, (January 2007), p.11.

order to understand the viewpoints of participants regarding the surgical modifications, hormone treatments and their conceptualizations of trans identity on the whole. Through a reading of medical correction stories, she underlines how significant the “return to true self” discourse is and how central it has been within the debates of the trans issue. And this discourse has grown out of the understanding that *transsexuality* is a problem. It is a problem that needs to be overcome and fixed through converting the body into something, which could fit in one of the binary gender codes, either femininity or masculinity.

More importantly she argues that this “return to true self” discourse based on the wrong body narrative “may be seen to be medically constructed and internalized as a means to an end”.<sup>126</sup> Thus, the more medicalized the language regarding *transsexuality* gets, the more the trans individual employs and functionalizes that language. Therefore, the idea of return to true self corresponds to the rehabilitation of the trans people in pursuance of the medical confirmations, which explain *transsexuality*. Then the crucial point is that, these definitions turn out to shape the very trans identity.

Prosser, on the other hand, reads the “wrong body” discourse as an experience of the pre-transition period. For him, the translation of *transsexuality* is exactly the aim of reaching one’s true self, by getting over the wrong body. Then the reason of the insistence on the narrative of wrong body (or wrong embodiment as he puts it) is “because being trapped in the wrong body is simply what *transsexuality* feels like”.<sup>127</sup> For him, this narrative of being trapped in the wrong body “suggests

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<sup>126</sup>Ibid., p.6.

how body image is radically split off from the material body in the first place, how body image can feel sufficiently substantial as to persuade the transsexual to alter his or her body to conform it. The image of wrong embodiment describes most effectively the experience of pre-transition (dis)embodiment: the feeling of a sexed body dysphoria profoundly and subjectively experienced”<sup>128</sup>. Thus this commonly shared feeling of being trapped, that is gender dysphoria, is disposed of through the correction of individual’s wrong sex. This correction refers to the right embodiment for the individual.

What Hines disagrees in this argument is Prosser’s analysis of return to true self narrative as an experience attributed to all trans individuals. Hines, on the contrary, claims that it is not possible to take the trans identity as a monolithic experience. In her research, many participants found the “wrong body” narrative as deeply unsatisfactory. Participants’ own definitions regarding trans identity were much more complicated indeed to be simply explained as being trapped in the wrong body. In other words, for her, the wrong body narrative belongs to a medical construction<sup>129</sup> that is taught in a predominantly heteronormative society, and inevitably internalized by the trans individuals themselves.

One should underline the author’s focus on this construction as being internalized and utilized by the trans individuals themselves. Similar to Hines, Cromwell argues “the idea has been imposed upon trans people by those who control access to medical technologies and have controlled discourses about trans people.

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<sup>127</sup>Jay Prosser, *Second Skins: The Body Narratives of Transsexuality*, (Columbia University Press, 1998), p. 69, (my emphasis).

<sup>128</sup>Prosser, (1998), p. 69, as quoted in Hines, (2007), p.6 (my emphasis).

<sup>129</sup>Hines, (2007), p.6.

Some individuals may believe or come to believe that they are in the wrong body or at least use language that imparts the same meaning”.<sup>130</sup> Therefore, both authors disagree with the view that all trans individuals share the “return to true-self discourse” profoundly. Hence both of them criticize Prosser’s take of the wrong body narratives and find him uncritical in his reading of these narratives.

This debate on whether the decision of sex reassignment is an imposed one as a result of social constructions that medicalize and pathologize the trans identity is an important one, since it also leads to disagreements among the scholars that deal with the issue. When the trans issue was first on the agenda of feminism in the 1970’s, several scholars including Janice Raymond argued that trans women could not share the experience of womanhood “encumbered by the scars of patriarchy that are unique to a woman’s personal and social history”.<sup>131</sup> For these scholars, male-to-female trans individuals, therefore, cannot be counted as women as biological women are.<sup>132</sup> They argued that primarily conceptualized male-to-female *transsexualism* was understood as “affront against women”,<sup>133</sup> whereas the female to male trans individuals were not even on the agenda. Thanks to the struggle of the LGBT movement, as well as lesbian feminism, this stance is abandoned due to its obsession with biological sex and due to its gender essentialism. The debate on the trans issue, however evolved, into two camps concerning the issue of reassignment currently:

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<sup>130</sup> Jason Cromwell, *Transmen and FTMs: Identities, Bodies, Genders and Sexualities*, (University of Illinois Press, 1999), p.104 also quoted in Hines, (2007),p.6.

<sup>131</sup> Janice Raymond, “Sappho by Surgery: The Transsexually Constructed Lesbian Feminist,” (1979), in *The Transgender Studies Reader*, edited by Susan Stryker and Stephen Whittle, (New York : Routledge, 2006), p.103 .

<sup>132</sup> Raymond even goes on to argue that transsexuals rape the bodies of women, therefore depicts them as threats and deception of womanhood. Raymond, (1979).

<sup>133</sup> Raymond,(1979) as quoted in Bernice Hausman, “Recent Transgender Theory”, *Feminist Studies*, 27, no: 2, (2001), p.465.

Whilst some authors argue that the need for reassignment is socially constructed, several others underline the vitality of the surgeries for the trans individuals.

First camp of the debate basically assumes that the trans identity is merely the byproduct of “medical and psychiatric institutions”.<sup>134</sup> The idea is that *transsexualism* served as the reconfirmation of the binarization of gender roles. In that sense surgeries are understood as the tool that enabled the individual to adopt the convenient role, while leaving the inconvenient one. Authors in this school, such as Devor (2007), Ekins(2006), Wilchins(2002), Stryker(2006,2008), Halberstam (2005), therefore start with rejecting the term *transsexual* and employ “*transgenderism*” which belongs to a queer vocabulary in the sense that the latter connotes to a non-fixed identification. To open it up, *transgenderism* challenges the idea that people can be categorized in one of the two sexes. Transgressing the gender codes, in other words following a neither/both approach instead of an either/or one, “has come to be privileged over passing as women and men. Those who seek to pass as women or men are described as being ‘closeted’, or having ‘false consciousness’”.<sup>135</sup>

It might be useful to remind here that the term *transgender* has risen as an umbrella term that is attributed to *transsexuals*, *transvestites*, *intersex people* and *cross-dressers* instead of referring to a single sexual orientation and a single gender identity. We should note that these conceptualizations do not underline clearly defined identities. Consequently most individuals, particularly those who are at the process of transition, prefer to use the term *trans/transgender* in their belief of the

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<sup>134</sup> Viviane Namaste, *Sex Change, Social Change: Reflections on Identity, Institutions, and Imperialism*, (Toronto Ontario: Women’s Press, 2005), p.3.

<sup>135</sup> Katrina Roen, “‘ Either / Or ’ and ‘ Both / Neither ’: Discursive Tensions in Transgender Politics.” *Society*, 27, no:2 , (2002), p. 521.

complexity of gender identities and orientations. For the term *transvestite*, which was generally used for individuals who has the appearance of the opposite sex without undergoing the surgery, has a pejorative meaning. Also individuals mainly do not want to identify themselves with an identity concerning their surgery status. They simply reject to be defined according to the fact whether or not they have undergone the surgery. Hereby the terms *trans/transgender* extensively dominates the language and replaces the division of *transsexual/transvestite*.

However the intentional abandonment of the term *transsexual* also signals a particular political inclination. This political inclination is the rejection of sex reassignment as a medical intervention, since the word *transsexual* has come to be attributed to the people who have undergone the surgery. Despite the fact that the term *transgender* is also used to include all gender variant orientations, it is also intentionally used by scholars and activists who reject that gender identities are fixed. Accordingly, “passing as the ‘other sex’ is the ultimate sell- out”, as it is understood to be “complicit with normative gendering”.<sup>136</sup> These scholars argue that identities move in their fluid nature. Therefore, they assume that reassignment of sex is automatically invalid, because sex, too, cannot be stabilized. In that sense the term *transgender* well answers to this fluidity. In other words, although the term *transgender* is widespread among the trans individuals as the term connotes all identities regardless of the surgery situation, the *transgenderist* school of thought has also employed it. For, the *transgenderist* school of thought argues that sex reassignment surgeries are based on the social constructions of binary gender roles, and thus sex reassignment will only serve to reproduction of this categorical

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<sup>136</sup> Ibid., p. 501.

divergence. In that sense *transgenderism* is mainly attributed to the understanding which rejects the reassignment process. The scholars in this camp thus criticize reassignment phenomenon as reproducing heteronormative categorization of binary roles; gender dichotomies as either man or woman.

As Hausman puts forward, this school has quite significant contributions that opens up new conceptualizations with its comprehensive critique of heteronormativity. It certainly broadens the scope of the debate with its “emphasis on performativity over essence”, together with its “insistent denaturalization of sexuality”<sup>137</sup>. These points have been subject of debate in the scope of both feminist and queer studies since the late 90’s. However *transgenderist* theories played an undeniable role in LGBT studies in bringing the issue of sex reassignment into question, which was underestimated before. Nevertheless, although the *transgenderist* school of thought aims to shed light on the heteronormative contributions that underlie sex change, it is criticized for its paternalism in reducing the demands of trans individuals to sheer social constructions and disregarding the daily forms of discrimination trans people have to face. It is meaningful to remember Elliot’s question here: “If gender is nothing but an oppressive social order, as some feminist, queer, and trans theorists argue; are transgender persons more politically progressive in refusing to comply with it than their transsexual counterparts who seek recognition within its terms?”<sup>138</sup>

This question is often the agenda of the other camp that evaluates the issue of sex reassignment within a rights struggle. For this school, which is called

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<sup>137</sup>Bernice L. Hausman, “Recent Transgender Theory.” *Feminist Studies*, 27, no: 2, (2001), p. 467.

<sup>138</sup>Patricia Elliot, “Engaging Trans Debates on Gender Variance: A Feminist Analysis”, *Sexualities*, 12, No: 1, (February 2009), p.6.



the *transsexualist* school of thought by the *transgenderist* camp, the *transgender* debate misses how vital the issue of sex reassignment is for trans individuals. *Transgenderist* debate neglects how the application of rights, recognized or not, is related to the sociocultural structure in the big picture. For Namaste, “transgender emphasis on gender identity obscures transsexual’s concern with the social and political processes involved in becoming and living as the other sex”.<sup>139</sup> This camp, criticizing the *transgenderist* school, argues that the *transgender* emphasis turns out to ignore the *transsexual* experience. In this emphasis, *transsexual* experience is rendered invisible under the umbrella of *transgender*, and this umbrella does not in fact allow any gender specificities that locate the individual within the binary categorization.

Trans people then could only be read as “valued examples of gender performativity only if they abandon their desire for congruence”.<sup>140</sup> Authors such as Namaste (2000,2005), Elliot (2009), Rubin (1998,1999), Prosser(1998) defend that this desire of constructing congruence between sex and gender and the demand of living as man or woman is definitely individual’s right to be recognized and advocated. Significant in enlightening the opposing views of this debate, Patricia Elliot raises a question to Halberstam, who argues that identity migration from the wrong body to the right body “merely leaves the politics of stable identities and therefore stable gender hierarchies, completely intact”.<sup>141</sup> She asks: “If ‘specificity is

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<sup>139</sup>Namaste, (2005), also quoted in Elliot, (2009), p.8.

<sup>140</sup>Henry Rubin, “Phenomenology as a Method in Trans Studies”, *GLQ: Journal of Lesbian and Gay Studies*, 4, no:2, (1998) , pp. 275,276 in Elliot, (2009), p.9.

<sup>141</sup> Judith Halberstam, *Female Masculinity*, (Durham, NC: Duke University Press, 1998), p.171, quoted in Elliot(2009), p.23.

all' and transsexuals express a desire to move from a body that feels wrong to one that feels right, then why can't the specificity of *this* desire be appreciated?"<sup>142</sup>

The main critique to the *transgenderist* school is its interpretation of "any account of sexual difference that exceeds the sociological, performative account" as gender conservative, heteronormative and essentialist.<sup>143</sup> With their devaluation of sex reassignment and the *transsexual* identification on the whole as falling into heteronormativity's trap bounded by binary constructions, they fail to refrain from falling into paternalist trap. In that trap, they are unable to recognize individual's own desire for living in one of the two sexes.

