

TRANSGENDER PEOPLE’S RIGHT TO MARRY IN VIETNAM AND OTHER COUNTRIES – LEGAL RECOGNITION AND PRACTICAL PROBLEMS

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Abstract: *Transgender rights and right to marry of transgender people have been recognized by many countries in the world, this rights come from human rights of every person. For the first time, the Vietnamese laws have legalised “sex reassignment rights” by article 37 of Civil Code 2015 and all the moral rights of Vietnamese transgender people, including right to marry. This study will be conducted by the author for the purpose of the comparison and evaluation of the provisions of law relating to transgender people’s right to marry in Viet Nam and some countries in terms of legal recognition and some practical problems.*

Keywords: *transgender rights, right to marry, sex reassignment surgery, transgender people, gender change.*

I. Introduction

Same-sex marriage and transgender rights are considered as global social problems which have always attracted the attention of the legal researchers, especially in Vietnam. Although gender change has long ceased to be a new social phenomenon, it’s always a new research issue not only in Vietnam but also in many countries around the world. From the date of entry into force of the Civil Code 2015 which has legally recognized the transgender rights of Vietnamese citizens can be considered as “a new regulation” for transgender rights in Vietnam. However, the legalization of gender change has existed for a long time in some countries. Specially, in Sweden, the Legal Gender recognition Act (Act 1972:119) relating to recognition of legal gender came into force in 1972. Thereby, Sweden became the first country in the world to codify the transgender rights which allow swiss citizens to be assigned with a new legal gender after gender reassignment treatment¹. Up to the present time, there are 62 countries and States have legalized sex change and Vietnam officially became the 62nd country in the world and the 11th in Asia to admit the gender change right². There are many countries in Europe, America and Asian that recognize only the transgender rights after surgery, and other countries permit their citizens to have the right to gender change on official personal documents without undergoing surgery. For Vietnam, there are no legal documents guiding the requirement of medical intervention for gender change recognition.

In fact, the proportion of transgender people is increasing and accounts for a relatively high number of the world’s population, the world’s studies show that the rate of transgender people is about 0.3 to 0.5% of population. As a result, in Vietnam, the average number of Vietnamese transgender citizens is estimated between 290,000 and 480,000³. However, there are many transgender people who face many problems such as discrimination and difficulties in relationships, job, healthcare, social services and moral rights prescribed by law in which the right to marry must be mentioned. Thus, countries and States should require specific legal

¹ The Government of Sweden, Chronological overview of LGBT persons rights in Sweden, <https://www.government.se/articles/2018/07/chronological-overview-of-lgbt-persons-rights-in-sweden/>, retrieved October 29, 2021.

² Báo Điện tử VOV (2015), Hợp pháp quyền đổi giới tính tại Việt Nam: Người chuyển giới nói gì?, <https://vov.vn/xa-hoi/hop-phap-quyen-doi-gioi-tinh-tai-viet-nam-nguoi-chuyen-gioi-noi-gi-453680.vov>, retrieved October 29, 2021

³ Cục Phòng, chống HIV/AIDS - Bộ Y Tế (2019), Quyền chuyển đổi giới tính - cần một hành lang pháp lý, <http://vaac.gov.vn/quyen-chuyen-doi-gioi-tinh-can-mot-hanh-lang-phap-ly.html>, retrieved October 29, 2021.

corridor to protect the legitimate rights and interests of transgender people and most notably their right to marry may be enforced in practice.

The legal concepts, according to gender transition, are prescribed by the provisions of law of countries:

(1) “Transgender”: according to the provisions by law of the United States of America, “*transgender*” is an umbrella term for persons whose gender identity or expression (masculine, feminine, other) is different from their sex (male, female) at birth⁴.

(2) “Transgender person”: the Transgender Persons (Protection of Rights) Act, 2019 if India provides that “*transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta*”⁵.

(3) “Gender change”: under Vietnamese law, at clause 01 of article 02 of the draft law on Gender Transformation stipulates that “*gender change is the process of performing medical intervention in order to change the sex of a person who’s assigned at birth to be suitable for identification about their sex*”.

(4) “Sex reassignment surgery”: in the legal sense, under provisions of the Directorate-General for Internal Policies - European Parliament, “*gender reassignment is the term used to define the legal process whereby a person is formally recognised by the State in his/her “new” gender role*”⁶.

