

## CASE STUDY: "DANI ELA"

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DANI ELA, MASTER OF NURSING STUDENT WHO WORKS AS A NURSE IN THE INTENSIVE CARE UNIT HALL OF A HOSPITAL, CAME TO THE LEGAL ORIENTATION SERVICE OF THE NATIONAL SEX EDUCATION CENTER (CENESEX) COMPLAINING FOR BEING DISCRIMINATED IN BOTH HER WORKPLACE AND SCHOOL DUE TO HER GENDER IDENTITY. VIOLATIONS OF HER SEXUAL RIGHTS, AS WELL AS OTHER FUNDAMENTAL RIGHTS ENSHRINED IN THE CUBAN CONSTITUTION WERE FOUND DURING THE ANALYSIS PROCESS. THE CASE WAS ADMINISTRATIVELY SOLVED AFTER BEING REFERRED TO THE MINISTER OF PUBLIC HEALTH.

KEY WORDS: TRANSSEXUAL, GENDER IDENTITY, SEXUAL RIGHTS, DISCRIMINATION

### REASONS LEADING TO THE FILING OF THE CASE AT THE LEGAL ORIENTATION SERVICE

Her working center is demanding her to "look like a man" if she wants to preserve her job and conclude her higher studies.

#### References to the problematic

She came to the Legal Orientation Services because her work center is demanding her to have a "man style" haircut, not to do her eyebrows and her nails, not to use tight clothes because she has to dress according to what has been regulated for this special kind of special health service. Daniela refers that, in order to ensure "avoidance of problems" and comply with "what has been established", she has her hair carefully tied up, no makeup, very small earrings and no nail varnish as is demanded to other nurses there. She even wears men's clothes but, in order to be more comfortable, she wears them a little bit tighter. As part of these demands, she has been warned that, if she does not comply with them, they will conclude her labor contract and, consequently, that will affect her university studies. Daniela is accepted as a woman by her study and work colleagues.

#### Other important references

Daniela was assigned the male gender at birth in accordance with the appearance of her external sexual genitals. However, she defines herself as a transsexual woman.<sup>1</sup> She is a Cuban young woman in her last year of the master degree in nursing. She works as a nurse in an intensive care unit hall of an important hospital in her province. She came to the National Sex Education Center (CENESEX) and requested an appointment with the National Commission for the Comprehensive Care of Transsexual Persons (CNAIPT, its acronym in Spanish)<sup>2</sup> since "she feels as a plain woman" and consequently, has constructed her identity in accordance with the gender she feels she belongs to. Her image is the image of any other Cuban young woman.

#### Discussion of the case and care strategy

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Obviously, this is an infringement of sexual rights.<sup>3</sup> We are dealing here with the violation of the right to sexual freedom of a person<sup>4</sup> who comes to the Legal Orientation Services because she feels that violence is being exerted upon her to prevent her from physically expressing her sexuality. In this case, the gender identity she has constructed for herself as an indispensable element for her full development as a human being has been violated. Likewise, her right to physical autonomy has been undermined since they are restricting her capacity to make decisions about her body, especially those associated with her physical aspect. Additionally, such demands lack a legal foundation since there is no effective legal regulation in any law dealing with the appearance that men and women should have.

Though the Cuban legislation does not expressly acknowledge sexual rights linked to gender identity, there are mechanisms which, indirectly, promote and protect these rights, since other human rights are guaranteed and, therefore, sexual rights are also protected.

In this case, the constitutional text was not complied with, bearing in mind that in its Article 9, it reads: "the State ... shall guarantee the full freedom and dignity of men and women, the enjoyment of their rights, the exercise of and compliance with their duties, and the comprehensive development of their personality ...". Likewise, Article 41 declares that: "all citizens enjoy equal rights and are subjected to the same duties"; and Article 42 states: "discrimination due to race, skin color, sex, national origin, religious beliefs and any other discrimination against human dignity is forbidden and sanctioned by law ...".

Likewise, the discriminating behavior described a priori limits the enjoyment of the right to education, enshrined in Article 51 of the fundamental law and the right to work contained in Article 45.

Bearing in mind that the study center where she was studying is subordinated to the Ministry of Public Health, we assessed the relevance of submitting this case to the Minister himself for him to examine all its elements and resolve it as appropriate.

Despite the institutional support we decided to provide to this case by submitting this issue to the competent authority through administrative channels, it was necessary to instruct Daniela in the constitutional right she has to file complaints and petitions to authorities and to receive the relevant attention or replies in a prescribed period of time in conformity with the law.<sup>5</sup> Based on the abovementioned, it was legitimate for her to appear in person and in her own right at institutions that, from the administrative point of view, were legally relevant, including the Office of the General Attorney of the Republic of Cuba, for it was in charge of guaranteeing legality by supervising the strict compliance of the Constitution, the legislation and other legal provisions by the State bodies, economic and social entities and citizens.<sup>6</sup>

After submitting a detailed report to this authority, the Legal Orientation Services received a notification of the decision made by the Minister to put an end to this conduct that violates the sexual rights of the transperson involved and, therefore, to the illegitimate demands to modify her image.

In a further interview with Daniela, we confirmed that, in fact, the situation she had reported to us had changed, since no more administrative "pressures" were being exerted on her to modify her image.

## NOTES

1. Transsexual persons experience a deep feeling of not belonging to the gender and sex assigned to them at birth in accordance with the external appearance of

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the genitals, but to the other gender and sex. Thus their identity construction points to the gender and sex they feel they belong to. Therefore, these persons subject themselves to different procedures so as to modify their characteristics through medical interventions for their feminization or masculinization, and even to surgical procedures to reassign their genitals in accordance with the gender and sex they feel they belong to. In these cases, it is extremely important to clarify that transsexuality is not the result of readjustment or reassignment surgery, it exist prior to any intervention and will persist even if the surgical procedure is not performed.

2. Created by the 2008 Resolution 126 issued by the Minister of Public Health. This legal provision defines the functions of this Commission: drafting, implementation and coordination of the national policy dealing with the comprehensive care of transsexual persons; promotion of this care; approval, in conformity with eligibility and availability criteria enshrined in protocols for this treatment, the relevance or not of the sexual re-assignment surgery; methodological guidance of the Center for the Comprehensive Health Care of Transsexual Persons; and promotion of researches contributing to the multidisciplinary scientific knowledge of transsexuality.

3. In general terms, sexual rights allow people, without any distinction based on skin color, age, ethnic origin, nationality, social class, religion, sex, sexual orientation or gender identity, to fully enjoy sexuality. The sexual rights are human rights associated with sexual health. The abovementioned inserts sexual rights into the catalogue of human rights regulated by the international legal instruments.

4. Cfr. World Association for Sexual Health: Salud sexual para el milenio: declaración y documento técnico. Minneapolis; 2008.

5. Cfr. Article 65 of the Constitution of the Republic of Cuba.

6. Cfr. Article 127 of the Constitution of the Republic of Cuba.

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