This paternalism draws a sense of hierarchy between the *transgender* activists who *transgress* the predetermined boundaries of gender structures and the *transsexual* individuals who are defined as stuck in these categories by *passing* from one to another. This hierarchy is one that "attributes a moral high ground to the queer goal of visibly contesting stable gender categories and construes transsexuals who wish to live as ordinary women and men as gender conservatives".<sup>144</sup> It puts forward its position to be politically progressive regardless of the demands of the trans people and their existing political struggle. In that sense it also ends up determining the borders within which trans politics could be carried out. Namaste draws attention to a commonly neglected point that this restrictive political stance could be too luxurious for most trans individuals. It is because it might not be "available to poor and

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<sup>142</sup>Elliot(2009), p.23.

<sup>143</sup>Elliot(2009), p.9.

<sup>144</sup>Ibid, p.10.

working class transsexuals whose ability to make a living or to access housing or health care would be jeopardized by adopting a visibly transgendered body”.<sup>145</sup>

In this manner, considering the Turkish context where the socio-economic status of trans population belongs to the lower strata of society, individuals whose lives are already quite vulnerable in front of the official institutions might not afford this political stance. Especially, this is the case for most male-to-female trans individuals, majority of whom are sex-workers. Prostitution is most of the time the only option for trans women, due to their visibility compared to their male counterparts who might have better options in terms of employment. In that sense, the application of sex reassignment and official change in their identity cards consist a significant component of their life struggles with their migrated identities.

Moreover, the critique of *transgenderist* school aim to demonstrate that; although trans individuals might not find a place under the *transgender* umbrella, this does not mean that they support heteronormative gender codes that deny their very existence and define them as a threat to the societal order. On this account, the question whether the choice of sex reassignment means the loss of agency is another significant matter of debate between the two opposing camps. Butler, for instance, argues that the medical process of diagnosis might induce the individual to see oneself as mentally ill and abnormal. Therefore she defines the diagnosis itself as “paternalistic and pathologizing, such that ‘choosing’ to submit to it, however strategically, entails a loss of agency and a subjection to the regulatory norms of a rigid gender order”.<sup>146</sup> However the opponents of this view find this stance

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<sup>145</sup>Namaste, (2005), as quoted in Elliot, (2009), p.10.

paternalistic too in the sense that it ignores the transsexual political struggle for access to medical care. Butler's analysis is thus criticized for not appreciating "the historical efforts of transsexuals to establish a recognized medical condition that enabled doctors to perform sex reassignment surgery in the first place".<sup>147</sup>

Coming back to the above-mentioned debate regarding the "wrong body narrative", in parallel with Butler's assertion, the *transgenderist* argument is that the individual's agency is lost among the adaptation process to normative classification of the medical examination. However the *transgenderist* school of thought fails to catch the reality of trans people in its scrutiny of sex reassignment, in the sense that it misses the strategical tools that the trans individual comes to develop in order to circumvent the normative enforcements of legal and medical regulation of reassignment. As the findings of Hines' study support, most trans individuals are aware of the wrong body narrative is expected from them during the medical and legal processes. Therefore, "whilst the 'wrong body' hypothesis can be seen as a discourse that produces its subject, the self-conscious repetition of the 'wrong body' narrative can be read as an agency driven process whereby trans people employ knowledge as power".<sup>148</sup> Then the strategy they adopt to convince medical and legal authorities and their conscious employment of the gender codes in the discursive level indeed reflect the significance of the trans agency. It is an agency through which the individuals create their own ways to overcome the process. However there is one thing that needs to be taken into account. Critical reading of school of

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<sup>146</sup>Judith Butler, *Undoing Gender*. (New York: Routledge, 2004), p.78, as quoted in Elliot, (2005), p.15.

<sup>147</sup>Elliot, (2005), p.15.

<sup>148</sup>Hines, (2007), p.7.

*transgenderism* is quite significant in the sense that it questions latter's paternalistic attitude that does not recognize the agency of the individual in the decision to have the surgery. The paradox is that the rejection of trans agency and the interpretation of their desire to migrate from one gender to another as reification of binary gender codes, result in the neglect of their demand, "in order to achieve the most stable identity from which to communicate their true selves"<sup>149</sup> in a societal system based on the gender binaries.

What is important, on the contrary is, regardless of the debate whether this demand is socially constructed or not, individual's decision and desire of embodiment in one of the binary gender roles must be recognized as a right. For in such a system where "identities are defined as heterogeneously and conjuncturally as they are here and in which both possibilities might, therefore, coexist",<sup>150</sup> it is not possible to advocate one correct path concerning the underlying reason of the need for surgery. It is also not possible to make a judgment concerning whether this demand reconstructs or deconstructs the dichotomous structure of existing gender roles. Instead, the significance lays in the vitality of the issue in terms of rights' struggle of the trans people. Thus, just as the right of individuals who demand to locate themselves in one of the two gender roles must be defended, the right of those who reject to live either as a man or a woman as defined in the legal and medical codes, must be recognized too.

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<sup>149</sup>Lockwood, (2007), p.116.

<sup>150</sup> Deniz Kandiyoti, "Pink Card Blues: Trouble and Strife at the Crossroads of Gender" in *Fragments of Culture: The Everyday of Modern Turkey*, edited by Deniz Kandiyoti and Ayşe Saktanber, (New Brunswick, New Jersey: Rutgers University Press, 2002), p.288.

Otherwise the critique against the *transgenderist* school of thought, for not touching the realities of those who demand the surgery, does not make any sense in terms of political struggle of LGBT movement. A politics that defend the right to sex reassignment, whilst ignoring those for whom the narrative of finding “proper home”<sup>151</sup> might not be attainable, is not meaningful. That is because it would not actually contribute to the struggle against heterosexist structure of society. In that sense we should remember that the trans people’s rights struggle and the demands concerning the regulation of sex reassignment must be embedded with the concern of depathologization of the trans identity. A politics that would make sense, should recognize the right of reassignment on the one hand, and it should reveal and struggle against the heteronormative and heterosexist mental structure that enforces the individuals to fit into the predetermined patterns in the application of reassignment, on the other. These are not mutually exclusive<sup>152</sup> strategies and the political struggle will only make sense through the employment of these strategies altogether.

All in all, one can conclude that there are two opposing camps in the academic debate concerning the issue sex reassignment. Whilst one camp argues that the issue of sex reassignment contributes to the reproduction of heteronormative binary gender codes, the others defend the necessity to fight for the right to sex reassignment for those who demand it.

First group which calls for a transgenderist struggle, well contributes to LGBT movement with its attack on heteronormativity through constant denaturalization of sexuality and its utilization of the concept of performativity.

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<sup>151</sup> Aren Z. Aizura, “Of borders and homes: the imaginary community of (trans)sexual citizenship”, *Inter-Asia Cultural Studies*, 7, no: 2, (2006), p.293.

<sup>152</sup> Roen, (2002), p.502.

However, they fall into the trap of paternalism when they simply label the demand of sex reassignment as gender conservatism, and establish hierarchy between those who transgress and those who pass. Despite the significant contributions of this camp concerning the questioning of heteronormative structure of the definitions regarding the gender relations, its political inclination fails to catch the reality of the trans people. Most particularly in the Turkish context, where the trans individuals are giving the struggle of sheer existence on the main streets, establishment of such a hierarchy cannot go beyond the ivory towers that are distant from streets where the lives of these people are quite far from being ordinary indeed.

The other camp also has significant contributions to the movement in the sense that it defends the necessity of a rights struggle and paves the way for it for those who demand sex reassignment. Nevertheless it should be supported by a mental structure that saves the conceptualization of sex from its static definitions, and that recognizes the rights of those who reject to live as a man or a woman as defined under legal and medical regulations. It indicates the vitality of a mental structure for which the credits should be given to the previous camp.

Therefore an approach that benefits from the two camps will be one that leads a rights movement, which aims to improve opportunities for those who demand the surgery. It is also an approach that tries to undermine the heterosexist structure of society and to deconstruct existing gender goals at the same time, however without falling prey to the trap of paternalism.

## Concluding Remarks

This chapter offered the evaluation of the theoretical framework that the issue of sex reassignment is located. The citizenship debates gain significance in the sense that the regulation and implementation of sex reassignment in Turkey indicates how the conceptualization of citizenship in the Turkish context connotes to a restrictive and exclusivist meaning. It is because that conceptualization draws the borders within which the individuals can be recognized with the identities they have migrated. The context and understanding of citizenship in Turkey overlap with the framework of citizenship debates that enlighten the heteropatriarchal grounds, on which the mainstream citizenship conceptualizations are settled. In consideration of a new conceptualization of citizenship, debates on the framework of rights concerning the LGBT issue plays a certain role in determining the route of the struggle for this new conceptualizations. However one should keep in mind the vitality of the necessity to purify the rights movement from its heterosexist terms, in order to relate it to the new conceptualization of citizenship that liberates the trans individuals. Cleansing it from the predominant heteropatriarchal structure is only possible with the desacralization and deconstruction of male dominated heteronormative codes of society in collaboration with the rights struggle. This chapter also shed light on the debate concerning whether this deconstruction could be possible together with the defense of the right of sex reassignment. In this debate, one camp argued that the very logic of sex reassignment could be interpreted as the reproduction of gender dichotomies and the starting point should be the deconstruction of these dichotomies and struggle against the pathologization of trans identity. On the other hand, the other camp argued that the initial point should be the support for individuals who demand it, instead of questioning the sources of this demand. This thesis argues that the two



strategies are not mutually exclusive strategies, and a new conceptualization of citizenship in that sense can only be liberating, if it utilizes the core of the two camps in its support for the right of reassignment and the enhancement of the regulation. This support must also be embedded in the emphasis of the goal of struggling against the pathologization of trans identity, and the motivation to undermine heteropatriarchy in each level of this struggle.

## CHAPTER 4

### THE EXPERIENCE OF REASSIGNMENT IN TURKEY: ANALYZING THE TESTIMONIES OF TRANS INDIVIDUALS

#### Introduction

The motivation that led me to this study has been to look upon the puzzle that sex reassignment is an officially recognized right; however it is regulated in a sense that the applicant individual should confirm his/her adaptation to an archetypal *transsexual* within the scope of regulation. The legal code defines the conditions of that recognition as the criteria, required to be fulfilled by the Article 40. In that sense, one question was how the recognition of the right to sex reassignment as a seemingly liberationist policy turns out to create the borders of a restrictive recognition, which is far from embracing the sexual minorities. Requirements are stated in the law, and a careful reading of the contextual framework of the concerning legal code shows that the regulation aimed standardization. However, the lack of (and the impossibility of) a standardized definition of the “transsexual nature” and the “necessity of reassignment” gives birth to a loophole in the reassignment process in Turkey. Therefore another question for me to raise, was how this loophole is covered in the implementation of the regulation. In that sense, the experience of the trans individuals gain significance to understand the mechanisms through which this loophole is replaced with the final say of the expert opinions. Making sense of the trans experience of the process was also important, since it indicates how these mechanisms are reflected on the subjects of the main actors of reassignment.

The previous chapter offered an evaluation of the theoretical framework concerning the issue of sex reassignment in Turkey, through the reading of regulation in its contextual relevance to the debates of citizenship and heteronormativity. This chapter aims to shed light on this relevance, through the light of the prominent layers of the implementation level, based on the perceptions and self definitions of trans individuals, and according to how they position themselves within their experience of reassignment. The rest of this chapter is organized to that end, in accordance with these prominent layers of the reassignment experience based on the testimony of the interviewees.

### Getting the New Identity Card

Changing the national identity card was often repeated as the ultimate goal of the trans individual at the institutional level. For the trans individual, new identity card means the official recognition of one's real identity, the gender identity to which the individual already feels to belong. Yet, what are the significances of the identity card and the official recognition of the migrated identity for the trans individual? Is it that vital for the transitioned gender identity to be recorded officially?

