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The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other international organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) and with regard to the joint communication under reference OL BGR 01/2021, dated September 27, 2021, issued by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women, its causes and consequences, has the honour to communicate the response provided by the competent Bulgarian authorities (herewith attached).

The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) the assurances of its highest consideration.

Annex: according to text (5 pages).



**OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS**

Quick Response Desk, Special Procedures Branch

Thematic Engagement, Special Procedures and Right to Development Division

GENEVA

INFORMATION BY THE REPUBLIC OF BULGARIA
regarding a joint communication by UN Human Rights Special Procedures

The Republic of Bulgaria expresses its appreciation to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the right to privacy, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women, its causes and consequences for the provided extensive overview of the international human rights documents. The information has been sent to the attention of the Supreme Court of Cassation and other responsible authorities.

In response to Communication OL BGR 1/2021, the Government of the Republic of Bulgaria would like to convey the following information:

I. Preliminary Observations. Relevant National Legal Framework

1. The Republic of Bulgaria aims to fully safeguard the universality human rights to every individual without discrimination. As a member of the United Nations, the Council of Europe and the European Union, we strive to honour our international and regional commitments and obligations to the highest possible level. We are a party to all major legal instruments in the field of human rights.
2. The Constitution of the Republic of Bulgaria raises the rights, dignity and security of the individual to supreme principles. In this way, the respect for equality and non-discrimination is guaranteed at the highest legislative level. No restrictions on rights or privileges based on race, national or social origin, ethnic identity, sex, religion, education, opinion, political affiliation, personal or social status or property status are permitted (*art. 6, para. 2 of the Constitution*). Those principles are enshrined in all aspects of the domestic law.
3. More precisely, article 4, para. 1 of the Protection against Discrimination Act envisages that any direct or indirect discrimination is prohibited on grounds of sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party.
4. In light of the model enshrined in the Constitution of the Republic of Bulgaria, sex is binary and directly determines gender. The biological attributes are indivisibly related to the social constructs and only two categories exist – man and woman. This binary model represents permanently acknowledged values by the Bulgarian society.
5. In March 2021, the Constitutional Court was requested by the Supreme Court of Cassation to provide its interpretations on “sex” under the Constitution. The request was sent in the context of the inconsistent practice regarding the admissibility and preconditions for respecting a request to a court for change of the data entered in the civil registration acts.
6. On 26 October 2021, the Constitutional Court issued Judgement N. 15/2021, according to which under the Constitution the term “sex”/ “gender” is consider only in its biological meaning, in a binary (male/female) model. It relates to the provisions

- of the current Constitution with its relevant regulations regarding marriage and family. This judgement is in consistency with the judgement of the Constitutional Court N.13/2018 issued regarding the ratification of the Republic of Bulgaria Council of Europe's Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention) and reconfirms the interpretation of some of the main provisions of the Constitutions.
7. Article 46, para. 1 of the Constitution recognises the matrimony as a free union between a man and a woman and only a civil marriage is legal. In addition, under article 47, para. 2, mothers are object of special protection on the part of the State and are guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance.
 8. In Judgement N. 15/2021, the Constitutional Court recognizes that some individuals could self-identify according to their own feelings regarding gender. The Court also notes the need for equal resolution of all cases in which persons seek recognition from the State regarding their legal gender. The right of these persons to self-identify and accordingly to express themselves and communicate in their social life cannot be questioned and is protected as by Art. 8 of the ECHR, as well as from Art. 4, para. 2 of the Constitution, guaranteeing the life, dignity and rights of the individual as values of the highest rank, where the framework, within which the State is obliged to assist their identity status, remain within the firm context of the Constitution.
 9. The constitutional ruling is not aimed at recognizing or denying a person's right to self-determination in one way or another. The Constitutional Court, in accordance with its competences, aims to resolve a constitutional problem by giving a binding interpretation of the Constitution. In this respect, it does not issue mandatory instructions to individual authorities regarding the legal status of transgender persons. It also does not interpret the understanding of "sex" in other legal acts. The Court interprets it only in the current constitutional regulation, i.e. related to marriage and family, and interpreted in accordance with the spirit and principles of the Constitution and specifically those that reflect established values in Bulgarian society. The ruling of the Constitutional Court does not bind the judiciary on the adequate way of ruling on requests from transgender persons to respect certain legal consequences arising from their self-determination.
 10. In the awaited Supreme Court of Cassation's interpretative decision, following Constitutional Court Judgement N. 15/2021, the contradictions in the legal practice in the possibility to change the civil status of a Bulgarian national is expected to be resolved. However, it should be underlined that the right of all persons to self-determine to one or another sex and accordingly to express and communicate in their social life is not questioned. It is protected by Art. 8 of the ECHR, as well as by Art. 4, para. 2 of the Constitution, guaranteeing the dignity and freedom of the individual as values of the highest rank. The absence of an explicit legal regulation for gender reassignment is not an obstacle for the referral to the Bulgarian court. According to the Bulgarian legislation, there is an established procedure for changing the persons' data in the civil acts. According to Article 73 and in relation to Article 76, paragraph 5 of the Civil Registration Act, the sex of a person can only be changed in court. In the case *Y.T. vs Bulgaria*, the ECtHR accepts that in Bulgaria the non-admission of gender reassignment is an isolated practice.
 11. The content of the constitutional concept of "sex" in its biological sense, derived from the path of interpretation, is also reflected in the European Union legal order and the main principles of the European Union, enshrined in article 2 of the Treaty on