2. Transgender rights and right to marry in accordance with the provisions of Vietnamese laws

2.1. Transgender rights under Vietnamese law

The previous provisions of Vietnamese law, especially the Civil Code of 2005 and Decree No.88/2008/NĐ-CP of the Vietnamese Government⁷, prohibited gender change and didn’t recognize the new gender of Vietnamese citizens who have undergone gender reassignment surgery. This legal regulations cause discrimination against transgender people.

However, on the basis of the provisions of the Constitution of 2013, which have ensured for respect and protection of human rights and citizen’s rights including transgender rights and right to marriage. At the 10th session of the 13th National Assembly in 2015, the members of Parliament have voted to pass the Civil Code 2015 in which the right to change gender is officially legalized on the territory of Vietnam. Simultaneously, the gender change right becomes one of the moral rights of citizens protected by Vietnamese law. This right is concretized in article 37 of the Civil Code 2015 whereby Vietnamese transgender people have the rights and obligations to register for changing their civil status in accordance with the civil status law. They also have moral rights according to the provisions of the Civil Code 2015 and other relevant legal documents as a Vietnamese citizen.

⁴ Centers for Disease Control and Prevention, U.S. Department of Health & Human Services, Transgender Persons, <https://www.cdc.gov/lgbthealth/transgender.htm>, retrieved November 11, 2021.

⁵ Ministry of Law and Justice of India, Transgender Persons (Protection of Rights) Act, 2019, <https://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>, retrieved November 11, 2021.

⁶ Directorate-General for Internal Policies - European Parliament (2010), Transgender Persons' Rights in the EU Member States, page No.05.

⁷ Expired.

The legalization of transgender rights is an important step of the Vietnamese law in recognizing the existence and equality of transgender people in Viet Nam, so that they can live as themselves. And obviously, after completing the registration for change of civil status, Vietnamese transgender people have moral rights being considered appropriate for their new gender.

It can be said that the recognition of transgender rights is an important legal basis to ensure all the moral rights of transgender people in terms of civil status, marriage and family, child adoption, etc. However, there is no legal document that specifically regulates the procedures for the issues mentioned, so it is difficult to exercise transgender rights in practice. Logically, when the new gender is not recognized, the right to marry of Vietnamese transgender people is also not allowed. Meanwhile, the Civil Code of 2015 stipulates that when any citizen undergoes sex reassignment surgery, he/she must strictly comply with the provisions of the law. Therefore, it's necessary that the Government of Vietnam should soon issue legal documents to determine specifically medical facilities (which are allowed to perform gender reassignment surgery), marital status and process of changing civil status of vietnamese citizens after undergoing surgery and so on. All of these regulations are aimed at ensuring that transgender people's moral rights are really their rights.

2.2. Rights to marry under the provisions of Vietnamese law and international law

The right to marry is one the most fundamental rights of every human being, all individuals are equal and protected by law in terms of the right to marry. Consequently, it is logical that this right of transgender people must also be guaranteed.

Under international law, the International Covenant on Civil and Political Rights 1966 (ICCPR) is one of the most important international human rights treaties adopted by the United Nations General Assembly, in which one of the rights recognized by this Covenant is the right to marry and to establish a family, specifically the article 23 provides as follows:

“...2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses....”

This provision affirms that States parties must ensure the right to marry and to establish a family of man and woman who have reached the age of marriage. At the same time, States parties must also guarantee the principle freedom of agreement and complete consent in marriage. Furthermore, at article 12 of the European Convention on Human Rights (ECHR) prescribes that *“everyone has the right to marry and to have a family.....”*. The regulations from ECHR and ICCPR confer a privilege of marriage on the citizens of member countries including transgender people.

From the perspective of Vietnamese law, the National Assembly has legalized the transgender rights of its citizens, respects and guarantees all the rights of transgender people, and especially the right to marry. In order to exercise the right to marriage registration and be recognized a legal marriage, transgender people need to perform two important procedures as follows:

(a) Firstly, the procedure for changing civil status is the first step that must be taken for transgender people to be legally recognized as man or woman, the content changes are mainly related to gender and full name. However, the name does not have to be changed, it depends on the wishes of the transgender people, they usually will change full name to suit their redefined gender. According to the provisions of Vietnamese law to complete this procedure,

Vietnamese citizens can submit their application to the competent state agency to register for changes in their civil status information when they can prove their legitimate reasons in accordance with the provisions of the Civil Code of 2015 and other relevant legal documents⁸. And after completing the registration procedure of civil status change, transgender people who have been recognized as male or female gender can get married only when they comply with the conditions for marriage as prescribed by the law on marriage and family.

