

PRESS RELEASE

Subject: "Remarks–Proposals by GTSA on the draft law regarding legal recognition of gender identity"

The "Greek Transgender Support Association" (G TSA), a recognized non-governmental, voluntary organization for the rights of transgender people would like to welcome with this release the submission of the draft law regarding the legal recognition of gender identity (<http://www.opengov.gr/ministryofjustice/?p=8078>), as well as to publicize its comments on it and provide concrete proposals in order to improve it.

Our critique focus mainly on the procedure, the restrictive context of the conditions and the lack of provision by the draft law to provide effective protection of the rights based on gender expression, gender identity and sex characteristics, in all fields. Specifically and on each article:

Article 1 – A Person’s Rights: The wording of this article, both in paragraphs 1 and 2, is in the right direction. However, the introductory article, describing the rights of the person, must do so in a more precise and detailed way. We propose the following wording in 4 lines:

Article 1 - All individuals have the right to:

- 1 Have their gender identity recognized and respect of their sex characteristics independently of their registered gender at birth.
2. Develop their personality freely, according to their gender identity respectively to their gender identity or sex characteristics.
3. Be treated according to their gender identity, and in particular, be registered in a way that their documents prove their identity, in terms of their name and their gender.
4. Their physical integrity and physical autonomy.

Article 2 - Definitions: The definitions given in this article with regard to gender identity and sex characteristics are also in the right direction. However, regarding the definition of gender identity, we consider it appropriate to be enriched further. We propose the following wording:

Article 2 - Definitions

Gender identity is understood as the internal and individual way in which gender is perceived by the person, which may coincide or not coincide with the gender identified at birth, and includes the individual experience of their body. This may result in changes in their body appearance or changes through pharmacology, surgery and/or other means (given that they are freely selected), or in some of them or even none. It also includes other gender expressions such as clothing, speech, expression, and choice of name.

Article 3 - Correction of the registered gender - Conditions: This article is particularly problematic since paragraph 2 requires the person to have full legal capacity, while paragraph 3 requires not to be married. Both these paragraphs deviate from the European Standards as set by the Council of Europe (CoE) in its 2048 Plenary Session of the CoE Parliamentary Conference (2015), since article 6.2.3 states: "Remove any restrictions on the right of transgender people to remain in an existing marriage upon recognition of their gender", article 6.2.5 states: "Ensure that the best interests of the child are a primary consideration in all decisions concerning children", and article 6.2.1 states that "make these procedures available for all people who seek to use

them, irrespective of age, medical status...". It is also an oxymoron that while articles 8 to 13 aim to ensure the rights of children, those same rights are excluded by previous articles.

It is obvious that the restriction only to individuals who have full legal rights: (a) excludes minors, therefore the rights of minors are violated and their best interest is not ensured, as transgender children and adolescents (according to many international and European surveys) are experiencing harassment, intimidation, bullying or even violence to the maximum extent, on the basis of their gender identity or its expression - while the suicide rates among transgender children and adolescents have reached scary heights (40%), (b) is generally problematic, as gender identity is a real situation that cannot be related to the ability of a person to enter into contracts (legal acts) and we are particularly concerned that many transgender people who -in order to receive access to hormone therapy- have receive a psychiatric diagnosis of "gender dysphoria", could be considered, in an malicious interpretation of the terms used, as "unfit" on the basis of their legal capacity. In addition, we should take into account that the current legislation (Law 344/1976) does not have such harsh conditions regarding minors' rights, full legal capacity and marriage status. Thus, these two paragraphs: a) violate the rights of minors; b) may violate the rights of adults; c) dissolve the existing family life and a married person will have to choose between two fundamental rights; (d) these conditions do not exist in the current law and are more tight and restrictive than the existing legal framework and e) fell short of the European Standards set by the Council of Europe. We propose rewriting the article as follows:

Article 3 - Correction of the registered gender - Conditions

1. Every person is able to request the correction of the registered gender and the change of the first name, whenever these do not agree with the way they are identified, according to their gender identity. The procedure according if a person is adult or a minor is described at Articles 4, paragraphs 1 and 2 accordingly.
2. In order to correct the registered gender, there is no requirement that the person has undergone any medical procedure or surgery. There is also not a requirement for any examination or medical treatment, associated with physical or mental health.