European Union. Article 19 of the Treaty on the Functioning of the European Union envisages actions “to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. In addition, while providing explanation in art. 157, para. 2 of the TFEU on the meaning of the equal pay without discrimination based on sex, article 157, para. 1 ensures the principle of equal pay for male and female workers.

II. Protection of gender-diverse people’s right to recognition as a person before the law, including persons of diverse gender identities in line with the international legal framework of human rights law and standards (according to point 2 of the Communication)

12. The Civil Registration Act provides the conditions and the rules for the civil registration of the individuals in the Republic of Bulgaria. The civil registration does not divide people by race, religion, ethnicity and sexual orientation. The rules for civil registration are equal for all persons. The civil registration includes the recording of the events of birth, marriage and death of the certificates of civil status and entering of the individuals in the population register.
13. According to article 8, para. 1 of the Civil Registration Act, the basic civil registration data of an individual includes name, date and place of birth, sex, citizenship and unified civil number (UCN). The UCN is a unique number through which the individuals are unambiguously identified. In accordance with art. 104, para. 2 of Ordinance No. ПД 02-20-9 from 21st May 2012 on the functioning of the Unified Civil Registration System, every UCN consist of ten digits. The first six digits show the person’s date of birth. The following three figures form a unique combination of digits and the ninth digit contains information about the person’s sex – an even number for a man and an odd number for a woman. The tenth digit is a control one.
14. As provided in art. 73 of the Civil Registration Act, all changes of data in the civil status act of the individuals are made by judicial order or according to administrative procedures. Whenever the registration of the characteristic “sex” changes, the name of the individual is also changed to reflect the change. Nevertheless, as explained in item I, under the Bulgarian legislation, an individual could be recognized as either as male or female.
15. In Constitutional Court Judgement N. 15/2021, exceptions from the sex recognition may be made for persons with an atypical karyotype, whereby gender determination may be the ground for changing the sex, entered in the civil status acts. It should be reminded that the X and the Y sex chromosomes participate in sex determination where females have two X chromosomes in their cells and the males – a X and a Y chromosome. In a borderline hypothesis, due to deviations from the typical combinations of sex chromosomes (XX for female and XY for male), the person has distinctive gender characteristics of both sexes and, according to the Court, the gender determination is not biologically defined and as such is not in discrepancy with the main binary principle of the Constitution.
16. From a medical point of view, sex reassignment procedures are related to the individuals’ self-identification and awareness. In this regard and in the context of biological development and maturation, individuals need to be given the opportunity to make informed decisions. Bulgarian health legislation provides for all medical activities to be carried out after the informed consent of the patient. The Health Act provides for cases in which legal representatives of the patient – parents, guardians or trustees, including juvenile patients, express informed consent.

