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Transgender issue in contemporary Iran: A theological reflection¹

Kwestia transpłciowości we współczesnym Iranie: refleksja teologiczna

Abstract:

The Islamic Republic of Iran is recognised as a theocratic political system with a touch of democratic elements. Since the last decade of the 20th century it is the only Islamic republic with sophisticated system for sex-change operations and procedures related to this issues. This unique situation was developed on the ruling of Ayatollah Khomeini concerning the Fereydoon Molkara's case. He was born as a man and later identified himself as a woman. Current legal regulation in Iran not just allows sex-change procedure, it is recommended and even expected by the religious authorities that anyone who identifies himself with the other sex than he was born with would undertake the sex-change procedure. The paper deals with the historical and theological context of the issue.

Keywords: transgender; transsexuality; Iran; Shia; Islam; Christian theology.

Abstrakt:

Islamska Republika Iranu jest uznawana za teokratyczny system polityczny z elementami demokracji. Od ostatniej dekady XX wieku jest to jedyna islamska republika z wyrafinowanym systemem operacji związanych ze zmianą płci oraz procedurami dotyczącymi tej kwestii. Ta wyjątkowa sytuacja rozwinęła się za rządów Ayatollaha Chomeiniego w związku ze sprawą Foreydoona Molkara. Urodził się on jako mężczyzna, a później utożsamiał się jako kobieta. Aktualne przepisy prawne w Iranie nie tylko zezwalają na procedurę zmiany

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płci, jest ona zalecana, a nawet oczekiwana przez władze religijne, które mówią, że każdy, kto identyfikuje się z inną płcią niż ta, z którą się urodził, podejmie procedurę zmiany płci. Artykuł dotyczy historycznego i teologicznego kontekstu tego problemu.

Słowa kluczowe: *transgenderyzm, transpłciowość, Iran, Shia, islam, teologia chrześcijańska.*

Introduction

The transgender issue is a challenging question for ethical concepts including the catholic theology. Concepts trying to analyse reasons for the gender disorder are numerous and there are also many attempts trying to describe it in order to find a solution. The terminology on the field of research is still under discussion.

When individuals experience their gender identity that means the way they feel, and their gender expression that means the way they act differently from sex and gender assignment they were associated with at birth, they are often referred to as a transgender, a gender dysphoria or a gender nonconforming person. However, these umbrella terms consist of other terms such as transsexual, cross-dresser etc (Beemyn, G., Rankin, S. 2011, 1–7). It is, above all, important to make a distinction between birth sex on one side and sexual orientation on another side and, moreover, also aspects of gender in general and gender identity together with gender expression in particular.

In the paper we are going to use the prime term transgender and other terms are later specified in the text. We are going also to use a term intersexuality, which is considered to be a deformity of sex development and it cannot be compared to gender dysphoria. The first one is a physical defect, the second one is a psychological disorder. A word hermaphrodite is in the Muslim law traditionally in use to describe individuals with ambiguous genital or it is a synonym to the term of intersex person (Najmabadi, 2013, chap. I).

From the perspective of the Catholic theology it is a crucial task to match the terminology of originally Western metaphysical understanding of *the person*. This simple word was developed in Europe and had been maintained by the Christian theological tradition. It is also anticipated, especially from the Catholic part, that it is also acceptable and understandable by non-Christians alike. The teaching of the Catholic Church addresses the metaphysical unity of the person and the creation of the soul by God at the moment of its infusion into the body. Therefore any argument supporting, for instance, the sex reassignment

surgery must contend with theses including the subtitle distinction of the person as the unity of the body, soul and spirit. If we accept that there is a gender disorder in a life of a certain human being, then it should be described from theological point of view in these trichotomy terms. It is a theological issue on the one hand, on the other hand, the natural science follows the evidence and does not allow anyone to influence it by any ideological considerations. The Catholic theology is then challenged especially by psychological research and by surgical possibilities of medical science.

The same challenge was set upon the pluralistic world of Islamic thought. And surprisingly in Iranian Shia based society it is not only allowed but it might be also considered a religious duty to change one's sex by sex change surgery. However, only if a person is officially recognised to be a transgender individual. Since the Islamic Revolution in 1979 the Islamic Republic of Iran has been recognised as a theocratic political system with little touch of democracy. The combination of both aspects leads commentators to describe Iranian regime to be a semi-totalitarian. However, the approach towards the transgender issue in the homeland of famous physician Avicenna (980–1037) “the father of modern medicine” seems to be very liberal (Mir-Hosseini, 1999, 3–16).

For instance, in other predominantly Muslim countries we have very different approaches at least in Saudi Arabia (Salman al-Oadah, 2010), Malaysian (Majlis Raja-raja, 2010), Turkey (Jansen, 1992, 83–92) and Egypt (Skovgaard-Petersen, 1995; Alipour, 2017). There is no room to go through all of them in the paper.