The answer is yes, especially if the individual is in the transition period and has started using hormonal medicines. During the hormonal treatment, especially in the first six or seven months of hormonal usage, individuals experience the most explicit change in their physical appearances. Some of them are luckier enough to hide behind an androgynous look, while most of them suffer from social discrimination due to their "ambiguous" outlook.

In that situation, each and every level of confrontation with the state means institutional discrimination for the individual. The difficulty in proving to be the same person in the existing identity card prevents the individual from demanding any public services or causes him/her to refrain from any possible encounters with a state official.

For instance one participant who had been using the hormones for more than six months and who had quite a masculine outlook, was not allowed to take the university entrance exam by the officials, due to his female identity card. The possibility of a problem due to non-recognition of the transitioned identity gives birth to the effort and attitude of escaping from state institutions such as hospitals, police stations, as well as anywhere that the individual identifies with security control such as airports, bars and even streets, if the individual is visible with the trans identity. Therefore, the mismatch with the existing identity card leads to an institutional phobia for the individual. In this manner the individual has to give up some of the basic citizenship rights and delay the utilization of them, until the official recognition of the migrated identity and the acquirement of the new identity card.

The struggle for the acquirement of the new identity card indicates the strength of the relationship between the reassignment experience and the issue of citizenship. Trans individual's insistence on official recognition with the gender transitioned despite all the difficulties indicates his/her claim to citizenship and the demand for the rights that stem from that claim. As each institutional confrontation reminds and reaffirms state's existence to the individual, each application to state institutions reaffirms his/her citizenship. For the trans individuals this application can only be possible after the recognition of one's claimed identity and this official

recognition is necessary for the individual to enjoy the very basic rights as a citizen of this country.

One of the interviewees told me that when he was a child he tried to paint his female identity card into blue after he first learned that male identity cards are in blue. The rest of the lives of the trans people are characterized by the much more complicated version of that naïve struggle of painting that identity card, now as a matter of life and death.

### Sex Reassignment After 2002

As mentioned in the previous chapter, the previous regulation allowed every applicant to go through the process and have the surgery conducted, most of the time through informal ways by incapable doctors. For those reasons, my interviewees agreed upon the view that a new, a more systematic regulation was needed before 2002, since the previous regulation gave the medical professionals the initiative to have the operations as they wish without any supervision. In a conversation about the previous regulation with a trans woman, who had the operation before 2002, she mentioned the doctor who conducted her surgery. “We used to call him *kasap* (butcher)Osman”,<sup>153</sup> she said; “you could not bear with the results of their operations, they turned us into monsters”.<sup>154</sup> The fact that there had not been any regulation

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<sup>153</sup> The term *kasap*(butcher) was used extensively to refer to doctors who conducted the sex change operations in 1980’s. See the Article “Butcher of Travestis”, *Aktuel*, 202, (18-21 Mayıs 1995) also quoted in Deniz Kandiyoti, “Pink Card Blues: Trouble and Strife at the Crossroads of Gender” in *Fragments of Culture: The Everyday of Modern Turkey*, edited by Deniz Kandiyoti and Ayşe Saktanber, (New Brunswick, New Jersey: Rutgers University Press, 2002).

<sup>154</sup>S., interview by author, tape recording, İstanbul, Turkey, February 17, 2011.

regarding the sex re-assignment surgeries caused many trans individuals to suffer from misconducted surgeries and wrong treatments. Thus taking the previous regulation into account, interviewees agreed that a new regulation was needed to supervise these operations, in order to enhance the health status of the trans individuals.

However, the regulation eventually put into effect in 2002, only put the lives of the trans people into a halt, instead of introducing a procedure that prioritizes the health and subjective preferences of the trans individual. While it did not prohibit the arbitrary running of the process, the two-step system the new regulation brings left the entire initiative in the hands of medical and legal professionals. It is also unique in the sense that the current regulation requires permission from the court in order to undergo the sex change operation.

Hereby, from the interviewees' point of view, the current regulation ended up being worse than the previous one by complicating the whole process and almost prevented them from sex change, although transition is in fact recognized as a legal phenomenon. They believed that the regulation was simply used as a strategy of intimidation.

## Financing the Surgeries

One of the most vital issues that the trans individuals have to deal with is the issue of financing the surgery. For the trans people, especially those who are not supported by their family, the issue of affording the surgeries has a central significance in the decision of transition.

As mentioned in the previous chapter, the issue whether the transition period is covered under social security is not easily resolved. Psychiatric examination and the therapy period are generally under the scope of social insurance. However, for the rest of the process this argument is not easy to hold on to. There is no explicit statement in the concerning regulation regarding the sex change operation. This complicates the whole situation, as there is no clear information about the relation of social security and the sex reassignment process. There is a possible departure point in the Article 63 where it is stated that "... operations and treatments to be applied based on the diagnosis"<sup>155</sup> will be counted under the coverage of social security. However, in the light of the experience of my interviewees, I realized that departure point is not that eligible for the trans individuals, in practice. None of the interviewees, who had undergone the genital operation, was supported by the health insurance; although some of them gave the struggle for it. After the doctors in the public hospital rejected to conduct the genital surgery due to the reason that it is not covered by the state, one of the interviewees told me that he had submitted a petition to the Social Security Institution.<sup>156</sup> His petition was answered stating that the

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<sup>155</sup> Republic of Turkey, *Social Insurance and Universal Health Insurance Law*, 5510, 1 October 2008, Article 63, Subclause b (My translation).

<sup>156</sup> "Social Security Institution was established by the Social Security Institution Law No. 5502 entered into force upon published in the Official Gazette numbered 26173 and dated 20.05.2006 . In

regulation could be interpreted to cover the process by the health insurance. However he never managed to carry this into effect in the public hospitals.<sup>157</sup>

The fact that the genital operation, which is the most vital stage for a significant number of trans individuals, is not often considered as a social security issue is a real problem for the individual who may not have enough financial sources to afford it on his/her own. The operations are not often conducted in public hospitals, and also the genital operation is a complicated surgery which requires special expertise on the field. For these reasons, the operation turns out to be accessible for those who have the opportunity to afford it in the private hospitals.<sup>158</sup>

In that sense, if not supported by any other source, individual is left on his/her own in affording the transition period. All of the interviewees, with the exception of those who are supported by their families, had the primary agenda of saving the operation money. Since there are not many job opportunities for the trans individuals in their transition period, this agenda leads them to search for unregistered employment with low salaries and mostly with bad conditions. The situation is much

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order to transform the five different pension regimes being composed of the ones for civil servants, individuals working under an employment contract, individuals working under an employment contract in the agricultural sector, individuals working in his/her own name and account and the individuals working in his/her own name and account in the agricultural sector into a single pension regime in which rights and obligations would be equal actuarially, the Social Insurance Institution, General Directorate of Fund for the Self-Employed and the General Directorate of Pension Fund were assembled under the same roof by this Law...”

quoted from: Republic of Turkey Social Security Institution, Legal Framework of the Social Security System, 2011, Available [online]: [http://www.sgk.gov.tr/wps/portal/en/english/the\\_legal\\_framework](http://www.sgk.gov.tr/wps/portal/en/english/the_legal_framework) [17 July 2012].

<sup>157</sup> The surgery might be conducted in some state hospitals with the concerning permission from the court, however even in this case individual is required to pay a contribution fee which rises up to ninety percent of the operation cost.

<sup>158</sup> Sinem Hun, “ Trans Geçiş Süreci ve Hukuka Genel Bir Bakış” in *Trans Erkek / Kadından Erkeğe Transseksüellerin Deneyimleri*, edited by Aras Gungor/Kaos Gl, (Ankara: Ayrıntı Basımevi:2012),p.141.

Also available [online]: <http://www.scribd.com/doc/92758953/Kitap-Transerkeklik01> [17 July 2012].



worse for trans women whose gender identity is much more visible compared to the trans men, as the former do not have much alternatives to get a job if they started the transition period and are somewhere in between the male and female appearance. The answer is most of the time in prostitution for them in order to afford the surgery, whereby the individuals still have no social security.

Consequently the decision to start the process depends on the financial means of the person. A group of individuals among the interviewees had to pause the therapy period and came back after they gain more money. One of them says that if he had the opportunities he would not wait a second. Similarly another interviewee calculates the years she worked in order to collect the money that will help her to afford the surgeries. On behalf of the trans individuals who are members of LGBT organizations, I was told that regular parties were organized where an average amount of money were collected in order to support their transition period, in order to compensate the lack that social security does not cover indeed.

#### The Role of the Organization in the Experience of the Reassignment Process

Despite knowing the difference from others in a sense from their childhood, the consciousness regarding the gender identity and self-identification with trans identity is mostly developed after a process of struggle of trans individual to understand and define one's disharmony with the heterosexual norms.

Once acquaintance with the LGBT organization has an important role in this process of self-identification with trans identity. Most interviewees, in that sense, were introduced with the idea of the existence of other trans people, thanks to their

visit of the organizations or through the journals being published under the organization. The former feeling of being alone in the whole universe and the feeling of guilt for the contradiction of body and soul was one of the most repetitive themes in the interviews. Naming of this contradiction and simply understanding one's trans identity is a vital agenda in the trans life.

Affiliation with the organization leads the individuals to gain information about the transition process and decide accordingly. Most of them mentioned that they could not believe that the dream of surgery would come true. In that sense the organization plays a vital role in the construction of the idea and the image of sex reassignment, while there is not any official mechanism to inform and enlighten the individuals about the process.

Among the interviewees, there was a sharp difference between those who had an activism background and those who have not participated to any organizational activities before. Those who had committed themselves to trans activism believed that they had gone over the process more easily than the others. When I asked them why they believed that they were luckier than the others in their experience of transition period, their answer was focused on the availability of information they reached through the help of the organization. Information, both in terms of their self-identification with trans identity and concerning the legal and medical procedure of the transition period, was rendered eligible for them through their participation in the organization. According to those interviewees, they knew the answers of the questions they would be asked during the process. Therefore they were prepared for all possible problems that could come up in institutional and social levels concerning

their trans identity. The organization, they believed, gave them the strength to stand up to the mal treatments they faced during the transition period.

LGBT organizations filled the gap of an institutional mechanism to inform the trans individuals to a certain extent; but it is important to note that the organizations do not offer professional consultation service indeed. Being informed through the organization is mostly based on the shared experiences of other trans people, which might be misleading too. For instance, one interviewee emphasized that male trans identity was not still visible in the LGBT organizations few years ago, where he was often perceived as a masculine lesbian woman. Although the organizations are the saviors of most trans individuals who are organized under them, the need for an institutional mechanism is still crucial to be highlighted.

#### The Absence of an Institutional Mechanism to Inform the Trans Individual

It is true that the organizations play a vital role in raising the awareness of the trans people who have not been well informed until that time. However, it is important to remember that there are also a lot of trans individuals in the society who may not have the opportunity to hear about an LGBT organization, or who may not have enough courage or motivation to involve in an organization. For these individuals, the process is much more difficult, since most trans individuals are not informed either about the legal or medical procedure. The process is shaped according to what they hear from the other familiar trans individuals, who might have experienced the transition process before; certainly in the case that they know other trans people.

Most problematic issue based on the lack of a consultation mechanism for the trans individuals is the irregular and arbitrary usage of hormones by the trans individuals. All interviewees except for one, who is a medical professional, admitted using hormones without any medical observation. Hormonal treatment is one of the most important steps of the transition process, which must definitely be under the control of a medical professional. Irregular usage of hormones might cause several diseases ranging from tension troubles to heart defects depending on the metabolisms of the users. Hence the individuals under the hormonal treatment must regularly take medical tests, and use hormones accordingly. However, at the time of my interviews, only a few interviewees have taken a test so far, others did not have the opportunity for blood test though using hormones for more than six months. The absence of a professional institution to guide them, in a way obliges the trans individuals to the shared pattern of irregular and arbitrary usage of hormones, which would have several side effects.

One common point of the interviews was interviewee's former expectation from the therapy process to guide the individual regarding the next steps of the transition. However the interviewees agreed on the absence of a professional to call in times of trouble or in the need of a social and medical support. Although the assistant doctors are appointed for each applicant, the interviewees claim that they do not follow their cases. Some of the interviewees were called for only one time in one year, and the appointed doctors have not called the others yet, at the time of our interviews.