(b) Secondly, regarding the implementation of legal procedure for marriage registration, at the clause 5, article 3 of the Law on Marriage and Family 2014 of Viet Nam stipulates that “*getting married means a man and a woman’s establishment of the husband and wife relation according to the provisions of this Law on marriage conditions and registration*”. Therefore, the Vietnamese transgender citizens will fully enjoy the right to marry only if they satisfy all the conditions for marriage as specified in article 8 of the Law on Marriage and Family of 2014 as follows: (1) the man is full 20 years or older, the woman is full 18 years or older; (2) the marriage is voluntarily decided by one man and one woman; (3) they do not lose the civil act capacity; (4) the marriage does not fall into one of the cases prohibited by the provisions of law. It is important to note that the Vietnamese law has not yet recognized same-sex marriage.

All conditions mentioned are met, a Vietnamese citizen can completely marry a Vietnamese or foreign citizen of the opposite sex.

3. Legal recognition of transgender rights moving towards legalization of the right to marry under the laws of some countries

Although the National Assembly has acknowledged the transgender right and the right to marry of Vietnamese people, the legalization of this rights in Vietnam is considered later than in the world, many countries have recognized transgender rights of their citizens and granted them the right to marry after carrying out the necessary legal procedures, although the recognition rules vary widely from state to state. The approach of the States can be divided into two basic groups: (a) some States accept legally new gender of their citizens without undergoing the sex reassignment surgery or no requirement of hormonal treatment; (b) other States set the legal conditions to recognize only the new gender of their citizens after completing surgery on their reproductive organs. Besides, it is possible to mention the third group in which certain States haven’t any regulations on transgender issues⁹.

(a) Firstly, some countries tend not to require their citizens to undergo the surgical sterilization, but they can still have been legally recognized as transgender gender:

[1]. France: Gay, bisexual and transgender people's rights in France are traditionally considered liberal¹⁰ and France has been named as one of the most gay-friendly countries in the world¹¹. As a result, the issue of recognizing transgender rights, same-sex marriage and right to marry of transgender people has been soon legalized in France¹². However, in the

⁸ Điều 27, 28 Bộ luật Dân sự năm 2015

⁹ Directorate-General for Internal Policies - European Parliament (2010), Transgender Persons’ Rights in the EU Member States, page No.08.

¹⁰ Reuters (2013), French parliament allows gay marriage despite protests, <https://www.reuters.com/article/us-france-gaymarriage-idUSBRE93K08B20130423>, retrieved October 11, 2021.

¹¹ Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in France, European Union, <https://rainbow-europe.org/#8633/0/0>, retrieved October 11, 2021.

¹² LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id>, retrieved November 11, 2021.

period since 2010, the French citizens must undergo a large surgery such as: vaginoplasty for MTFs, mastectomy and hysterectomy for FTMs to accept legally their new gender¹³.

Another important step taken on November 06, 2015 to further ensure the transgender rights of French citizens, it is the fact that a drafted bill (known as “Amendement N°282 (Rect)”) approved by the French Senate allow transgender people to legally change their sex without performing a gender reassignment surgery and compulsory sterilization. And on May 24, 2016, this bill adopted by the National Assembly of France¹⁴. Finally, “Amendement N°282 (Rect)” has taken effect on January 01, 2017. The “Rect” marks the transgender rights of the French citizens that begin to enter a new phase when they have the right to decide on medical interventions for their bodies or not.

[2]. United Kingdom: the Gender Recognition Act 2004 (GRA) permits transgender people to apply to the Gender Recognition Panel to have a Gender Recognition Certificate (GRC) since 2005. Then they will be given a new birth certificate, get married and enjoy the same benefits as other ordinary British citizens. The United Kingdom is one of few member States of the European Union where there is no requirement of hormonal treatment or no mandatory for gender reassignment surgery. However, the GRA have also established the compulsory standards that require a British transgender citizen aged over 18 and they must demonstrate to be diagnosed with gender dysphoria.