Transgender issue in Iran is dealt from a specific perspective and is well covered by media inside Iran (Saeidzadeh, 2016, 250, note no. 1) and also on international level (Wikan, 1977). It is discussed predominantly in two perspectives. One of them evaluates the government of Iran for its affords to deal with this issue (Farrah, 2014). Other authors note that the sex change procedure is misused by the government to manipulate with gender and sexuality in order to force all different kinds of disorders, predominantly homosexuality, to fit into heterosexual categories of binary set up male and female society (Najmabadi, 2008, 25–26).

The paper deals with Islamic theological background of above mentioned approach in Iran and its practical aspects. We are dealing with the issue from Ayatollah Khomeini's fatwa up to the beginning of the 21st century. Attention is also paid to the theological reasoning of Iranian scholars dealing with difficulties of the unity and harmony of soul and body and for the theological reasoning. Conclusion of the paper is presented as a theological reflection and a contribution to interreligious relations and bioethical reasoning in the Catholic milieu.

The first part of the paper deals with basic Bioethical axioms as they were developed in Iranian Shiism. Then it goes to a short historical survey of the

transgender issue in Iran and then it pays attention to the situation after the Molkara's case. The paper is concluded by the reflection and inspiration for the Catholic reasoning on the field of research.

Motivation to the bioethical reasoning

Among the many bioethical controversial issues there is one of the gender identity disorder or also called the gender dysphoria (Furton, 2017). As it was mentioned above it is allowed and also recommended to undergo the sex change surgery if someone is recognised to be the transgender individual in Iran. But beside that phenomenon, for instance, the abortion is banned outright in Iran. However, under exceptional circumstances, such as endangerment of the mother's life an abortion is allowed and authorized by relevant authority. On the other hand, in Iranian society someone might be punished by a death sentence for homosexual behaviour (Wahme-Sabz, 2000, 285–286). In spite of all those facts the most conservative political system in Iran has one of the most open approaches to the transgender issue. The transgender individuals, if recognised by responsible medical body as a gender disorder person, are officially allowed to undergo surgery in order to change their sex. And in some cases the transgender surgery is also widely expected to be done and even recommended by religious authorities. And transgender individuals are even motivated to undergo the surgery.

Before the Iranian Islamic Revolution in 1979, the issue of gender dysphoria in Iran had never been officially addressed by the government or public authorities. A changing point in history of modern Iran was a overthrowing of Mohammad Reza Pahlavi known as Mohammad Reza Shah. He was the Shah of Iran from 16th September 1941 until 11th February 1979. After that date we can see rapid changes in political system, society, culture, science and, of course, also in bioethics. The situation in Iran was completely changed in a decade.

At the beginning of the middle 80s transgender individuals were officially recognized by the government and allowed to undergo a sex reassignment surgery. The situation in Iran developed into following settings: The government provides up to half the cost for those needing financial assistance for the transgender surgery and the second half of the finances might be obtained from the Iranian charitable organization, The Imam Khomeini Relief Foundation. Beside that, a sex change is recognised in the birth certificate and passport, identity card, driving licence etc. And individuals after a sex change surgery can be also married in their new identity.

According to official statistics there is in Iran from 15 thousand up to 20 thousand transsexuals. Unofficial estimates suggest that there are almost 150 thousand transsexuals. (Sarcheshmehpour, Abdullah, 2017, 65) There is approximately 78% male to female transsexuals and approximately 26% female to male individuals (Sarcheshmehpour, Abdullah, 2017, 58). Still, Iran carries out more sex change surgeries than any Muslim country around the world.

Having said that we must recall the question: What can we learn from the transsexuality issue in Iran? It is above all the consequence of certain decision which is established only on duties and obligations of an individual in the society and not also on dignity of human beings.

Transsexuality in Iran: brief history and *status quo*

During the first half of the 20th century there were only some records witnessing the surgeries concerning the sex change issues. According to press reports in 1930 and then up to late 50s the scene was better covered by media; however, all sex change surgeries were done in order to change intersex conditions (Najmabadi, 2005, 26–62; Najmabadi, 2008, 26). According to medical reports in the Iranian press the earliest sex change surgeries (i.e. non-intersex sex surgeries) were done in February 1973. In general only in Teheran and Shiras were sex change surgeries carried out. During that decade the state run organisation, the Medical Association of Iran, opened up the discussion about ethical aspects of sex change surgeries and in 1976 decided that the surgeries are ethically unacceptable with one exemption – intersex individuals.

The Supreme authority of the Iranian regime was Ayatollah Khomeini who was also the moving agent of slowly developing transgender policy. Long before his leading position during the Iranian revolution he published in 1968 his pivotal book in which he foresaw his own later statements concerning the transgender issue – it is called in Persian language *Tahrir al-wasilah*. The book was published and dated 1387 of Iranian traditional calendar, it means from 1967 to 1968 AD, released in two volumes. However, the book was written a couple of years earlier during his exile-times in Bursa in Turkey from 1964 to 1965. Section 49 is the last one and it deals with contemporary questions and issues in general and with transgender issue in particular (Khomeini, 2011, 491–495).