The interviewees who started the process with the support of their families also argued that not only themselves, but also their parents needed consultation,

because the transition process is quite complicated and difficult for them too. At the end of the day, all of the interviews agreed upon the need for an institution or a mechanism centralized on the consultation regarding sex reassignment. This must be a mechanism through which both the individual and the family are informed about the process and the surgeries, as well as the medical requirements of the transition.

Prior to my interviews, during the analysis of the legal documents, I had expected that the common complaint of the interviewees would be the new regulation structure that brought a repressive controlling mechanism on each level of the transition period. In terms of their comparison to the previous regulation, my expectation was met in their argument that the new regulation resulted in complicating their lives with the over requirements demanded from the trans individuals. However what I had not expected to hear previously, was their demand for more a positive regulation that would support and enhance their lives. Thus for me one paradoxical point to be underlined in the interviews, was their need for a better regulation. It was the call for a regulation, which would be on their side in terms of informing them concerning the hormonal treatment and the medical and legal procedure of the transition. They needed a regulation, which would fulfill the absence of an institutional mechanism and this tells the story of how related is the issue with the frame of citizenship. Their demand for better regulation and enhancement in the implementation is also their rights that stem from their citizenship tie to the State.

As an answer to my question whether they do not ask the doctors about the density and dosage of the medicals that they have been using, the interviewees complained about the lack of expertise of the medical professionals on the issue. As

the issue of sex reassignment belongs to a field that requires specific expertise, it must be understood that the irregular usage of hormones cannot simply be explained by the dismissive treatments of doctors. It is rather caused by the absence of a mechanism that would inform and educate the medical professionals on the issue. An interviewee's answer to the same question represents the common view of the interviewees: "If I could believe that the doctors really know about this, if I could only believe that the doctors could prepare me to this transition process in a healthy way I was ready to pay what I have earned and what I will be earning whole my life"<sup>159</sup>. Then while doctors do not answer the need for a consultancy, the only way turns out to be their own estimations and decisions regarding the hormones and the other details of the transition.

#### Psychiatric Examination Period

Psychiatry department is the first step of the transition period from where the individual needs to take a report that verifies individual's transsexual nature and the necessity of sex change in terms of his/her mental health. In order to take the report, the individual is brought to a committee of psychiatrist for a final examination. Despite it is not stated to be obligatory in the legal regulation, individual is usually not given the report, without the completion of a therapy period he/she is subjected to. Group or individual therapies, depending on the conditions of the hospital that the individual applied to, last between one and a half year and two years at least. A number of interviewees mentioned that there had been a rumor about some trans

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<sup>159</sup>G., interview by author, tape recording, İstanbul, Turkey, March 23, 2011.

individuals who managed to take the report without an individual or group therapy period. However all of my interviewees either had gone over the process or were in their therapy periods.

Instead of applying to the court first and then taking the hospital step, it is also possible to start the transition period from the psychiatry department, and apply to the court during the therapy period or right after the completion of this step. As a matter of fact, this is the most preferred option for most of the trans individuals, because there is too much queue in the public hospitals where they could wait for more than three or four months for their turn. Group therapies are usually conducted in big research and education hospitals, which are over crowded like Istanbul Medical Faculty. The interviewees, who have been involved in the therapies in such hospitals, were complaining that the number of the individuals could rise to sixty. There were also some others who told me that these over populated research and education hospitals, due to the big crowd waiting for their therapy turn to come, had rejected them.

During the individual/group therapies the individual has to follow a consistent timeline that is also in accordance with the criteria, which were mentioned in detail in the previous chapter, in order to be able to form the committee where the final psychiatric report is prepared and delivered. Therefore the status of the applicant in therapies is the determinant of the psychiatric report.

The views concerning the therapy period varied among the interviewees. By the majority of interviewees, most particularly group therapies were criticized due to the expectations based on an archetypal transsexual definition of the medical professionals, while there is no standardized definition to prove one's transsexuality.

While there is no standardized definition of a transsexual nature, it was criticized that the criteria were arbitrarily shaped according to the knowledge and the expectations of the legal and medical professionals. For instance; since Istanbul Medical Faculty is known to be the most embracing institution towards LGBT individuals, I had expected the examination and (group) therapy conducted here would be the most intersubjective one that would offer a positive example to the other medical institutions. However my interviewees claimed the total opposite. According to the interviewees, the therapy process here implements the strict codes, which categorize the trans individual as pathological by definition based on the interpretation of Harry Benjamin's standards. According to that, trans identity is defined as a gender identity disorder under DSM IV, although these standards are now abandoned in several countries in the world. I was told that, during the psychiatric examination process manhood/womanhood, masculinity/femininity definitions of the therapist are required to be confirmed, in order to pass the step without a hitch. As the decision of which urge and motivations lead the individual to demand surgery is based on a knowledge and experience that no one but the individual himself/herself has access to, it is not possible to set totally objective criteria mechanism for an outside decision for the necessity of the surgery for the individual.

One of the interviewees mentions that he was questioned and warned several times because he wore a little make-up and he was relatively more feminine due to the requirements of his job regarding the physical appearance. He was dismissed from the therapy afterwards, as he could not attend only two sessions of the therapies because he could not get permission from his work. Nevertheless he bases this, on his mismatch with the never mentioned rules and the categorical criterion in the



therapist mind, recalling that the therapist kept on calling him with his official name consistently. After being dismissed from the therapy, the interviewee confesses that he uses the hormones without medical supervision; because he has to.

According to the interviews, the general outlook and also the clothes of the applicant is quite determinant in the running of the individual/group therapies. Individuals are expected and encouraged to wear clothes that are appropriate for the gender transitioned into. Similar to the above-mentioned interviewee who was criticized for wearing make-up, another trans man was discouraged because once he was wearing a colorful shawl. One interviewee mentioned that wearing a skirt is completely an incidence for both gender. In the therapies skirt has a symbolic meaning as an indicator of adapting to the “pre-defined” characteristics of the femaleness for male-to-female trans individuals, and as an indicator of inconsistency with the “pre-defined” characteristics of the maleness for female-to-male trans individuals. The most striking part is that the length of skirt turns out to be quite significant, because too short skirts are questioned as an indicator of exhibitionism. Similarly several interviewees told me that throughout the group therapy period particularly, they witnessed that the therapist asked some trans people why they did not put on red nail polish, or red lipstick. Hereby, it is understood that the individual is expected to learn the normative requirements of the transitioned gender role and has to act accordingly. As one of the interviewee says they are expected to reconstruct the gender roles by fitting into the existing norms leading to the functionalization of the binary gender categorizations, while their very existence deconstructs the gender categories.

The demand of the completion of final genital surgery<sup>160</sup> is very critical during the therapy period. Although the last genital operation, the plantation of the transitioned sexual organ, is not demanded by several trans individuals, especially by a number of female-to-male trans people due to the complication and probable inefficiency of the surgery, the insistent demand for surgery and for the new sexual organs are counted as the obvious determinants in the psychiatric examination period.

One applicant argues that he was dismissed from the psychiatric examination period, since he said that the genital surgery is not that important. One of the fixed questions, especially toward the trans men, during the committee report after the two-years-therapy period was whether the applicant was planning to have penis surgery. Two of the interviewees were asked the same question and explained that they did not plan to. Both of them were told to be the marginal cases, were stigmatized as rebellious, and one of them told me that the final committee asked him whether the rejection of penis surgery was a new trend.

Interviewees -either those who have experienced the individual therapy or those who have experienced group therapy period describe the therapy as the confirmation step before the surgery. Accordingly, in order to survive the therapy you have to prove that you are insistent on your demand and your need for the surgery. If you cannot prove it, you are immediately dismissed from the process. Certainly there are a lot of trans individuals who demand the final operation, and who by themselves demand to fit into the expectations from them during the psychiatric examination period. Yet there are also several individuals who do not.

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<sup>160</sup> Penis surgery for the female to male trans individuals/ vaginal surgery for the male to female trans individuals.

For those, the psychiatric examination process dictates the idea of the completion of each step of the transition, in order to reach the final step of change in the ID card; even though the individual might not want to undergo the final genital operation. Then the psychiatric examination process is constructed as the preparation period for the surgeries. The same thing was required from everyone in the therapy, requirement of the demand to have the surgery conducted. Otherwise, you are either dismissed or excluded. Then the right to surgery in this context can only be understood as a method of avoiding or ‘recovering from’ ambiguity, instead of the recognition of a liberal freedom prioritizing the demands and the needs of trans people, some of whom might not want to undergo the genital operation as the final step of transition.

Quotation from the interview with one of the interviewees is quite relevant here: “they [the doctors] are looking at our bodies which they try to verify. Their minds are on our bodies. But it is about our souls; it is in our souls, not in our bodies. Our souls need this change, our souls want this, not our bodies”.<sup>161</sup>

Mentioning his hesitation regarding the request of the report after therapy, another interviewee argues that receiving that report basically means to approve the Benjaminian rules. Accordingly, the trans individual is expected to demand to be saved from ambiguity completely, however that cannot be the common interest of each applicant. Therefore, focusing on the general reading of the therapy stories in my interviews, for those who do not demand to fit into these archetypal expectations, the only option is to pretend to, in order not to be dismissed from the process.

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<sup>161</sup> “G., interview by author, tape recording, İstanbul, Turkey, March 23, 2011.

In addition to the above-mentioned determinants in the process, such as the outlook and the surgery decision of the applicant; social status, family status and education level are also significant determinants in the psychiatric examination period as for the interviewees. Accordingly, having an appropriate job with the gender transitioned means a good grade and expected as a proof of convenience to life with the new gender form. However it is not the case for majority of trans individuals, who have to work in any jobs they find in order to collect the money for their transition period, unless their families support them.

#### Group Dynamics

One of the most prominent themes in the interviews was the fear and disappointment of being criticized by the other trans individuals within the group therapies. Being othered by the other trans individuals due to reasons of not fitting the transitioned gender perfectly complicates the lives of the trans people, whose self-esteem is vulnerable to dissolution to a large extent.

Especially the interviewees who have recently started the hormonal treatment and whose trans appearances are more visible and salient complained that they were stigmatized, due to their physical appearance. One interviewee tells me that he wanted to tear his lips and his ears apart, because he was constantly told that his ears were too small and his lips were too fat: “They live on the frames of manhood, every part of their bodies, as well as their existence, is based on manhood”.<sup>162</sup>

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<sup>162</sup> M., interview by author, tape recording, İstanbul, Turkey, May 13, 2012.

Another interviewee bases these stigmatizations on the feeling of inadequacy of the trans individuals who try to prove their convenience to the gender transitioned, by the blaming on the other. She says that she heard the others whispering that she looked like an alien, during the very first months of her transition period in the therapies when she wore female clothes for the first time. She was explicitly asked how come she could turn into a woman. She argues that this is definitely about dissociating yourself, in order to prove that you fit into the norms of the migrated gender, and that you are not like the other trans people.

Especially during the group therapies, partly taking courage from the attitudes of therapists in the case that they appreciate the application of the gender roles of the transitioned sex, individuals within the therapy too are depicted as reminding and imposing an expected trans image on each other, frequently. In *Gender and Culture*, Anne Phillips identifies four distinct meanings of essentialism. The fourth meaning she attributes to essentialism is the exclusively normative one; that is “the treatment of certain characteristics that cannot be questioned or modified without thereby undermining one’s claim to belong to the group”.<sup>163</sup> Being ostracized within the only community where they expect a sense of belonging, trans individuals who fall outside this image is locked into no man’s land.<sup>164</sup>

Talking about the dialogues with the other trans men, one interviewee says that he almost felt like he was in front of the empire of manhood, where he has to make himself accepted to the other members in order to enter.<sup>165</sup> To some extent,

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<sup>163</sup> Anne Phillips, *Gender and Culture*, (Cambridge: Polity Press, 2010), p.80

<sup>164</sup> Kandiyoti, (2002), p.289

<sup>165</sup>i., interview by author, tape recording, İstanbul, Turkey, April 19, 2011.

disapproval and the “normative weight imposed from within the collectivity”<sup>166</sup> they consider to be their own community, may be more puzzling for the individual in the sense that his/her self-definitions so far is in danger of collapse. The feeling of being unaccepted and being judged by the other trans individuals brings with it the feeling of despair and depression. Three of the interviewees told me that they seriously thought about giving up the process.