Related to marriage rights of transgender people, prior to the period of 2013, British transgender people were required to end their marriage in order to obtain a gender recognition certificate, because same-sex marriage was legally admitted. And the transgender people's right to marry has changed in the positive direction since the Marriage (Same Sex Couples) Act 2013 came into force, the requirement of the end of marriage no longer applies. So, the current marriage relationship may still be maintained when one or both parties change lawfully their gender as long as both parties intend to continue this marriage after getting a gender recognition certificate.

Although the provisions of law guarantee all the moral rights of transgender people, in practice in the UK, they always face the problem of discrimination. In fact, these rights are easily violated by many different causes such as transgender people can be bullied, stigmatized, discriminated and limited access to education, employment and health care. In order to ensure provisions of law related to transgender rights which are implemented in practice, the UK Government has enacted the Equality Act 2010 for prohibiting discrimination on the basis of “gender reassignment”¹⁵.

[3]. Taiwan: In first for Asia, in 2019, Taiwan's Legislative Yuan has passed a special law on same-sex marriage (known as the Act for Implementation of J.Y. Interpretation No. 748), Taiwan became the first country in Asia and the 27th country in the world to legalize same-sex marriage. Specifically, at article 2 of this Act provides that “*two persons of the same sex may form a permanent union of intimate and exclusive nature for the purpose of living a*

¹³ Directorate-General for Internal Policies - European Parliament (2010), Transgender Persons' Rights in the EU Member States, page No.25.

¹⁴ Assemblée Nationale de la France, Amendement N°282 (Rect – 12/05/2016), <https://www.assemblee-nationale.fr/14/amendements/3726/AN/282.asp>, retrieved October 11, 2021.

¹⁵ UK Parliament (2020), Gender recognition and the rights of transgender people, <https://commonslibrary.parliament.uk/research-briefings/cbp-8969/>, retrieved November 11, 2021

*common life*¹⁶. It can be said that this regulation is “a big step forward” in terms of equal rights of the LGBT community in Asia.

Regarding transgender rights, it has been recognized in Taiwan since 2008, but it is mandatory that Taiwanese people must undergo gender reassignment surgery in order to change their legal gender on personal official documents. On the basis of decision of the Directive issued by the Ministry of the Interior of Taiwan in 2008, the registration of gender change on ID card of any Taiwanese citizen will not be admitted if the Taiwanese applicants can not provide medical certifications mentioned to their gender dysphoria and transgender surgery¹⁷.

However, at the present time, Taiwan has removed the mandatory requirement performing gender reassignment surgery and instead, the Government stipulates that the applicants only carry out the procedures to change information on personal official documents according to regulations to be recognized as legal gender. It is considered as a major change in Taiwanese society to facilitate the realization of transgender rights and aspirations of the transgender community.

Thailand has officially become the first Southeast Asian country to legalize same-sex relationships and Thailand is also a famous country that conducts many gender reassignment surgeries for many foreign citizens. Thailand's parliament approved the Civil Partnership Bill which allow same-sex couples to register their partnership and give them the moral rights and privileges as straight couples¹⁸. To be registered, same-sex couples must be at least 17 years old or older and at least one of whom must be a Thai citizen according to the amendments to the Civil and Commercial Code of Thailand. However, the Thai government has yet to legalise gender change as the regulations of Taiwan. Therefore, it is obvious that transgender people in Thailand don't have the right to marry.

The Thai government's regulatory approach comes as a surprise when Thailand is a country that has almost accepted legally same-sex marriage, but does not recognize transgender rights.

[4]. Australia: Same-sex marriage in Australia has been lawful since 2017. The Australian Parliament has officially approved the Marriage Amendment (Definition and Religious Freedoms) Act 2017. Accordingly, from January 9, 2018, same-sex couples may be permit to get married in Australia. Prior period of 2017, the Amendment to the Sex Discrimination Act 1984 has provided the new provisions for the protections from discrimination based on sexual orientation, gender identity and intersex status on Australian territory in 2013¹⁹.

¹⁶ Ministry of Justice (Taiwan), Act for Implementation of J.Y. Interpretation No. 748, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008>, retrieved October 05, 2021.

¹⁷ Focus Taiwan (2021), Taiwan court rules to allow trans woman's ID card gender change request, <https://focustaiwan.tw/society/202109240019>, retrieved October 05, 2021.