17. Sex reassignment procedures are a possible, albeit professionally complex medical activity, which includes operative, invasive and other procedures and are available to patients in the health network in the Republic of Bulgaria. Ordinance № 4 of 2021 for approval of the medical standard “Plastic-reconstructive and aesthetic surgery” includes the specifications for sex reassignment operation in item 6.3.2.1.31 of the list of operations and manipulations.

III. Provisions and measures for ensuring non-discrimination of trans persons in Bulgaria based on their legal gender recognition and guarantee for their legitimate right to privacy (according to point 3 of the Communication)

18. Bulgaria notes that, according to the OHCHR, the legal obligations of States with respect to protecting the human rights of LGBTI people include:

- protection of individuals from homophobic and transphobic violence;
- prevention of torture and cruel, inhuman and degrading treatment;
- repealing of laws criminalising same sex relations and transgender people;
- prohibition of discrimination based on sexual orientation and gender identity;
- safeguarding of freedoms of expression, association and peaceful assembly for LGBTI people.

19. We also take note of the assertion by some practitioners¹ that no obligation to recognise and protect “gender identity” exists in international human rights law, since this category is not specifically enumerated in the core treaties. Prohibition of discrimination based on gender identity is also not included in the EU acquis, namely Charter of Fundamental Rights, TEU or TFEU, relevant Regulations and Directives. Article 10 of the Treaty on the Functioning of the European Union (TFEU) provides that the Union aims to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Moreover, as stated in item I.11, article 19, para. 1, and art. 157, para. 2 and 4 of the TFEU also uses “sex” as a ground for prohibiting discrimination and introduce the equality between men and women.

20. Nonetheless, the Republic of Bulgaria abides by the understanding that, when it comes to protection against discrimination, the enumeration of grounds is not exhaustive. Most discrimination grounds in international human rights acts refer to “or other status” as an intention to include additional categories. The Bulgarian Protection against Discrimination Act forbids any direct or indirect discrimination on a number of grounds (see above item I.3).

21. In the Republic of Bulgaria, no laws criminalise private, consensual same-sex relationships or cross-dressing. LGBTI persons are free by their choice and could establish representative non-governmental organisations. They are also included and participate actively in the decision-making processes. According to national surveys², the society’s evaluation of a person on the territory of Bulgaria does not depend on his/her sexual preferences, but on the complete public image of the individual.

22. The legislation of the Republic of Bulgaria acknowledges the possibility of an individual to request sex reassignment. Article 9, para. 1 of the Law for the Bulgarian Identification Documents provides for change of the name, UCN, sex, citizenship or for substantial and permanent changes of the image the individual an obligation to

¹ <https://www.refworld.org/pdfid/4a783aed2.pdf>

² http://www.kzd-nondiscrimination.com/progress2009_2010/images/stories/products/doklad_publicacia_short_Stoilova_%5B1%5D.doc

obtain new identification documents within 30 days. Art. 77 of the Civil Registration Act specify that a change of the UCN is implemented only by administrative order by the official on the basis of a document ascertaining the need for such change.

23. The Bulgarian authorities are dedicated to providing all members of society with equal opportunities and equal protection. The Criminal Code includes numerous provisions to protect all persons, irrespective of their gender self-identification, from violence. Xenophobia is considered an aggravating circumstance. The Commission for Protection against Discrimination regularly decides on cases, related to discrimination based on sexual orientation, provides protection, and issues fines and recommendations. Law enforcement officers undergo systematic trainings, dedicated to the investigation of hate crimes committed with homophobic and transphobic motives, where in some cases the trainings are organized in partnership with the civil society.

24. The Republic of Bulgaria would like to use the opportunity and remind all stakeholders that, despite the ongoing debate, there is a need to be mindful of the particular sensitivities of LGBTI issues among interlocutors on the one hand and the specific vulnerabilities of LGBTI persons on the other. We consider a consistent but persuasive bottom-up approach to be more likely to have a positive effect. The historical and societal specificities and values need to be taken into consideration and respected.

25. In view of the above, the Republic of Bulgaria would like once again to state that the State remains committed to fostering understanding and tolerance among persons belonging to different groups of the population, while respecting the national and societal specificities. Discrimination and hate speech are manifestations of negative stereotypes and prejudices that should be counteracted in a timely manner. Joint efforts must remain the engine for positive change.

***Sofia
March 2022***