In order not be exposed to stigmatization among their own community too, one solution for the trans individuals is to pretend to position themselves convenient to the valid norms and categories of the community. Kandiyoti calls this “peer pressure” through which “appearance becomes a subject of constant preoccupation, fine-tuning and sometimes bitter rivalry and envy.”<sup>167</sup> Some of the interviewees argued that the concern of inclination to constant esthetic operations also stems from the need to be accepted within the community and in order to look more feminine/masculine than the others. In that sense the effort of masculinizing or feminizing oneself turns into a never-ending process for the most trans individuals, since the expectations are never completely fulfilled. Aizura bases this on the “belief that unless trans people live exclusively as ‘real men’ and ‘real women’, widespread recognition of the difficulties faced by gender variant people is impossible”;<sup>168</sup> while it is also impossible to make a concrete definition of a *real man* and a *real woman*. Interviews also signaled to the existence of people who deny their trans identity by simply rejecting to call themselves as trans individuals. Some interviewees argue

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<sup>166</sup> Phillips, (2010), p.81.

<sup>167</sup> Kandiyoti, (2002),p.283.

<sup>168</sup> Aren Z. Aizura, “Of borders and homes: the imaginary community of (trans)sexual citizenship”, *Inter-Asia Cultural Studies*, 7, no: 2, (2006), p.293.

that the same rejection mechanism might cause these people to not necessarily humiliate, but to look down on the trans individuals they see in the streets, because it is underlay by the societal perception regarding the trans individuals. As one of the interviewees said, as long as the transphobia in the society endures, trans people will continue to construct it naturally.

### Individuals' Demands

#### Concerning the Psychiatric Examination Period

Here it is significant to note that interviewees do not deny the necessity of a psychiatric support, or the necessity of a regulation, which would inform the applicant regarding the details of the transition period. For the trans individuals, demanded form of a psychiatric process was perceived to answer the need of the interviewee to be informed regarding the hormones and the physical and psychological drawbacks of the process. For, it is the very first step that individual takes concerning the transition. However, they complained that most of the time the process was far from this informative reflective function, and outside the one-in-a-month Wednesday therapy meetings, they were left alone during this period when they needed an expert's help.

I asked the interviewees their opinions about the existence of a psychiatric examination process. When they could leave aside the ongoing in the Turkish structure and of the treatments of the psychiatrists for a moment, interviewees did not object to the necessity of the existence of a therapy process as a matter of fact. Therapies were the first step to meet trans people like themselves, if they had not visited an LGBT organization or any environment where the trans individuals can

gather comfortably. With the help of the therapies, they find the opportunity to meet people who have already started the process, as well as people that are about to complete the process. In that step, the transition starts to turn into a reality from a distant ideal for the trans individual. I was told that the interviewees experienced the feeling that the surgeries were almost impossible for them, before they met people who had gone over the same experiences.

Despite not providing a systematic consultancy service for the parents, or in fact not even for the applicants themselves, two years of therapy period might also help the families to get used to the idea of transition. Just like the applicants understand that they are not the only ones who demand this transition, the parents come to understand that their children are not the only ones to experience this. As I was told, therapies are perceived as a necessity that has to be regulated in a different way, for these individuals feel themselves as the most alone ones in the society.

Emphasizing that the transition process is a difficult period when the individual needs psychological support, interviewees did not deny the necessity of a therapy period. For, therapies could help the individual to familiarize the physical changes led by the decision of transition. “However you want it since your childhood, your body and your soul reacts to the transitional differences. Your body tries to understand the removal of the organs that you have been carrying for more than twenty years. It is almost impossible to get over this process without any psychological support”,<sup>169</sup> says one of the female interviewees.

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<sup>169</sup>F., interview by author, tape recording, İstanbul, Turkey, March 24, 2011.



Two years of therapy period before undergoing the surgeries is also significant in terms of helping the individual to clarify his/her mind regarding the decision of surgery. It is because this time period might offer a good opportunity for the individual to question the decision of surgery and it might prepare the individual to the outcomes of the transition. Because, it is also true that after a long period of self-repression, individuals have the desire to complete the transition period shortly and immediately once they give the decision. In that sense, distancing oneself from the urgent desire to end up the process, helps the individual to be less traumatized, while he/she gets used to the physical and hormonal changes in his/her body.

In the light of my preliminary research and the preliminary interviews, due to the common spread complaint about the psychiatric examination period, I was expecting that trans individuals were in demand of a total abandonment of an individual/group therapy period and a psychiatric examination. However my final interviewees indicated that what the applicant trans individuals were complaining about was not the psychiatric period by itself. Instead it was the regulation and the structure in our system, where the pathologization of trans identity opens up a room for the already existing expectations and definitions of psychiatrists based on an archetypal transsexual. With these motives in mind, it will not be wrong to agree in the necessity of a therapy period regulated according to the priorities of the applicants, where they could have the opportunity to prepare themselves for the complications of the transition. However, the question is: Focusing on the Turkish context, is it possible to argue that therapies are still useful for the trans population, in practice, with medical professionals who hardly have expertise on the issue of reassignment? The conclusion for this part was that while the interviewees complained about the lack of expertise of the medical personnel on the trans issue,

they emphasized the need for a well prepared and well-informed therapy process would be helpful.

### Arbitrariness of the Process

One of the most significant points underlined by all of the interviewees was the fact that the running and the duration of the process varies according to the doctor and the hospital on the one hand; and to the judge and the prosecutor on the other hand, to a great extent.

Despite the fact that Article 40 asserts that in order to be allowed for surgery and to have the sex change affirmed in the official records afterwards, the individual has to fulfill the criteria set forth by what is called “the condition of transsexual nature”. Yet, the criteria are not objective, in fact no such objective criteria can be defined that could be verified through a standard test or a mechanism that would establish or verify the definition of that transsexual nature. Although a committee of doctors composed of gynecologists/urologists, medical geneticists, endocrinologists and psychiatrists prepare the final report; what the criteria are for the existence of a transsexual nature is not defined anywhere on paper. Interviewees who had completed the reassignment procedure argued that the examination process is shaped according to the perceptions and the discretion of the legal and medical experts. While some doctors can prepare the report easily, some others extend the process by simply requiring more documents and more examinations that are not related to the sex reassignment. Because the individual is directed to the hospitals assigned by the court, as an applicant she/he does not have much to say in this procedure. Similarly,

some of the judges end the suit once the required documents are available, while other judges of the same court requires several documents that are not determined under the legal code.

Interviewees emphasize that the preparation process of the report varies from hospital to hospital, especially regarding the issue of “permanent fertility” required in the Article 40. Some of them mention that the gynecologists could note that the applicant has fertility during the examination intentionally, while other gynecologists could simply reject sterilization due to the principle of physical integrity in the Constitution. However their rejection could only turn out to prevent the trans individual from completing the sex re-assignment process, as permanent infertility is required. The requirement of permanent infertility as a prerequisite for the surgery causes the individuals to look for unregistered operations to sterilize themselves in the case that they cannot easily manage to undergo this operation in the hospitals.

An important reason why the procedure varies from doctor to doctor and the judge to judge, was put forward by the interviewees as the lack of knowledge of legal and medical professionals. On the side of legal professionals, the lack of legal professionals generally caused the duration of the process to last for longer. Two interviewees who started the process in hospitals assigned by the judges, had to restart the process after months due to the reason that they did not start the process in the education and training hospitals. The judge asked another interviewee about whether sex reassignment and identity change was attainable at all, in reality.

In the preamble of the Article 40 of the new Civil Code, it was stated that:

Article [Article 29 of the then Civil Code] does not give any discretion to the court concerning the change in the birth register

due to sex change; it renders the courts merely as certifying office. This presents our court with a *fait accompli* regarding the arbitrary sex change situations. For this purpose the person who demands sex change is obliged to apply to the court before undergoing this change; it is aimed to preclude arbitrary sex change situations, as it was the case before due to the Clause 2 of the Article 29 of the current Civil Code, by depending the court permission on several conditions.<sup>170</sup>

It means that unlike the previous regulation which left the courts as merely the certifying authority, new regulation aimed to give the final say to courts, after the required documents collected from the concerning medical departments. In that sense, courts are attributed an upper position as a gatekeeper; where the judges have the initiative to restart the process and ask for more documents in the case that they are not satisfied with the medical statements, “which are still subject to the final determination of the court”.<sup>171</sup>

Having the authority to say the final words on the “transsexual nature” of the applicant, I was told that judges who did not find the medical report enough to conclude for the transsexual nature of the applicant, demanded from some interviewees two witnesses from their hometowns. During the trial, the witnesses were asked whether they saw the applicants going to *kahves* (coffeehouses, which are traditionally male populated places) or whether they saw the applicants wearing skirts in their childhood; which overall indicate gender perception during the juridical process. Legal system, in this sense, turns out to play the central role in the definition of gender by controlling the ability of sex/gender determination, often

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<sup>170</sup> Republic of Turkey, preamble of the Article 40 of the Civil Code of Turkey, No:4721, 22 October 2001.

<sup>171</sup> Danielle M. Lockwood, “Negotiating the Boundaries of Sexed Identities: The Status of Transsexuals in Turkey”, (MA Thesis, Utrecht University, 2007), p.13.

through the delegation of task to medical experts,<sup>172</sup> and by formulating the identity of the individual within the social framework. That results in the predominance of this social framework on the trans individuals' subjectivity and self-definitions.<sup>173</sup>

Leaving the judicial part of the story aside, the lack of knowledge of the medical professionals, both psychiatrists and the doctors from the other expertises, meant either wrong treatment or humiliation for the trans individuals, which could result in unrecoverable mistakes, or the complete withdrawal of the individual from the process. Several interviewees told me that their psychiatrists tried to search for the roots of *transsexuality*, and tried to cure them that "disease" instead of easing the lives of the applicant. For instance, a male trans interviewee was told that he has transsexual identity, simply because he was envious about his brother; and another female trans was told to have the trans identity due to the death of her father.

As mentioned above, the issue of usage of hormones is also a quite crucial part of the transition period. However, according to the interviewees, the patients are not being informed about the appropriate usage and the dosage of the medicals mostly because the medical experts are not well informed about the issue, too. In addition to the need to expertize the medical professionals on the issue, also patients should be informed about the hormones because random usage could be quite dangerous. However in the current situation, poorly informed doctors, whose wrong suggestions could result in the worsening of the trans individuals' health status, usually authorize the period.

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<sup>172</sup> Megan Bell, "Comments-Transsexuals and the Law", *Northwestern University Law Review*, 98, vol.4 (Summer 2004), p.1719 as quoted in Lockwood, (2007),p.51.

<sup>173</sup>Lockwood,(2007),p. 118.

Majority of the male-to-female trans individuals complained that the doctors exposed them to rectal examination, which is arguably unnecessary in medical terms in the examination of infertility. When I asked them why they think the doctors practice rectal examination, I expected them to blame it on the transphobia of the medical professionals. Yet contrary to my expectations, interviewees based it on the latter's lack of knowledge. One interviewee, for instance, told me that the doctor tried to look for her removed testicles and conducted rectal examination. She argues that even the doctor does not know what to do, and feels obliged to do something in order to conduct examination. According to her, the first thing that comes to physician's mind is rectal examination for the most of the time, as a reflection of the commonly held transphobic prejudices of society; since the anal intercourse is often attributed to non-heterosexuality.

Considering the medical and legal procedure together, then, it is understood that the current regulation, however strict are the requirements, paves the way of arbitrariness by giving the mere initiative to legal and medical professionals. Yet, what is important to keep in mind here is that, the decision of which urge and motivations lead the individual to demand surgery is based on a knowledge and experience that no one but the individual himself/herself has access to. Therefore it is not possible to set totally objective criteria mechanism, for an outside decision on the necessity of the surgery for the individual. The medical professionals (including psychiatrists and the doctors from other regarding departments) who have expertise on the issue and the individual could base a decision regarding the necessity of the surgery on an deliberation; through which the individual is informed about the results and the drawbacks of the surgery that has no return. This deliberation would give the individual the opportunity to reflect on the process feeling, through the positive and

negative implications of such a serious operation and thus will recognize his/her right for the final say. However, according to the interviewees the legal codes are far from being implemented in such a participatory fashion. Instead, the ongoing of the process is shaped by the subjective assessments and evaluations of the medical/legal professionals.