¹⁸ Library of Congress (US), Thailand: Draft Legislation on Civil Partnerships for Same-Sex Couples, <https://www.loc.gov/item/global-legal-monitor/2013-11-05/thailand-draft-legislation-on-civil-partnerships-for-same-sex-couples/>, retrieved October 05, 2021.

¹⁹ Australian Government, Australian Government Guidelines on the Recognition of Sex and Gender, <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australian-government-guidelines-recognition-sex-and-gender>, retrieved November 11, 2021

The Amendment permit an Australian citizen to establish or update their new gender in personal records held by Australian Government departments and agencies. It is worth noting that the requirement for sex reassignment surgery or hormone therapy are no longer prerequisites in order to recognize lawfully the gender change²⁰.

In fact, for the first time, the recognition of the third gender in Australia has been codified through the Australian High Court has ruled that New South Wales must accept legally the third gender for an Australian citizen - Norrie May-Welby who has beginning a legal battle to be socially recognized as gender-neutral since 2010²¹. The High Court's decision is not only practical but also promotes gender equality, fights against discrimination and especially towards ensuring that the marriage rights of Australian transgender people and gender non-binary people are enforced in practice.

(a) Secondly, the countries tend to require citizens to undergo sex reassignment surgery if they want to recognize legally their new gender (affirmed gender) and right to marry. These mandatory requirements are causing serious violations of citizens' rights and human rights prescribed by the International Covenant on Civil and Political Rights 1966 (ICCPR) of the United Nations. On April 2017, the European Court of Human Rights (ECHR) declared that compulsory sterilisation is a serious infringement on human rights, if we consider it as a preliminary step in gender reassignment surgery. However, the “infertility requirement” or “forced sterilisation” has still existed in the EU countries as: Belgium, Bulgaria, Cyprus, Czech Republic, Finland, Greece, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Slovenia²².

[1]. Japan: In the Asian region, it can be referred to Japan that does not recognize same-sex marriage, but admit transgender rights of citizens. Specifically, at article 24 of the Japanese Constitution *stipulates* that “marriage shall be based solely on the consent of both sexes, and it shall be maintained through mutual cooperation with the right of equality between the husband and wife as the basis”²³. So, the people of the same-sex must perform gender reassignment in order to legally marry. And to concretize this provision of the constitution, the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (known as Act No. 111 of 2003, amended by Act No. 53 of 2011)²⁴ has allowed the Japanese citizens the right to freely change their gender according to the relevant legal documents. In fact, from the date of entry into force of the Act in the first year, there are about 97 people who apply to be registered their gender change. Over the past 15 years, it increased to 9,625 cases²⁵.

²⁰ Services Australia (Australian Government), Providing supporting statements for patients updating their gender classification, <https://www.servicesaustralia.gov.au/organisations/health-professionals/subjects/providing-supporting-statements-patients-updating-their-gender-classification>, retrieved November 11, 2021

²¹ The Guardian, Third gender must be recognised by NSW after Norrie wins legal battle, <https://www.theguardian.com/world/2014/apr/02/third-gender-must-be-recognised-by-nsw-after-norrie-wins-legal-battle#:~:text=458-.The%20Australian%20high%20court%20has%20ruled%20that%20New%20South%20Wales,change%20recognised%20as%20non%2Dspecific>, retrieved November 15, 2021

²² Parliament European (2017), Forced sterilisation of transgender people, https://www.europarl.europa.eu/doceo/document/E-8-2017-007687_EN.html, retrieved October 01, 2021.

²³ The Constitution of Japan, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html, retrieved November 02, 2021.

²⁴ The Act have taken effect in 2004.

²⁵ The Japan Times (2021), People changing registered gender rising at record pace in Japan, <https://www.japantimes.co.jp/news/2021/01/04/national/gender-change-japan/>, retrieved November 05, 2021.

However, under provisions of law, only Japanese citizens who have been diagnosed by at least two doctors (as physicians equipped with the necessary knowledge and experience) with a gender identity disorder can be allowed to apply to change their gender^{26,27}.

In addition, Japanese applicants must also satisfy other conditions prescribed by law such as being at least 20 years of age or older, unmarried and not having children under the age of consent. Besides, reproductive organs of the former sex are no longer functioning due to undergo sex reassignment surgery, in other words, they are no longer able to reproduce. If all conditions are met, Japanese citizens will of course be able to exercise their transgender rights if they receive the approval of the family court²⁸.