It can be also found in the fourth volume of bilingual edition release of the title published in 2011 by Institute for Compilation and Publication of Imam Khomeini's Works. There is the eighth chapter entitled "Change of Sex" and it

deals with 10 hypothetical cases regarding the sex change. The crucial formulation reads like this:

Likewise, a surgical operation of a hermaphrodite is not prohibited for his final attachment to either of the sexes. Is it obligatory in case a woman finds in herself inclinations of the kind of male urges or some male symptoms or a male finds in himself inclinations of the opposite sex and some of its symptoms? Apparently it is not obligatory when person really belongs to one sex but it is possible to change it into the opposite sex (Khomeini, 2011, 491).

Ayatollah Khomeini states that it is permissible but not obligatory to change someone's sex, if it is an intersex person. He also adds some regulative statement and one of the clauses talks about hypothetical situation when there are some religious duties which must be observed by the intersex individual.

If it is supposed that there is knowledge about the person's entering into an opposite sex and the surgical operation will not change his/her sex into another, but will only expose what is hidden, then undoubtedly it is obligatory to act according to the symptoms of actual sex and prohibition of the symptoms of apparent sex.

So if it is known that he is a male, it shall be obligatory upon him to observe all that is required of him as a man, and abide by all that is forbidden to him as a man, and vice versa.

It is, however, not obligatory to change his appearance and expose what is hidden, except when performance of the religious duties or some of them depend on them, and abstinence from the divine prohibitions is not possible without them, in which case they shall be obligatory (Khomeini, 2011, 491).

Here he stated that there is no religious restriction on corrective surgery for intersex individuals. In other words, it is applied to those individuals who naturally bear both male and female sexual signs; it means genitalia as well as secondary sex features that developed during adolescence. And because everyone in Islamic society should carry out his or her religious duties in harmony with gender polarity – male or female – it is religious obligation to change it.

However, this legal statement cannot be applied to those without physical duality in sex organs. It means that this fatwa or a judicial statement was suitable only to so called intersex persons (Najmabadi, 2013, 38–73). And above all, it also avoids the crucial question of body-soul relation (Khuri, 2001, 23–48).

Ayatollah Khomeini decreed that there was no religious restriction on corrective surgery in the case of intersexed individuals. The status of intersex indi-

viduals is one that has been discussed in the context of Quranic exegesis specifically because of the strict segregation of sexes: it is a priority for an intersexed person to choose one sex to embody fully into one of the sexes and carry on his or her religious duties.

In spite of the fact that Ayatollah Khomeini is dealing only with intersex individuals here we can see a basic framework of his decision making process concerning the transgender dysphoria. It might be a religious obligation to undergo a sex-change surgery in order to fulfil religious duties or perform religious role assigned to someone depending on religious status based on male or female gender status within the Sharia law.

We can also recognise Ayatollah Khomeini's fatwa as a legal statement in harmony with an *urf* (local customary precedent). However, a transgender issue was not addressed yet by any Iranian religious authority.

This is also important from the point of view of the religious functions that men or women perform within religiously based society and, above all, also from the point of view of the rights that men have over women. A personal status of woman in Sharia Law is defined primarily according to her relationship to a man – her status is mother, sister, daughter, widow. And Sharia law knows nothing in between; it must be clear whether someone is man or woman.

The situation about transgender issues has rapidly changed after the 1979 Iranian Revolution. The new religious government that was established identified transgender individuals with homosexuals, it means gays and lesbians. There can be seen certain continuity with Shah's era, because individuals with homosexual behaviour were condemned in Shah's era and faced a punishment of lashing or even death sentence according to Iranian penal code, only if they were proven guilty of homosexual behaviour (Habib, 2010, XXV).

Theological background of the Shia reasoning

Transsexuality was officially addressed by the Iranian government for the first time in the middle 80s. Still, the Khomeini's opinion was the determinative for its legal significance and religious authority, since Ayatollah Khomeini had dedicated some of his writings to the explanation of an intersex person's religious duties. He had been paying no attention to the transgender issue until a certain transgender individual, certain male-to-female person, Maryam Fereydoon Molkara, anticipated Ayatollahs understanding of the issue. And after years of writing letters and lobbying Fereydoon Molkara managed to reach the Ayatollah Khomeini's residence and personally forced him to deal with the

transgender issue. A letter that Fereydoon Molkara obtained from Ayatollah Khomeini after the audience allowing to have a sex change operation is considered to be the fatwa that later caused an avalanche of fatwas, and especially surgeries, and it technically legalized the sex change surgeries in Iran. There are other male-to-female individuals who claimed that they obtained the very first fatwa from Ayatollah Khomeini on changing sex surgery, however, there is no evidence for the demand so far (Najmabadi, 2013, 159). Let us pay attention to the Fereydoon Molkara's case, because it is very significant and the story is well covered by media in interviews and reports in Iran as well as internationally; there are printed interviews, film documentaries etc. (Saeidzadeh, 2016, 250, Wikan, 1977, Najmabadi, 2013, 159, 248).

Fereydoon Molkara (1950–2012) was recognised as male at birth but he identified himself as female since his childhood. He was born as a male and later was known as Maryam Khatoon Molkara and was also officially recognised as a woman. Before the Islamic revolution, he had longed to become bodily female. However, he could not afford a surgery and above all he was also searching for a religious authorization of his decision because he was a pious Muslim believer. His religious affiliation is one of the most important facets of the story because the religious opinion was one of the strongest arguments in favour of the transgender individuals.