### Systematic Humiliation, Maltreatment and Intimidation During the Implementation of the Process

Interviews showed that in several cases the implementation of re-assignment indicates intimidation of the individual from the process, instead of recognition of an additional right. While the regulation of the Article 40 means the sacrifice of the right to reproduce for the application of a new identity, in its implementation too trans individuals are often left but the chance to sacrifice some of their essential rights such as the right not to be subjected to inhuman or degrading treatment in return for being allowed to have the surgery.

For instance, one of the interviewees mention a vasectomy (surgery for male sterilization) incidence she has witnessed after which a friend of her was given a plate and was told that there were magazines inside. She, as a woman who wants to get rid of her penis, was expected to fill the plate for sperm enumeration, and this is required despite the fact that testicular removal will be conducted in any case. This implementation indicates how the initiative that the regulation introduces to the experts, and the absence of supervision might turn out to lead to inhumane treatment and humiliation of the individual, as a breach of his/her right to human dignity.

One of my interviewees had just come from the hospital to have her final examination report. Having difficulty in describing her day, she complained that the doctor humiliated her during the examination, which was unnecessary, because the doctor examined her already removed testicles as if she could hide her testicles; “This was the second time, the previous doctor wanted further requirements but this one was the worst. He asked me whether I was a man or a woman, whether I would be called as a girl, whether my mother called me a girl with a sarcastic voice, during his examining operation squeezing my spermatic cord. My strategy is always to play the quiet, proper girl. Okay you could bear with that but the doctor went on to rectal examination, it was unnecessary. He treated me as if I was a dog, hitting my leg”.<sup>174</sup> When I asked whether she plans to do something about it she answered: “I have got the report, I do not have any power to deal with anything else. I am sure much worse situations occur for the others”.<sup>175</sup> In that sense the individual’s response is to bear with this humiliation, in exchange for the recognition of her application concerning the sex reassignment.

The case of one interviewee was quite significant and his perception towards the whole process was meaningful, in the sense that his trans experience was hand in hand with his medical profession as a nurse. He had undergone ten years of hormonal treatment of oestrogen due to her menstrual dysfunction, with the pressure of his family; despite he would be under the treatment of testosterone due to his trans status. He had suffered from the cystic nature of his uterus and several doctors had told him that he had to have his uterus removed immediately. After a few years,

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<sup>174</sup> D., interview by author, tape recording, İstanbul, Turkey, January 8, 2011.

<sup>175</sup> D., interview by author, tape recording, İstanbul, Turkey, January 8, 2011.



being unable to stand the pain, he went to the doctor to have the operation; but the doctor delayed it due to the fact that he was in the psychological examination period. Despite the fact that the surgery was vital for him, the gynecologist rejected to do the operation and told him that the permission of the psychiatrist was required. The interviewee argues that in such a painful situation the doctor would urgently start the operation for any ordinary woman, but when the situation was involved with the therapy he had to wait for the medical professionals to decide that he is permitted to have the operation, as the psychiatric examination period had not been completed yet. Again this case exemplifies how the implementation suspends the individual's right of health.

The interviewee then could get the permission from the therapist after a long-lasting struggle and could have the surgery finally. He told me that the normal procedure after any hysterectomy is to support the anatomical structure with oestrogene. Yet, due to his trans status he could not have oestrogene and he definitely needed hormone test in order to be treated accordingly. However he was told that although he needed the test after hysterectomy medically, bureaucratically he could not have the test because the six-months-period was not completed. The hormonal medicals and the regular examination are vital for the trans individual, especially after the genital surgery in terms of their health status. But instead of supporting the individual, who needs medical consultancy, the process makes their lives much more difficult. In that sense, the bureaucratic process of the therapy period might end up suspending the individuals' right to health, more paradoxically.

### “Playing by the rules”: Strategies of the Applicant

From the overall narratives of my interviewees it could be realized that all of the interviewees had their own strategies to cope with this examination period. It is important to note here that just as if the interviewees agreed upon several points before I contacted them, several strategies were repeated all through the interviews, based on pretending according to the heteronormative expectations of the medical professionals.

Among their strategies “to look feminine, to act feminine, to speak feminine, to look naive” was the most recurrent one that all of the interviewees –who have been in the re-assignment process after the new regulation –followed in order to convince the doctor for her “transsexual nature” which is stated as the legal requirements for the operation to be allowed. Most probably, the discourse of “looking more feminine” is transmitted by the trans individuals who have already experienced the process to those who have not. However, what is most interesting about this discursive transmission is the fact that medical personnel themselves also become a part of it, and share this discourse. For instance, some interviewees mentioned that nurses advised them to come to the examination wearing more make-up if they wanted to get the report. As if it is one of the legal requirements of the sex re-assignment process, the interviewees take note of the accomplishment of that too: “more make-up, more feminine clothes than what I wear everyday could reduce the therapy period, so I tried my best”.<sup>176</sup> More feminine appearance has always been a solution to get over the humiliation and to pass unnoticed, undistinguished;

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<sup>176</sup>A., interview by author, tape recording, İstanbul, Turkey, January 12, 2011.

accordingly. Those who succeeded in looking more feminine/masculine could undergo the process much more easily in comparison to the others who did not. As the clothes are expected to be significant indicators of *transsexual identity*, choosing clothes more identical with the transitioned gender is one of the most important strategies that the trans individual pays attention to.

To act and to look more feminine for the male-to-female trans individuals, and to look more masculine for the female-to-male trans individuals, thus turned out to be the most crucial factor that determined the denseness and the duration of the period, according to my interviewees. Those, whose trans identity reflected upon their physical appearance less, defined themselves as “lucky ones that can be invisible”. One interviewee, for instance, a 28-years-old belly dancer that is not open to her workmates, argues that she was the luckiest one among her friends to get over the whole process more easily. She relates this to her feminine beauty that differentiated her from the others. Nevertheless she still argues that, in any case they were regarded as second-class-citizen, when she reminds that she was exposed to rectal examination and humiliation to some extent.

In addition to those, keeping silent and being non-aggressive is another strategy in order to convince the medical professionals and to ease the process. Most of the interviewees who have got the report explain their success by referring to the fact that they kept their silence, and as a response to their silence they argue that they could get the report. This idea, however, turns out to be what prevents them from opposing the humiliating treatments by the professionals. The belief that there is no institutional body that would work as the guarantor of their rights, or there is no protection by the laws; leave them alone, cause them to apply to their own individual

mechanisms to cope with their experience of social and legal marginalization as a group; such as keeping silent, or rendering themselves invisible. In addition the absence of a regulation in the Turkish legal codes regarding the principle of non-discrimination towards the sexual minorities and/or regarding the hate crimes, the struggle through the legal channels cannot go further than an insignificant effort. It must be mentioned that 2004 Equality Clause, which excludes LGBT individuals, is not a sufficient ground for protection of other –cited- identities as well, equality clause needs to be supplemented by laws that render discrimination illegal and create disincentives for those who would attempt to discriminate. Without a legal basis, therefore, they argue that their legal struggles remain symbolic and have no meaning regarding the solution of their problem. The only option left for the trans individual is then is hiding oneself which shows itself as a kind of sociophobia, and it renders the organized challenges against transphobic attitudes of the professionals almost impossible most of the time.

The common advice of the applicants was to go easy on the authority, as it was the only way to ease the process and shorten the duration of the bureaucratic procedure. One interviewee calls this “playing the house girl and the grannie at the same time<sup>177</sup>”. Just like the rest of the interviewees, she told me that her cue was ready before she was in front of the judge and in front of the doctor. In order not to be marginal on the eyes of the doctors and the judge, she says that she was wearing neater and un-revealing, but at the same time quite feminine clothes through which she emphasizes feminine sides and deemphasize masculine ones in a proper way.

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<sup>177</sup>D., interview by author, tape recording, İstanbul, Turkey, January 8, 2011.

She describes this as the effort of hiding herself by looking more feminine and more modest. In that sense, she argues that playing the modest girl is her shield, just like wearing make-up is.

The process meant a period of recursive tests where the trans individual constantly has to prove himself/herself. The experience of one of the interviewees exemplifies this perception to a great extent. After a long period of struggle in order to complete the change in his birth register, the interviewee could finally receive his new identity card as a male. Few weeks later, he was required to be registered for the military service and was referred as a deserter in the official military records. So while he had tried to prove his “transsexual nature” to the state officials until he could achieve sex change, he now tries his transsexual nature in the adverse way in order to be exempt from the military service. Overall, I heard a definition of the whole process as a story of convincing, as one interviewee said: “You have to learn to play by the rules”.<sup>178</sup>

### Reconstruction of Gender Dichotomies?

In the previous chapter, I gave a brief summary of theoretical debate on the issue of *transsexuality* and the views concerning the *transsexual* identity as social construction of gender binaries. After hearing the story of instrumentalizing their own strategies of coping with the reassignment process, my question was how the individuals themselves perceived this instrumentalization. During the interviews I kept on my mind the theoretical debate in the previous chapter regarding whether the

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<sup>178</sup> L., interview by author, tape recording, İstanbul, Turkey, June 22, 2011.

“return to true self” discourse should be seen as merely medically constructed and the need to sex change is to be seen as socially constructed.<sup>179</sup> Sally Hines’ study as mentioned in the previous chapter provided me a guideline in my aim to touch upon the trans individuals’ self-definitions and observations concerning the reassignment process. With the aim of analyzing and criticizing the 2004 Gender Recognition Act in the UK, she tries to show the “complexly understood, experienced, and practiced”<sup>180</sup> structure of the gender identities and sexualities. Her study contributes to this thesis in its investigation of the trans individuals’ own perception concerning the legislative changes. She focuses on the construction and the repetition of the “trapped in the wrong body” narrative, and argues that this articulation is tied to the medicalized language of the whole process. However, her argument concerning the complexity of gender identities and practices, which I completely share, is not justified in the sense that her focus on the construction of this “trapped in the wrong body” narrative causes her to universalize the reassignment experience. This universalization misses the possibility of individuals who might not believe that this narrative is the byproduct of a medicalized construction, or who might not experience it as such. Furthermore, the study of the issue of sex reassignment in Turkey requires a more multifaceted analysis in the sense that the issue signals to various scopes that should be scrutinized to enlighten the complexity of the process.

Believing that the question whether this need is based on social constructions cannot be answered and that question was in fact irrelevant, instead of looking for its answers, my goal was to understand the perceptions of the trans people themselves

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<sup>179</sup> Sally Hines, “(Trans)Forming Gender: Social Change and Transgender Citizenship”, *Sociological Research Online*, 12, no:1, (January 2007), p.6.

<sup>180</sup> Sally Hines, “A Pathway to Diversity?: Human Rights, Citizenship and the Politics of Transgender”, *Contemporary Politics*, 15, no:1, March 2009, p.94.

on the need for surgery. Interviewees' comments on the need for surgery varied. Almost half of the interviewees mentioned their desire to be "complete man/woman". I remembered a Ginsberg poem<sup>181</sup> as the interviewees told me that they cursed their reflection in the mirror, before they started the transition. The fear of the mirrors was one of the most repetitive themes of the interviews depicting their pre-transition period. However, the extent of desired change was different for them. The idea of being a complete man or a woman was a desire that will be achieved after the surgeries and after an amount of hormonal treatment for some; while being a man or a woman meant a fluid and a never-ending process for the others. This is why the genital surgery was perceived as the breaking point of their lives for some; whereas the breaking point was the decision of transition for the others. Some of them wanted each and every little change that could be possible from the genital surgery to little esthetic operations, while few of them were either afraid of or against having the genital surgery despite their demand of the official sex change in their identity cards. But the common desire was the official recognition of their real gender, the one that they had to hide for years. To that end, they shared the common hope that after the transition period their real identity would finally gain meaning at the institutional level if they succeed in changing their ID cards.