[2]. China: China is one of the few countries in Asia that admits transgender rights, but to be recognized as the new gender (preferred gender), Chinese citizens must undergo gender reassignment surgery. And Chinese government also admits transgender citizens to change legally their names and gender markers on their official personal documents in accordance with the Sex Reassignment Procedural Management Standards 2017 of China which requires Chinese citizens to submit the necessary materials and meet the preconditions to be eligible for gender-affirming surgery as follows:

“Before performing the main surgery, the surgical patient should submit the following materials and enter them into the medical record: (1) verification issued by the local Public Security Bureau that the patient has no prior criminal record, (2) verification issued by a psychologist or psychiatrist of a diagnosis of transsexualism, (3) verified written request from the surgical patient requesting the surgery and (4) verification that the surgical patient has already notified family of the intention to undergo sex reassignment surgery”²⁹.

In addition to the conditions related to medical intervention, Chinese people who want to be considered as preferred gender are required to meet additional conditions such as: they have no prior criminal record and must be older than 20 years old and unmarried. Furthermore, they must obtain the consent letters from parents as prescribed by the 2017 Standards. Upon completion of all legal formalities, Chinese transgender people are allowed to marry a person of a gender different in regards to the right to establish a family in practice.

4. Legal recognition in practice for transgender people's right to marry – International experience for Vietnam

The Civil Code 2015 has legalised the transgender rights of Vietnamese citizens, in order to enjoy this right, the Vietnamese laws impose conditions that Vietnamese applicants meet them to be legally admitted as male or female gender. And so, the determination of these conditions will be the basis of recognition of gender change and subsequently, the right to marry of transgender people.

Therefore, the draft law on Gender Transformation, proposed by the Vietnamese National Assembly, is in the process of getting the public opinion from the Vietnamese citizens.

²⁶ Article 02, Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (Japan), http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=2542, retrieved November 05, 2021.

²⁷ Human Rights Watch, Japan: A Really High Hurdle (2019), <https://www.justice.gov/eoir/page/file/1149876/download>, page No. 09.

²⁸ Article 03, Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (Japan), http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=2542, retrieved November 05, 2021.

²⁹ China Women's University, A Legal and Policy Review: Legal gender recognition in China, page No.28.

The provisions of this draft is considered as legal basis in the future for Vietnamese transgender people to ensure all their moral rights including the right to marry. Additionally, the issue of development of law drafting on Gender Transformation is aimed at the solutions with human values to help the transgender community in Vietnam, they can exercise all their rights and be protected by the law. When the right to transgender is fully recognized on personal official documents by law, the right to marry of Vietnamese transgender people will be guaranteed in practice.

Under the provisions of the draft law, some legal issues have been discussed such as: cases of transgender recognition; change registration of civil status; minimum age to be undergo gender reassignment surgery (medical intervention); psychological identification of Vietnamese citizens who want to perform the transgender surgery; conditions required for medical facilities which must satisfy are allowed to intervene in gender reassignment;...These are just the most basic legal issues mentioned by the draft law. In addition, the other important contents have been also discussed and consulted for the purpose of finalization of regulations before submitting the draft law to the Vietnamese National Assembly for approval.

The most remarkable point in the draft law on Gender Transformation in Vietnam is the legal recognition of gender change without medical intervention. Based on reference to the regulations of many countries around the world on transgender rights, the legal options are being considered for inclusion in the law, specifically:

(1) *The first option*, the provisions of the law will recognize Vietnamese citizens as transgender people after the psychological test (“*gender dysphoria*”) according to the standards prescribed by law and they will express their desire to change sex, as well as they must take hormones for a continuous period of time as provided by law before the time of the application of gender change registration on personal official documents.

(2) *The second option*, in addition to combining with the solution mentioned by the first option, the regulations on Gender Transformation require Vietnamese citizens to undergo surgery for partial or total breasts and genitals organs. And if only these conditions are met, Vietnamese transgender people will be recognized as male or female gender.

(3) *The third option*, recognition of the transgender sex without the medical intervention (such as the use of hormones or surgery on the breasts or genitals): Vietnamese citizens only need to obtain the confirmation certificate of psychological examination in accordance with the standards prescribed by law and they must show their expression of desires for transgender issues. And then, the Vietnamese transgender people can apply their request to the competent judicial authority in order to change the personal information on their official documents.