After a psychologist examinations he was told that he is a transgender individual and the sex change surgery was recommended to him. First of all, he met Ayatollah Behbehani a well-known figure among the religious authorities in Iran at that time. Ayatollah Behbehani gave him some advice, after performing a typical Iranian religious ceremony *istikhareh* (spiritual leadership). *Istikhareh* means letting the Koran fall open and interpreting someone's problem according to the particular page that was accidentally revealed. In that case it was the *sura* (i.e. chapter in Quran) called *Maryam*, the verses in the Koran that tells the story of Jesus' mother Mary. It is very specific *sura* as it is the only *sura* bearing a woman's name in Quran. Ayatollah Behbehani said that it means that Molkara's life would be like Maryam's life; it means the life of struggle. Since that moment Fereydoon Molkara decided to accept a new name Maryam. Ayatollah Behbahani also suggested, and it was his advice, that Fereydoon Molkara could contact Ayatollah Khomeini, who was at the time in exile in Najaf (Paidar, 1995, 178, Moallen, 2007, 190). Ayatollah Behbehani led him to the seeking a religious advice from exiled Ayatollah Khomeini, and he recommended him to present him his case. In 1975, before the Islamic Revolution, he began to write letters to Khomeini where he described his life story. Later in one of his interviews, already as a woman Maryam Molkara, summarised Khomeini's opinion on his personal situation:

I told him I had always had the feeling that I was a woman. I wrote that my mother had told me that even at the age of two, she had found me in front of the mirror putting chalk on my face the same way a woman puts on her make-up. He wrote back, saying that I should follow the Islamic obligations of being a woman (Tail, 2005).

In general Ayatollah's answers were not satisfactory for Fereydoon Molkara because he was probably not addressing the transgender issue but the intersex issue. For that reason Fereydoon Molkara travelled to Paris in order to confront the exiled spiritual leader to his story, unfortunately he failed to meet him.

After the revolution, Fereydoon Molkara was fired from the state run TV because his case leaked out to a public sphere; he was injected with male hormones in hospital, and forcibly institutionalized to behave in a male way. He was later released from rehabilitation centre with help from his personal connections and he continued to lobby many other leaders. During the 1980's the conflict between Iraq and Iran began and aspirations for reassignment surgery were not the question of the day. During this time he was working as a nurse in army facilities. He was dressed in female outfit as a nurse and he behaved as a woman. Later on, in 1986, Fereydoon Molkara would receive government approval to proceed with sexual reassignment surgery, allowing him to legally change the sex. Although he still was not able to afford it and above all he was missing the religious approval.

In order to obtain it he later went to see Ayatollah Khomeini, who had returned to Iran. The date of the meeting is not clear yet. Fereydoon Molkara gives two different dates of Iranian Solar Hijri calendar. It was in an interview with BBC Persian reporter, there he witnessed 1365, it means 1986–1987 in the Gregorian calendar. In certain interview with Mohammad Mehdi Kariminia he mentioned year 1364 of the Iranian Solar Hijri calendar, it means 1985–1986 in the Gregorian calendar (Najmabadi, 2013, 340). In our text we will use middle number 1986, however, everyone must keep in mind uncertainty of the situation. During the visit in Khomeini's residence, he was subjected to beatings from personal guards before being granted an audience with Ayatollah Khomeini.

At the meeting Ayatollah Khomeini ruled that Fereydoon Molkara's case was different from that of homosexual persons, intersex individuals and others that were addressed by his own former fatwas. As a result of that particular meeting Khomeini gave his blessing to Fereydoon Molkara, he gave him an *achador*, it is a woman's dressing signifying her status within society at public places, stating that it is not forbidden to undergo a surgery in order to change sex. It was for the first time that Khomeini addressed the issue of transsex-

uality when he recognized transsexual individuals as people suffering from certain illness and allowed Fereydoon Molkara to undergo sex reassignment surgery. Technically, he released a personal fatwa in form of a letter where he allowed Fereydoon Molkara to undergo the surgery. Fereydoon Molkara had the letter addressed to a chief prosecutor and a head of medical ethics, who are allowed to give permission for the sex change surgery. A text was later entirely published. However, we have also a witness made by Fereydoon Molkara, who claims that:

Khomeini decided that it was a religious obligation for me to have the sex change because a person needs a clear sexual identity in order to carry out their religious duties. He said that because of my feelings, I should observe all the rites specific to women, including the way they dress (McDowall and Khan, 2004).

Ayatollah Khomeini then decided that it was a religious obligation for man-to-woman person to have the sex change surgery because every person needs a clear sexual identity in order to carry out their religious duties in accordance with the Sharia law.

Particularly important in this case is a shift from the intersex-position-fatwa to the transsexual-position-fatwa. Fereydoon Molkara later described that point of this decision was a distinction between intersexual persons and transsexuals.