To my surprise, most of the trans individuals I have interviewed, particularly those who had connections with the organization, were in a way aware of the

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<sup>181</sup> "My face in the mirror, thin hair, blood congested in streaks down beneath my eyes.../ a creep in the eyes of all Universes/trying to escape my Being, unable to pass on to the Eye". Allen Ginsberg, "Lysergic Acid", *Kaddish and Other Poems, 1958-1960*, (San Francisco: City Lights Books, 1961), p.87.

conventional argument that “medical rebirth is a process of mythic deception”.<sup>182</sup> Some of them even agreed that the operations could be the byproducts of socially constructed codes, when they trace the starting point of this need, while some of them totally disagreed. One interviewee was questioning whether she would still demand surgery if her female identity was officially recognized without the surgeries; while for others this is unquestionable. However, at the end of the day all, of them agreed that the issue that this need could be socially constructed does not render this need invalid, or it does not diminish the vitality of this need for the lives of trans people. As one of my interviewee says, they instrumentalize what these conventional theories<sup>183</sup> –which reject the trans identity – calls deception as a life strategy for them. In fact, they reverse the deception arguments that are directed against them, in the sense that they are both aware of it and use it as a strategy, consciously. Thus, even before I ask, in the flow of the conversation most of the interviewees criticize the conventional “serving to binary codes by operations” arguments and insistently claimed that they undermine these arguments throughout their very daily practices. As one interviewee told me, even though the trans individual might or might not aim to be “normalized”, his/her existence means the normalization on the surface level at most. Trans identity, consequently, cannot be

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<sup>182</sup> Whittle, S. 2002. *Respect and Equality: transsexual and transgender rights*. Portland, USA: Cavendish Publishing: p.49 For further debate please see Elliot, P. (2009). Engaging Trans Debates on Gender Variance: A Feminist Analysis. *Sexualities*, 12(1), 5-32.doi:10.1177/1363460708099111; Hausman, B. L. (2001). Recent Transgender Theory. *Feminist Studies*, 27(2), 465-490.

<sup>183</sup> Interviewee refers to Raymondian School, which perceives transsexuality as the deception of womanhood. For further information see Janice Raymond, “Sappho by Surgery: The Transsexually Constructed Lesbian Feminist,” (1979), in *The Transgender Studies Reader*, edited by Susan Stryker and Stephen Whittle, (New York : Routledge, 2006).



reduced to simplistic role-model explanations as his/her very existence means the collapse of gender binaries.<sup>184</sup>

Consequently, even though one should acknowledge that we cannot answer the question whether the surgery process should be read as an individualistic salvation story through adapting the societal norms, or whether it is an existential need for the trans individual, of which answer I personally find unnecessary; at least in the case of my interviewees, the trans individuals are already aware of these given and expected norms. In that sense they go quite forward from where the conventional arguments stand, by instrumentalizing them. Hence what we have to keep in mind is regardless of whether the need is socially constructed or not, the issue of sex reassignment is a vital phenomenon in these people's lives, and its regulation has to be based on the intersubjective deliberation recognizing the demand of sex change as a human and citizenship right.

### The Mechanisms of Consolidation: Family Support

The majority of the trans individuals that participated in this research complained that they faced the institutional difficulties more because they were on their own and they lacked information concerning the process. Being alone, without any support was the recurrent theme mentioned during the interviews, however there are a few exceptional cases that also need to be underlined in terms of enlightening the routes of consolidation of the trans movement. Family of an interviewee, for instance, was

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<sup>184</sup>C., interview by author, tape recording, İstanbul, Turkey, February 4, 2012.

the biggest support of their child and they were following their child in each step of the reassignment process. The experience of that interviewee was certainly quite different from the other interviewees in terms of both confronting the medical/legal experts and undergoing the process in an informed manner. Family of that interviewee is the founder member of a voluntary family support and solidarity group called LISTAG,<sup>185</sup> which have been working in order to inform the families of LGBT members since 2008. In collaboration with LambdaIstanbul, the group has been organizing meetings with psychiatrists and family members of LGBT individuals on the issues of gender identity and sexual orientation as well as the legal procedure on issues such as sex reassignment.

In addition to the previously mentioned role LGBT organizations play in filling the gap of an institutional mechanism that informs and supports the trans individual, support by family members is the shelter of the trans individuals who are vulnerable to institutional discrimination during the reassignment process. The organized action of families of LGBT individuals also results in raising the awareness of other families who perceives the trans identity of their child as a disease to be cured, which is the case in family members of most trans individuals. Although family support was the exceptional case in my interviews and most of the interviews complained about the lack of it, it is important to be emphasized because it is one of the biggest components of collective action in terms of enhancing the conditions of sex reassignment experience in Turkey.

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<sup>185</sup> See <http://listag.wordpress.com/english/> for more information.

## Concluding Remarks

The analysis of the fieldwork of this study led me to various scopes of the issue of sex reassignment in Turkey. The different layers of the reassignment experience were converged in the framework of this chapter. The drive behind this research was the wish to highlight and scrutinize the puzzle that the legalization of the right of sex reassignment does not lead to the embracement and recognition of gender variant people; in this case the trans individuals with their differences as the equal citizens. In the previous chapters, I elaborated this puzzle in contextual and theoretical frameworks. The main goal of this chapter was to search for the real life correspondence of this puzzle in the implementation level of the regulation. The experience of trans individuals indicated the applicability of the argument that; the regulation draws the boundaries of recognition of the transitioned identity in a way that those who remain outside the borders will be excluded from the scope of citizenship with the identity they wish to migrate officially. The rationale of the regulation is based on an archetypal trans image, and the applicants are expected to conform to that imposed image, however indefinite it is. Regulation aims the standardization of trans individuals, while it does not offer a standardized definition of “transsexual nature”. That paradox causes the definitions of the medical and legal experts to lead the process in an arbitrary way, while the trans individual has no option but fitting into the frames already determined for them, if they want to undergo the process easily. These overall indications justify my expectations prior to this research. For me one astonishing point was the employment of that archetypal trans image by the individuals themselves either in its utilization as a strategy to go over the process more easily, or in its imposition upon the other trans individuals as a part of group dynamics. Nevertheless, the most crucial part of this research for me

was to emphasize the demand of the individuals for a better regulation that would be systematized in consideration and in harmony with their own definitions and their own needs. None of them demanded the regulation concerning the sex reassignment to be resolved. Instead they wanted more regulation and the recognition of their priorities in such a vital process that shaped the rest of their lives. This was their demand of an emancipatory regulation, which takes their individual definitions of necessity as central, as the citizens of this country whose rights of sex reassignment have been officially recognized.

## CHAPTER 5

### CONCLUSION

This thesis is the result of my three years of engagement with LGBT activism in Istanbul and partly in Ankara. Throughout these three years of studying the issue of sex reassignment, there has been one sentence that kept on playing in the background of my mind. It has been Simone de Beauvoir's famous sentence: "One is not born, but rather becomes, a woman".<sup>186</sup> Identity migration is a never-ending process, and for me the story of sex reassignment would illustrate the struggle of one's coming through the identity desired for so long. However, I have found out that the issue of sex reassignment in Turkey has been more than the trans individuals' naïve desire of the medical and official transition to gender identity which one always felt a part of. In the Turkish context, it indicates to a contested terrain, which includes not a few variables and going through the process turns out to be an arena of struggle for the trans people who demand it.

As mentioned for a couple of times in this study, the preamble of Article 40 of the current Civil Code mentions trans individuals with the following inscription:

With the aim of preventing the breakdown of the institution of the family, which is the foundation of society, by persons whose sex is ambiguous, first of all, the condition that the person is not married is set forth.<sup>187</sup>

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<sup>186</sup>Simone de Beauvoir, *The Second Sex*, Bk. 2, Pt.. 4, Ch. 1: Childhood, (1949) in the translation and edition by H.M.Parshley, Harmondsworth: Penguin, 1977: p.295.

<sup>187</sup>Kurtoglu's translation: Ayça Kurtoglu. "Sex Reassignment, Biological Reproduction and Sexual Citizenship in Turkey." *Reproduction* 2, no. 2 (2009): p.84

According to the legal spirit of Turkish society, trans individuals indicate the embodiment of ambiguity, a dangerous one, which should be fixed in order to prevent the possible threats it may pose against the sacred institution of family. A careful interpretation of the Article 40 shows that; despite the fact that the legalization of sex reassignment indicates the celebration of the migrated identity for the trans individual at the first instance, the implementation of the legal code meant the compromise of the restriction with the pre-requirements of the application to sex reassignment. In other words, while the legalization of the sex reassignment in Turkey is supposedly the license of the trans individuals' expression of the trans identity, the way it is regularized defines the borders within which the applicant individuals are allowed to exist with their identities migrated.

Based on this interpretation, my initial goal was to search for the possible relations of heteronormativity and the story of legalization of sex reassignment in Turkey. Was the official recognition of the right to sex reassignment stand for the embracement of sexual minorities in the Turkish context?

All through this thesis, I argued that the regulation and the implementation of sex change reveal the lawmaker's heteronormative mindset. That mindset imposes an exclusionary and restrictive definition of an archetypal transsexual, which does not touch upon the realities, or self-definitions of the trans people. While the self-definitions of the individuals themselves are not taken into account, the *transsexual nature* is not defined within the legal code anywhere. In that sense, the loophole in the decision concerning the criteria of the *transsexual nature* of the applicant is filled with the initiative given to the medical and legal experts.

I have tried to find out how the heteropatriarchal rationale on the background of the legal code was reflected upon the trans individuals' experiences of the sex reassignment. In this sense, my aim was to examine the mechanisms through which the subjectivity of medical/legal experts replaces the subjectivities of the trans individuals themselves, and how the trans people on the whole perceived this process. Briefly, I have questioned how it is possible that the legalization of sex reassignment turns out to be a program that is far from being liberationist and that reproduces the exclusionary manner of citizenship, as well as heteronormative gender codes in the Turkish context.

In order to observe the modalities whereby the understanding of citizenship is grounded on the sacralization of heteropatriarchal family norms and how this understanding perceives ambiguity as a threat posed to its very existence, scrutiny of the trans experience of sex reassignment has been vital. For, this scrutiny was underlay by the goal of questioning the heteronormativity as the mechanism against the recognition of sexual minorities.

This study is a combination of analysis of legal and theoretical framework within which the issue of sex reassignment in Turkey is located with the collaboration of the field research. For me, this combination was the embodiment of my purpose to ground the issue on the first hand experience of the trans individuals. Within the legal framework, the history of legalization of sex reassignment, gains importance in the sense that it gives the clues concerning the mindset behind the current regulation. The theoretical framework, on the other hand, contributes to this study in the sense that it shows how the regulation can be interpreted through its relation with the citizenship framework. It is also crucial, since it offers a guide in

terms of locating the issue in the context of the existing debates on the phenomenon of sex reassignment. Last but not the least, the fieldwork of this study is the backbone in revealing the perceptions and experiences of the trans individuals, who are the first address of the issue. And in that sense, it offers a vital ground for this thesis, upon which the theoretical and legal frameworks of the issue are settled. The arguments and the questions of this thesis, therefore, are based on the combination of these frameworks on the whole.

In accordance with my expectations, the standardized definitions of trans identity in the background of the regulation and the implementation of law, obliges trans individuals to adapt themselves to archetypal image of the *transsexual* identity. Regulation aimed standardization regarding the procedure, yet at the end of the day, it turns out to be the initiatives of the medical professionals that direct the procedure; which are substantially fed on the various impacts of heteronormativity. In this respect, the goal of standardization gives birth to the arbitrariness in the implementation of the process, shaped according to the initiatives of the legal and medical experts.

My anticipation was met in the sense that, although the legalization of sex reassignment indicates an emancipatory act at the first instance, the way that the trans individuals experience the surgery, denotes to a paradoxical process. This process is overcome in a manner whereby some essential rights of these individuals as the citizens of this country are disrupted in exchange for the recognition of the right to sex re-assignment. The process paves the way of arbitrariness, while it aims standardization on the profile of trans individuals, whose right to sex reassignment have been recognized. In that sense, the legalization of sex reassignment and the



recognition of such a right of trans individuals do not indicate the recognition of sexual minorities. On the contrary, it turns out to be a replication of the heteronormative structure of society. This replication is based on the heteropatriarchal family norms, which perceive the others that lay beyond the predefined borders as the threats to be dissolved.

