



HAMLET: A REFLECTION ON TRANSEXUALISM AND LEGAL ETHICS IN POSTMODERN THOUGHT

Over time many issues have been raised in relation to the possible legal recognition of those who, embracing their own psychosexuality, chose to undergo an irreversible surgical intervention. If ab origin, in the absence of any legislative provision, this legitimacy was denied with the consequent existence in the social world of intermediate beings, with features that do not correspond to the registry certifications, afterwards the identity reached prevailed compared to the other visible only under a microscope .

However an evolutionary interpretation of legislation which takes into account socio-cultural transformation brings the analyst to not make a distinction in the area of the changes necessary in order to obtain rectification only if the same determine “an approach by the subject toward the sex perceived and desired”.

According to this different hermeneutics opinion, it is not yet necessary to proceed with sex reassignment surgery when this is considered to be detrimental to the physical health or only to the psyche of the subject or not useful in light of old age.

In some cases, the subject can reach his psycho-physical wellbeing through the modification of secondary sexual characteristics, obtained after hormonal and esthetic treatments.

This state of psycho-psychical wellbeing must be able to be completed and made public with the rectification of the registry data. This is the direction in which a systematic interpretation of the legislation, which disciplines the subject, is going; according to art. 31, s. 4, leg. dec. no. 150/2011, excludes every and any form of constriction to undergo medical-surgical treatment, foreseeing the possibility to resort to the same only when the adjustment of the primary sexual characteristics is necessary, since gender identity disorder has determined a conflicting attitude of refusal by the subject of his own sexual organs, susceptible to being modified only through surgical treatment.

Therefore, this is the verification the judge must carry out in order to evaluate the necessity of the medical-surgical treatment to be authorized.

The present study aims to retrace the steps of this legal evolution, focusing on some institutions - such as the identity of sex, the right to name, marriage - looking at the Italian and English law - and having respective jurisprudences and harbinger of the necessity of the successive legislations as well as the experience of the European Court of Human Rights, in order to know the juridical disciplines legitimating the new epiphany of the transsexual subjects.