“I was taken into a corridor,” Molkara says. “I could hear Khomeini raising his voice. He was blaming those around him, asking how they could mistreat someone who had come for shelter. He was saying, ‘This person is God’s servant.’ He had three of his trusted doctors in the room and he asked what the difference was between hermaphrodites and transsexuals. What are these ‘difficult-neutrals’, he was saying. Khomeini didn’t know about the condition until then. From that moment on, everything changed for me” (Tail, 2005).

Those are witnesses made by Fereydoon Molkara and it is the only commentary based on eye witness of the fatwa so far. The distinction between the intersex individuals and transgender individuals and a question of religious duty and religious obligation was emphasised there. However, Ayatollah Khomeini in his fatwa says something slightly different and he emphasise different part of his decision making process. The fatwa was later published and is available also in English translations. Unfortunately the text was prepared with no sign of a date and with no legal argumentation. It simply says:

In His Great Name. Sex-reassignment, if prescribed by a trusted physician, does not raise any religious issues. God willing you will be protected, and hopefully the people you mentioned will be considerate towards you (Iran Human Rights Documentation Centre).

In alternative translation it brings nearly the same content.

In the Name of God. Sex-reassignment surgery is not prohibited in *sharia* law if reliable medical doctors recommend it. *Inshallah* you will be safe and hopefully the people whom you had mentioned might take care of your situation (Alipour, 2017, 96).

The fatwa states that it is not forbidden to undergo the surgery. In a vocabulary of Shia lawyers it means that it is lawful and then also allowed; however, it does not necessarily mean that it is absolutely obligatory to do so (Tabataba'i, H.M., 1984, 13–22). It simply reveals that according to Khomeini, the issue of sex change in the case of transgender individual is not against Islamic law and for that reason there is no convincing argument against this operation and no one can in praxis put obstacles against this intention.

This simple undated text must be interpreted in the context of Ayatollah's former decisions and also in the context of comments made by Fereydoon Molkara. The reason for "not prohibited" statement was, we dare to say, the same as in his above mentioned book *Tahrir al-wasilah*. If it is not against the religious law and the Quran, it is allowed and possible to do so, argues Ayatollah Khomeini.

One of the main reasons for his decision was no doubt a personal struggle of Fereydoon Molkara who forced him to express himself openly and directly to transgender issue. Above all, his decisions were motivated also by the context of Sharia law and his understanding of its axioms. According to Molkara's witness Ayatollah Khomeini had said that it is "a religious obligation" to change a sex and the main reason is that each person needs a clear gender identity in order to carry out his or her religious duties prescribed by Sharia law.

We must add that within Sharia law all religious duties and rights come from his or her personal status as a male or female individual. It must be absolutely clear, in order to know where and how to perform ritual prayers, for instance, how to bury someone, how to divide an inheritance, how to marry someone, how to perform a pilgrimage called Hajj etc.

Question of personal freedoms and rights to choose their own gender identity is not the point of the decision making process. The Sharia law settings in general and religious rights and duties in particular are the reasons for this apparently liberal approach to the gender identity disorder. We can also speculate whether Ayatollah Khomeini's fatwa was more a consequence of legal de-

cision making of his empathy and compassion with Molkara's struggle or not. The lack of information leaves us depended on Molkara's witness and Ayatollah Khomeini's published work.

To sum up the aforementioned published fatwa it consists only of Ayatollah's conclusion. What is not seen and was not published and mentioned in the fatwa is the fact that the decision is based on his understanding of sacred text of Quran (what is not forbidden in it, it is allowed), his interpretation of the Sharia Law (he is supreme authority in Shia tradition) and his empathy towards a suffering of on individual (Fereydoon Molkara's case).

And in order to finish Fereydoon Molkara's story we must add that at that particular meeting in Khomeini's residence Fereydoon Molkara was given a black chador, a piece of clothing worn by women in Iran signifying womanhood. Ayatollah Khomeini reportedly said according to Molkara's witness that because of his feelings, he should observe all the religious and cultural rites specific to women, including the way they dress.

Despite having the religious approval from Ayatollah Khomeini, Fereydoon Molkara still remained in manhood, because of his mother and because of the lack of financial resources. He started a hormonal therapy, living as a woman without surgical therapy. The sex reassignment surgery took place later in 1997 in Thailand. Expenses were covered by Imam Khomeini Relief Committee. After the sex change surgery Fereydoon Molkara, as a Maryam Molkara, a female individual recognised also by the government, co-founded an organization to provide loans to help other transsexuals. Until today it is called The Imam Khomeini Charity Foundation.

In contemporary Iran due to this very personal fatwa submitted in 1986 transgender males and females are able to live with different sex then they were given by the birth. At the first decades of 21st century there is a system opened for Iranians to undergo the sex change surgery. An examination process might take from six months to two years, it is supervised by the government and is organised under the standards of the World Professional Association for Transgender Health.

Each transgender case is treated individually and it takes a long time to pass all the examinations. And then, if someone is recognised a suffering from gender disorder the individual goes through the three step therapy (socialisation therapy, hormonal therapy, and surgical therapy). Until the very end of the therapy he must behave in a way proper to his original gender. The individual must demand the court order based on certificate released by Medical Organisation to change name and documents. And after that the individual can start to behave in a new social role. The process of the sex change and the following legal and

medical process of verification and recognition of transsexuality are briefly described in published literature (Saeidzadeh, 2014, 81).