This study also confirmed my expectation that the current regulation – compared to the previous one – ended up in complicating the lives of trans individuals, instead of prioritizing their needs and demands. However, what I had not foreseen was the trans individuals' call for more systematic regulation. Trans individuals who participated in my research perceived the process as a strategy of intimidation therefore I would not be surprised to hear that the individuals demanded the total dissolution of any regulation on the issue of sex reassignment. I expected that any institutional involvement would be removed within the demands and policy proposals of the individuals. However they believed that the problem was in the way that the sex reassignment was regulated and in the way that the regulation is implemented. None of them denied that the reassignment experience is a process during which they need institutional support to lead and inform them in medical and legal issues. In the same vein they need laws that would protect them. Therefore instead of calling for the total dissolution of the laws that regulate sex reassignment process, the participants of this thesis were in demand of a better regulation that would not give space for arbitrariness and loopholes; yet enhance their experience of sex reassignment instead of obstructing it. A regulation that would be based on their subjective needs and definitions, instead of an arbitrary definition of “transsexual nature”, should be one that helps the individuals to undergo the process in a more conscious and a healthy manner. The demand for an institutional guide that would

lead them in the hormonal treatment as well as the drawbacks of the process was common. Thus this once again indicated the relation of the issue with the scope of citizenship. The demand of trans individuals can be interpreted as the demand to enjoy their right of sex reassignment regulated in a way that would prioritize their status of health, before all the other considerations.

The importance of the issue for the purposes of this study, lies in its intense relation with the issue of citizenship. Trans individuals' demand of official identity change is the articulation of the need to be recognized as the citizens of the country they live in. Official identity change gains meaning when the trans individual is associated with state institutions; in each step of their lives at each confrontation with a state institution and that is why the official/institutional recognition of the transitioned gender is that vital for the trans individual. This thesis underlines the trans individuals' demand of institutional support and a better regulation and therefore shows that the struggle for the official recognition with the claimed identity is located into the frame of citizenship.

Although there is still a long way to go for the liberation of the LGBT individuals, the issue of LGBT people in Turkey is increasingly attracting interest and getting a wider support, which contributes to its public visibility. However, trans population, as the most vulnerable group in terms of confronting the social and institutional violence in their everyday lives, is still not voiced enough in the Turkish academia. Among the few studies on the trans population in Turkey, the issue of sex reassignment has not been addressed in detail. This study aimed to fill that gap, in terms of shedding the light on the various scopes of the regulation and implementation of sex reassignment in Turkey. Underlining the paradoxes and

puzzles of this rarely touched issue, was the goal of this study. And that goal stemmed from my belief that the issue tells a lot about the underlying mechanism of heteropatriarchy and the legal spirit concerning the Turkish society.

Anticipating that there might be variances in the implication of the regulation from city to city, I conducted a part of the interviews in Ankara. As mentioned in the previous chapter, there were differences in the practice between the two cities; in the sense that the interviewees from Ankara have completed the process in a shorter time compared to the interviewees in İstanbul, most probably due to the overcrowded situation of the hospitals in İstanbul. However, at the end of the day the two cities are the two cosmopolitan cities of Turkey. Therefore it is still understandable that a great deal of differences does not exist among the practices in the two cities. A further study, which will carry this study to different parts of Turkey, would have the opportunity to conduct a comparison among the practices in different cities. In that sense it would examine the different variables that are not covered in the current study, such as the impact of life standards and the conservativeness on the implementation of regulation, varied among the different places.

Conducting the research step of this thesis was the most difficult part in the sense that convincing the trans people, as the research subjects of this study, was not much accessible. In this respect, considering the limits of this study, it was not possible to keep the interviewees socio-economically variant in a strictly systematic manner. Therefore, a further study, which can control socio-economic variances of the interviewees, will be significant in the scrutiny of understanding the impact of socio-economic background of the individual on the experience of the sex reassignment process.

This thesis was based on the driving wish to touch upon the significance of the issue of sex reassignment in Turkey; and speak in a manner that will make sense in terms of the everyday lives and realities of the trans people. The life of a trans individual is constructed on the labyrinths of contestation, and sex reassignment process is one among the many zones of struggle. Considering its limitations, this study dealt with only one of these zones. To that end, it suggested that the demand and call for an emancipatory regulation, as the recurrent theme of this thesis, must be heard and brought into action. It is as a step that should be taken urgently, in order to give credit for the “all-encompassing” equality claim of the Constitution.

## APPENDIX: ORIGINAL QUOTES IN TURKISH

### Interview with K.

Bu kadar zor bir ameliyat silsilesini başka kim göze alabilir? Hissettiğin gibi görünür olmak bu kadar hayati olmasaydı kimse cesaret edemezdi, eğer ölüm kalım meselesi olmasaydı kimse tuhaf olarak etiketlenmeyi göze alamazdı. (p.1)

### Interview with Ö.

Bu olay eskiden, yeni düzenlemeden önce çok daha kolaydı. O zamanlar kimin ihtiyacı varsa kolayca ameliyatı olurdu, gerçi bizim için serbestçe kendimiz olmak hiçbir zaman kolay olmadı. (p.1)

### Interview with S.

Biz Kasap Osman derdik ona. Ameliyattan sonrasını sen kaldıramazdın, canavara çevirdiler bizi. (p.87)

### Interview with G.

Doktorların gerçekten bu işten anladığına inanabilseydim, beni bu geçiş sürecine sağlıklı bir şekilde hazırlayabileceklerine bir inanabilseydim şu zamana kadar kazandığım hayatım boyunca da kazanacağım tüm parayı vermeye hazırdım ben. (p. 95)

Bedenimize bakıp onaylamaya çalışıyorlar.Akılları fikirleri bedenlerimizde.Ama bizim ruhumuzla ilgili bu, bedenimizde değil ruhumuzda.Ruhumuzun ihtiyacı var bu değişikliğe, ruhumuz istiyor bunu, bedenlerimiz değil. (p.101)

### Interview with M.

Erkeklik kalıbı üstünde yaşıyorlar. Bedenlerinin de varoluşlarının da her bir parçası erkeklik üstüne kurulmuş onların. (p.102)

#### Interview with İ.

Bir erkeklik imparatorluğu var ve sen sürekli oraya girmek zorundasın gibi. Her daim kendini oraya Kabul ettirmek zorundasın gibi. (p.103)

#### Interview with F.

Ne kadar çocukluğundan beri istiyor olsan da beden ve ruhun geçiş döneminin değişikliklerine tepki veriyor. Bedenin yirmi yıldır sahip olduğun organlarından ayrılmayı anlamaya çalışıyor. Bu dönemi psikolojik bir destek olmadan atlatmak neredeyse imkansız. (p. 106)

#### Interview with D.

Bu ikinci seferiydi, önceki doktor da başka şeyler istemişti ama bu seferki en kötüsüydü. Bana 'sen kadın, mısın erkek misin' diye sordu. 'Kız mı diyeceğiz şimdi sana', 'annen kızım mı diyor şimdi sana' diye sordu dalga geçer bir tonda. Bir yandan da kordonumu sıkıştırıyor kontrol esnasında. Benim stratejim hep sessiz sakın uslu kızı oynamaktır. Tamam buraya kadarına katlanırsın ama bir de anal muayene yaptı, hiç gereği yoktu. Ayağıma vura vura köpekmişim gibi davrandı bana. (p.114)

Raporumu aldım ya artık başka bir şeyle uğraşacak gücüm yok. Eminim başkalarının başına çok daha kötü şeyler de geliyordur. (p.115)

Bir yandan ev kızımı bir yandan da nineyi oynamak bu. (p.119)

#### Interview with A.

Normalde yaptığımdan daha fazla makyaj daha kadınsı kıyafetler terapi süresini kısaltır diye elimden geleni yaptım. (p.117)

#### Interview with L.

İşi kuralına göre oynamayı öğrenmek zorundasın. (p.120)

#### Interview with C.

Bizim varoluşumuz sıradanlığı, normalliği, kalıpları yıkıyor. Dıştan normalleşmiş görünse de trans birey bildiğini okur, onun varlığı cinsiyet kalıplarını yıkmak demektir. (p.123)

## Decision of the Court of Appeal

Herkes yanlış eylemlerinin sonuçlarına katlanmak zorundadır. İşe, duygusal zeminde çözüm aramak doğru olamaz. Çünkü hukuk, hak karşısında ne kadar şefkatli ise, hata söz konusu olduğu hallerde de o derece müsamazdır. Erkekliğini yitirmiş ve fakat kadın da olamamış bir kimsenin caresizliğine birlikte acınır. Ama kanun bir yana itilerek imkân hazırlanamaz. (p.23)

## Additional Clause of the Article 29 of the Civil Code of Turkey No: 743

Bu konuda açılacak davalarda cinsiyeti değiştirilen kişi evli ise, eşe de husumet yöneltilir ve aynı mahkeme, varsa ortak çocukların velayetinin kime verileceğini de tayin eder,cinsiyet değişikliği kararının kesinleştiği tarihte, evlilik kendiliğinden son bulur. (p.24)

## Article 40 of the Turkish Civil Code No: 4721

Cinsiyetini değiştirmek isteyen kimse, şahsen başvuruda bulunarak mahkemeye cinsiyet değişikliğine izin verilmesini isteyebilir.Ancak, izin verilebilmesi için, istem sahibinin onsekiz yaşını doldurmuş bulunması ve evli olmaması; ayrıca transseksüel yapıda olup, cinsiyet değişikliğinin ruh sağlığı açısından zorunluluğunu ve üreme yeteneğinden sürekli biçimde yoksun bulunduğunu bir eğitim ve araştırma hastanesinden alınacak resmî sağlık kurulu raporuyla belgelemesi şarttır.

Verilen izne bağlı olarak amaç ve tıbbî yöntemlere uygun bir cinsiyet değiştirme ameliyatı gerçekleştirildiğinin resmî sağlık kurulu raporuyla doğrulanması hâlinde, mahkemeye nüfus sicilinde gerekli düzeltmenin yapılmasına karar verilir. (p.26)

## Preamble of the Article 40 of the Turkish Civil Code No: 4721

Madde bu şekliyle mahkemeye, kişinin cinsiyetinin değiştirilmesi sonucu nüfus sicilinde değişiklik yapma konusunda bir takdir yetkisi vermemekte, mahkemeyi âdeta bir onay makamı hâline getirmektedir.Bu durum, gelişigüzel cinsiyet değişiklikleri sonucu mahkemelerimizi, âdeta bir emrivaki ile karşı karşıya bırakmaktadır.Bu amaçla yeni düzenlemede cinsiyet değiştirmek isteyen kişinin bu değişikliğe gitmeden önce bizzat mahkemeye başvurması zorunlu kılınmış; mahkemenin böyle bir izni verebilmesi bazı koşullara bağlanmak suretiyle yürürlükteki 29uncu maddenin ikinci fıkrasında olduğu gibi gelişigüzel cinsiyet değişikliklerinin önüne geçilmek istenmiştir. (p.28)

Subclause B of the Article 63 of the Social Insurance  
and Universal Health Insurance Law

Kiřilerin hastalanmaları halinde ayakta veya yatarak; hekim tarafından yapılacak muayene, hekimin greceęi lzum zerine teřhis iin gereken klinik muayeneler, laboratuvar tetkik ve tahlilleri ile dięer tanı yntemleri, konulan teřhise dayalı olarak yapılacak tıbbi mdahale ve tedaviler, hasta takibi ve rehabilitasyon hizmetleri, organ, doku ve kk hcre nakline ve hcre tedavilerine ynelik saęlık hizmetleri, acil saęlık hizmetleri, ilgili kanunları gereęince saęlık meslek mensubu sayılanların hekimlerin kararı zerine yapacakları tıbbi bakım ve tedaviler. (p.31)



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