In the three options mentioned above, it can be seen that the third option will be the best choice in terms of economy and health safety of Vietnamese people who want to be transgender. Using hormones continuously for a period of time prescribed by law, Vietnamese citizens will be recognized as transgender people.

Firstly, according to the state agency responsible for drafting law on Gender Transformation, the total cost of a complete procedure for transgenderism at the reputable hospital in Thailand (including gender reassignment surgery and counseling support services) for female to male transsexual conversion range from 30,000 USD (about 700 million VND) in which the breast surgery costs from 3,000 to 5,000 USD. With male to female sex reassignment surgery, the total cost are more expensive up to 35,000 USD (equivalent to 800

million VND) in which the cost of breast surgery is about 5,000 USD³⁰. It can be said that the transgender surgery costs are very high, many Vietnamese citizens don't want the medical intervention due to their inability to pay.

Secondly, concerning the health impact of transgender surgery, according to a scientific study conducted by Center for supporting community development initiatives of Viet Nam (SCDI – “Trung tâm Hỗ trợ Sáng kiến Phát triển Cộng đồng”) indicates that the proportion of transgender population of Vietnam lacks access to essential health services, especially the medical services exclusively for Vietnamese transgender people and consulting support information from the reputable sources such as hospitals and large medical facilities. Additionally, the rights of access to psychological counseling and mental health care for transgender people are still limited. Many transgender people have been experiencing mental health problems such as depression, stress, insomnia, and persistent anxiety disorders. Furthermore, Vietnamese young transgender people may risk their lives and health by taking unsafe hormones and attempting surgery on themselves.

Reaffirming that the cost for surgery is very expensive and gender reassignment treatment carries many risks. As a result, many Vietnamese citizens want to change their sex but they don't have enough money. Some people only pay for breast surgery but have no money for genital surgery. For that reason, based on the human rights and international practices recognized by the majority of countries in the world, the provisions of Vietnamese draft law shouldn't require the mandatory condition for gender reassignment surgery to be recognized as legal gender. This optional requirement also shows respect for the human rights of every Vietnamese citizen.

On the other hand, loosening regulations on gender transformation as well as promulgating more specific recognition regulations for Vietnamese transgender people will indirectly ensure their right to marry. As mentioned in “2.1. *Transgender rights under Vietnamese law*”, the Vietnamese Civil Code of 2015 only provides general provisions on gender reassignment and sex change, it is so necessary to have legal documents detailing the implementation of regulations of some articles of this Civil Code to solve problems of gender identity, especially marriage registration for transgender people. In the author's opinion, the draft law on Gender Transformation should be promulgated soon to have a legal mechanism to deal with difficulties and problems related to recognition procedures, in order to ensure the legitimate rights and interests, the equality right and the right to enjoy happiness of Vietnamese transgender people.

5. Conclusion

The provisions, prescribed by the Civil Code 2015 of Vietnam, have given the priority to protect and enhance the rights of transgender people, including equality in marriage right and employment in accordance with international practices and not being contrary to Vietnamese traditions and customs. Additionally, the regulations on gender change provided by the draft law create turning points in the process of law-making and meet the needs of a part of Vietnamese citizens in the society today.

On the other side, even though the Civil Code 2015 recognizes the transgender rights and change registration of civil status of each citizen, the transgender people don't be able to exercise their rights because of the lack of legal documents guiding the implementation for the Civil Code 2015. Therefore, if only the draft law on Gender Transformation is soon

³⁰ Dân Trí (2021), 800 triệu đồng mỗi lần phẫu thuật và sự đánh đổi của người chuyển giới, <https://dantri.com.vn/an-sinh/800-trieu-dong-moi-lan-phau-thuat-va-su-danh-doi-cua-nguoi-chuyen-gioi-20211106220430088.htm>, retrieved November, 15 2021.

promulgated by the Vietnam National Assembly, the provisions prescribed by this law, concerning the procedures of civil status registration to recognize the new gender, will be implemented. Thereby, the Vietnamese transgender people's right to marry will be admitted indirectly.

Besides, the recognition of same-sex marriage is widely legalised in many countries around the world and the current trends of other countries will be able to accept the right to marry of same-sex couples. Therefore, the provisions of law on Marriage and Family may be considered and amended in order to codify same-sex marriage in Viet Nam.