However, Iranian legal system has not had yet a legal regulation focusing on transgender issue. Lawyers and judges have been searching for exact definition of the issue. For instance, a transgender female to male individual after the sex change surgery can initiate the process of the military service exemption. According to the article 33 of Examination and Medical Exemptions Regulations of Iran transgender individuals are exempted from military services in spite of the fact that military service is compulsory for all men in Iran over the age of 18. Transgender female to male individuals were classified as individuals with behavioural disorder. Nevertheless, since 2012 the situation has changed. In 2010 the general director of the office for Socially Harmed at the Welfare Organization of Iran announced that the code for Military service exemption for transsexuals should be changed. The conclusion of the discussion stated that transsexuals would be recognised as worthy of exemption because of the glandular disorder; the article 30 instead of the article 33. They are not described as individuals with mental disorder any more but as individuals with biological disorder. It also means that when they are recognised as individuals with biological disorder they should not be discriminated and they can afford their basic rights easily (Sarcheshmehpour, Abdullah, 2017, 67).

Another place where transsexuality was addressed is the Civic Registration Law amendment in 1985, article 20, clause 14, which states: "a person who has changed his/her sex can legally change their name and gender on the birth certificate upon the order of court" (Saeidzadeh, 2016, 261). And also the Family Law Bill amendment in 2011, article 4, clause 18 says: "family court is entitled as a judicial authority to handle issues related to sex change" (Saeidzadeh, 2016, 261).

A sex change issue is addressed by Iranian law but the term transsexuality is not mentioned in it. And above all the rights and duties of transgender persons after the sex change surgery are not mentioned. When legal status of transgender individuals is not defined in civil law it cannot be addressed by any bill published by the Iranian government.

Still, Ayatollah Khomeini's fatwa keeps on the direction of the self-development of the Iranian legal system which is built on heterosexual paradigm. If the Iranian legal system accepts a particular paradigm of transgender as an alternative to the traditional one it could cause the crumbling of the system in general.

It is not surprising that there is no unanimous consensus among Iranian clerics concerning application of 1986 fatwa. However, Khomeini's opinion is binding and was later approved by his successor ayatollah Khamenei, the current supreme leader of Iran.

The plurality of opinions is beyond the scope of our topic and so we have no room in the paper to overview Iranian cleric's plurality of opinions. Readers interested in the ongoing discussion can search in published studies where supporting as well as opposite legal opinions to Khomeini's fatwa could be found (Mir-Hosseini, 1999; Saeidzadeh, 2016, 249–272; Ireland 2007; Islamopedia, 2010; Rispler-Chaim, 1993, 44–49).

Cultural background in contemporary Iranian society

Results of the current discussion are clearly visible in some places in Iran. As in Teheran it is possible to undergo the sex change surgery including changes of identity before the law. In some cities not only the sex change surgery is forbidden, but the legal change of name and gender is not recognised by local religious authorities.

Those who are allowed to undergo the sex change surgery are facing difficulties caused by the Iranian society cultural background. In Iran there is a notable difference from transgender legal, social, and above all, cultural standards elsewhere. When a transgender individual decides to become man or woman, he or she must take into consideration important facts.

In Iranian society based on predominant Muslim culture of Shia tradition to become a man means to acquire new rights. In other words in case of inheritance, divorce rights and marriage rights a man has more freedom and more rights than a woman. And it also means that a female-to-male transsexual is losing a *hijab* that is more or less mandatory for a woman in Iran and a female-to-male transsexual is setting herself free from the duty to hide herself from sights of men by adherence to a dress code (Shakerifar, 2011, 327–339).

On the contrary, a man who wants to become a woman is viewed in a very negative way, because someone might ask himself why a man would want to become a woman and would like to lose his Sharia guaranteed rights and freedom. Male to female transgender individuals are after the sex change surgery like all other women in Iran, that means they are dependent on certain man as was already mentioned above in the text.

In other words, to become a man in Iran means to acquire rights and freedoms, and vice versa to become a woman means losing rights and freedom. From that point of view we can see another challenging facet of transsexual individual's decision making beside his or her devoutness. Let's formulate it in form of a question. How unbearable must be a difficulty of male to female transsexual's life if they are ready to exchange some of their rights and freedoms for new

gender identity based on the irreversible surgery and recognised by the state and partly also by society. It must be added that moreover, many male-to-female transgender individuals are rejected by their families, because they have renounced to be men and since that their legal and social representation is often dependent on a male partner. They might be viewed as weak and dishonourable men (Ireland, 2007).

Majority of transgender individuals were reportedly targeted by sex-abusers; they were beaten and mistreated also by family members. And because of their new female sex they search for a marriage. In many cases they are temporarily married in institute of *muta* (i.e. pleasure) marriage. It means they live in very unstable relations, with a risk of abuse of power granted over them to a man (Ireland, 2007).

Thus there is a great deal of stigma attached to the idea of transgender and gender reassignment in ordinary Iranian society, and transgender people after finishing their transition are encouraged to remain silent regarded to their past.

The discussion concerning the transgender issue in contemporary Iran leads into two main positions and has not landed yet to a final conclusion.

In general there is the government which is continuously complimented for its seemingly liberal approach. Also, the 2001 report of United Nations High Commissioner for Refugees says that homosexuality if presented in public spaces in Iran is haunted and also punished.

“Still, homosexuality is practised every day, and as long as this happens behind closed doors (...) they will most likely remain unharmed”. And compares a homosexual’s situation to transgender individual’s situation and adds: “Furthermore, sex changes are permitted in Iran and operations are frequently and openly carried out” (UNHCR and ACCORD, 2001, 12).

The second position is critical to the current situation and calls for substantive changes. For instance, the Country Information Report: Iran from 2004 was elaborated with financial support and also published by The Allen Lane Foundation. The report describes the United Nations 2001 Report as overestimating and simplifying the situation. The Project’s report suggests that United Nations underestimated legal pressure over transgender matters. According to the Report’s unspecified sources it states that the religious authorities do not allow sex change surgery and for that reason transgender individuals might be haunted for their illegal status, because they were medically examined and officially diagnosed as individuals with gender disorder. And moreover, the Report presents a suspicion, again with no specific source.

There is a risk that people involved in homosexual relationships who may not be transgender, are pressured into undergoing a sex-change operation in order to avoid being 'illegal'. (Safra Project, 2004, 13)

It means that if they are approved for the sex change surgery, they are expected to undergo treatment immediately. Those who wish to remain non-operative transgender are considered to be males or females according to their biological gender and they might be harassed as being homosexuals and also might be subject to the same law barring homosexual acts.

It means that the Project report also states that currently it is not possible for presumed transgender individuals to choose not to undergo surgery and that the sex change surgery was instrumentalized for achieving the gender binary society. It is the statement of the report so far.

In the line with the 2004 Report there is later published Jafari's study from 2014. He openly describes Iranian transsexual policy as manipulative and accuses Iranian authorities of misinterpreting 1986 Khomeini's fatwa. Let's quote from Jafari's study where he states:

There is the evolution of Khomeini's original fatwa to the contemporary Iranian *ulama*. They are manipulating Khomeini's fatwa and using it as a medicalization device to enforce sexually normative behaviour and shape sexual desires through state-sanctioned and governmentally implemented surgery (Farrah, 2014, 31, see also 39-42).

These voices are supported by media coverage and interviews made with transgender individuals before and after the sex change surgery. One of them is largely quoted and it states:

There are only a small percentage of people who get a sex-change operation who are actually transgendered. Out of some 100 transsexuals whom I have encountered, only 20 of them were genuinely transgendered, and the rest are gay (Ireland, 2007).

Opponents to this attitude usually recall the fact that in Iran the civil law does not directly legalize the sex change surgery nor recognizes the transsexuality. Before the law it does not exist or as it was mentioned above the law addresses the issue indirectly. There is only possibility based on legal opinions of religious authorities. It probably remains taboo in order to keep on society in gender binary setting. However, when someone undergoes sex change surgery

she/he is recognised by the government in his or her new identity. Many interviews are collected and also summarised in Zara Saeidzadeh's study published in 2017. We can recommend it if someone is interested in the collection of the oral history to pass through the text (Saeidzadeh, 2016, 249–272).

It is noteworthy that criticism of contemporary legal situation must be examined together with parallel ongoing discussion led by religious authorities. Newly arrived transgender issue is probed by religious paradigms. And if we overview rapidly changing medical progress in the last decades, religious leaders from different religious traditions are equal partners in ongoing discussion.

However, let us now come to the theological reflection of contemporary Iranian transgender issue and conclusion.

Conclusion and selected theological remarks

Ayatollah Khomeini's fatwa lays out a course of the transgender issue discussion and, of course, also leaves many problems unresolved. Today we can summarise that original fatwa was beyond a doubt in harmony with his former rulings and it means that it was also in harmony with his interpretation of the Sharia Law. Beside that we must count on his personal involvement in the Fayerdoon Molkara case, therefore, his published fatwa gives us also a message about his empathy and his deep personal understanding of certain transgender individual's life story.

And because Ayatollah Khomeini also left the field open for other Islamic authorities he also left a legacy. He motivated Iranian religious authorities to undergo their own struggle with the issue based on legal opinion in harmony with the Quran and in harmony with their own empathy and deep understanding of evolved individual's situation. Ayatollah Khomeini's fatwa is still the corner stone of the ongoing discussion that is challenging the Iranian interpretation of the Sharia law.

The Ayatollah Khomeini made an unprecedented attempt to reach the balance between a law and personal freedom. Another approach that might be developed from his fatwa is based simply on an idea of social order. Someone who wants to set up the world according to the idea of well organised society might tend to force people to fit abstract categories. It is suggested by some above mentioned observers monitoring transgender community in Iran. It might be the direct way to misusing the idea. In that situation the case to case decision making process is replaced by a manual full of religious obligations and prohibitions.

Another approach that is very close to an argumentation in favour of the sex change surgeries is a liberal approach focusing on freedom of choice and freedom of self-definition. However, it is not the case of Iranian situation. Johanne Meyerowitz describes an attitude which paved a way to the open position of the Western society towards the transsexuals, and as it seems it is completely different from Khomeini's decision making process:

“The more liberal sexual climate of the 1960s probably made sex-reassignment surgery seem less outrageous to the doctors (...), and so did the growing familiarity of other forms of bold operations, such as organ transplants” (Meyerowitz, 2004, 2019) and later on she adds that “as a few American universities created gender-identity clinics and as some transsexuals formed advocacy organizations, more liberal sentiments surfaced among some judges and lawyers” (Meyerowitz, 2004, 245).

In slightly changing cultural European and North American environment also the Catholic Church have been searching for her approach to the transgender issue (Conf. Family Forum, 2016). Members of the Catholic Church face exactly the same medical challenges as their brothers in faith from the world of Islam. Modern science in general and modern medicine in particular is developing rapidly day by day and a theological reasoning is challenged by new issues. For a theological decision making process it is crucial to depend on theological sources (International Theological Commission, 2012, chapter I-II). Theologians must leave space to the free theological reasoning in order to preserve and support theological plurality. Moreover, while dealing with ethical issues from a catholic perspective we have to take into consideration also specific term of “conscience” which was cherished for centuries by Christianity in general and the Catholic Church in particular.

Roots of the conscience are in Greek philosophy, however, it was developed predominantly by Christian theology and later was incorporated into western thought and culture and now is understood as a basic and common value shared by all human beings. However, it was never developed in such extent in the world of Islam. Beside some distant affinities of the word ar. *taqwa* and ar. *niyyah*, nevertheless, both of them are not instances of inner-personal judgment.

What might be inspiring on the Iranian ongoing process of decision making for Catholic theologians is freedom of discussion (Martin, 1993). On the other hand, what is alarming is a risk of manuals. Where is a role of consciousness when there is a list of religious duties that must be followed? A role of conscience cannot be underestimated even in the world of Islam. Muslim believers are called

to the listening of an inner voice when dealing with ethical issues. It is leading them to the truth, but they do not call it conscience and they are not religiously obliged to follow this calling when referring to ethical questions.

From a theological point of view it is the Iranian reflection of transgender issue inspiring to only certain extent. It sets up the mirror for the catholic milieu. Theologians can see in the Iranian decision making process two extreme reactions on the transgender issue and also a struggle to balanced approach.

It is, on one hand, a rigid and normative refusal of the reality and consequently, forcing individuals to fit the norm of male and female norm. When any religious tradition, including the Catholic Church, starts to follow the way of manuals with list of what is allowed and what is not allowed, then it slightly drifts towards the consequences indicated by critics of the contemporary Iranian approach to the transgender issue.

On the other hand, someone can unwisely and uncritically leave a room open for unregulated decision making with no rational reflection. As it was mentioned above, some of Iranian clerics are warning before misusing the medical science. In other words, they ask a question whether the sex change surgery including the hormonal therapy and the process of socialisation are effective solutions of individual's gender misbalance. As it was mentioned above, in plurality of Iranian cleric's opinion, for instance Ayatollah Yusef Madani Tabrizi argues with concern to the consequences of the surgery. His argumentation is based on the strictly religious sources with no references to contemporary situation in modern science and modern society (Mir-Hosseini, 1999, 37). The first argument leads to the distinction between man and God. No one is allowed to interfere to God's creation, he concludes. And the second argument concerns the consequences of the surgery, he argues that sex change is never perfect or newly established organs are not fully functional and for that reason it is not lawful to undergo the surgery. Surprisingly, his fatwa is not following the red line drawn by Ayatollah Khomeini in 1986. His ruling goes on the contrary to former Ayatollah Khomeini's fatwa.

The third approach might be described as a process of giving a space to both of the approaches and searching for a balance of both of them. A conclusive part of the decision making process must be a well cultivated conscience. Each religious tradition is called to prepare human beings to meet the infinite reality of a life. In that sense the Catholic Church is called to cultivate and cherish conscience in order to allow anyone to identify oneself with his/her own life story. If we leave the conscience apart we would lose a treasure. For that reason Pope Francis said that "we have been called to form consciences, not replace to them" (Pope Francis, 2016, art. 37). And it expects that we can prepare a space

of clearly defined rulings together with the open space for personal case to case discernment. However, if we left aside regulations we would see the anarchy, if we left apart a freedom of conscience, we would introduce a totality. The role of conscience is crucial and for theological reasoning unavoidable, for that reason the Catechism of the Catholic Church says “when he listens to his conscience, the prudent man can hear God speaking” (CCC, 1997, par. 1777).

Nevertheless, further research into the transsexuality issue in Iran should be conducted with respect to the theological reasoning. Limited by the length of the paper many facets of the issue were left apart. There is an important question concerning theological arguments of contemporary Iranian clerics supporting the permissibility of sex change surgeries, as well as arguments of those scholars who argue against it. Another essential question is applicability and workability of alternative opinions on the transgender issue in the contemporary Iranian society and Iranian jurisprudence. Further findings might be published after the research made by the author in Iran during the year 2018.

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