Article 4 - Procedure: In this article, the legal proceedings selected for voluntary jurisdiction are described, according to Article 782 of the CCP. It is almost the same procedure set under the current law (Law 344/1976), apart from the fact that this will now take place in a private office, without publicity. However, this article fails to apply the standards set by the Council of Europe in Article 6.2.1 of the 2048 Decision (2015), which states: "Develop quick, transparent and accessible procedures, based on self-determination". Any judicial procedure is not going to be fast, its transparency is in question since it can raise doubts on how the judge will rule, and it is not going to be fully accessible to everyone, since it will only be available to persons with full legal rights and unmarried. Moreover, although it will take place in a private office without publicity, the person will still have to prove in some way that is trans and given that the decision relies on a judge, we can no longer talk about self-determination. This process is based on wrong foundations, especially considering that -according to current legislation- a person is able to change surname only through a simple appeal procedure to the City Hall of its residence. Therefore, it is meaningful to follow a similar procedure by appealing to the relevant Registry, as this is the responsible part of the administration for these changes. In the following proposals, we suggest that the change of registration could be made directly to the Registry, available through a fast-track procedure, completed within thirty days and available for all persons over the age of 18. We propose the following wording:

Article 4 - Procedure

1. Every person who has reached the age of eighteen (18) years old, relying on this law for the correction of their recorded gender and first name, declares in writing, in person or through an authorized lawyer, to the relevant Registry: the name selected and the matching surname. The application should be accompanied by a copy of his/her birth certificate.
2. If a person is under the age of eighteen (18) years old, the application to correct the registered sex shall be made through a court order, and in the best interest of the child and its healthy development, by the parents or the person who has custody in a clear agreement with the minor. The requested gender, the name selected and the associated surname are stated in the application. The application shall be accompanied by a copy of the person's birth certificate. The court decision is recorded by the Registry that has issued the birth certificate. The application of the court decision on gender correction is done in a way that ensures privacy of the change and the original birth certificate, for all.
3. If the person does not wish to request the change of registered gender and name in the Registry of birth, the person may, by a declaration, do so at the Registry of residence.
4. No other characteristic of a person, such as appearance, sexual orientation, disability, state of health, social condition, previous or present detention, criminal record, economic situation, family status, parental status or custody of children may be used as a reason to deny the process.
5. If the person is married, there's no change on the marriage status. The marriage certificate changes according to the new first name and the surname of the person who change the registration of the gender within 30 days.
6. A third "blank" gender registration choice is created in the registries, marked with a dash (-).
7. If the person wishes to have the gender entry "vacant", may request this for the corrected birth certificate and the gender registration will be indicated by a dash (-) and only the name will be corrected.
8. The change of the registered gender and the name shall be completed within thirty (30) days and a new registration shall be issued accordingly.
9. Based on this new Registry records, any other public bodies responsible for issuing other documents identifying or recognizing the person's attributes, such as identity card, diplomas, identities of professional associations and unions, driving licenses, professional licenses, insurance records, passports, voter list, etc are required to issue new documents according to the new, corrected gender, name and the adapted to the new gender surname. This obligation to recast begins with the presentation of the new registry records and has to be completed within thirty (30) days ex officio under order of the Registry which must be given in thirty (30) days. The new birth certificate, the new identity card and any other such documents or listings must not state that a "correction" process has taken place, or include any reference to the date of the new registry.

Note: Alternatively of paragraph 9, namely the ex officio procedure as it stated before, there could be used the procedure of a certificate of identification with the purpose of the change of all records without a hitch, as the Regional Ombudsman of Attica, Vasilis Sotiropoulos, states at his proposals (<http://elawyer.blogspot.gr/2017/05/blog-post.html>).

Article 5 - Consequences of the correction of registered gender: In paragraph 2 of this article, although the rights and obligations of parental responsibility for any existing biological or adopted child remain unaffected, no change occurs in the birth certificate of the children regarding the registered gender of their parent. This means that in spite of the fact that the parent's gender registration will have been changed, his/her gender recorded in his/her children documents will remain the same. This violates Article 8 of the European Convention on Human Rights (violation of a person's private and family life). We propose the following wording:

Article 5 - Consequences of the correction of registered gender

Paragraph 2: If the person who has corrected the registered gender has children (whether under marriage, civil partnership, without marriage or adopted), his/her rights and obligations under parental responsibility are not affected. In their children's birth certificate, the registration of their parents' name and surname has to coincide with the new birth certificate of their parent according to their corrected entry.

Article 6 - Privacy: Paragraph 2 of this article must be removed, as –similarly to the arguments presented

for Article 3- the legal capacity of a person cannot be linked to his/her ability to change the legal recognition of his/her gender identity.

Article 7 - Other Provisions: Since the procedure we propose is a direct request for a change of gender and name, this does not constitute a voluntary jurisdiction (as proposed in this draft law), as long as the phrase "sex change" is completely removed from paragraph 1 of the relevant article of Law 344/1976, since this change will now take place in accordance with the proposed legal provisions. Yet, in addition to the very positive paragraph 2 of sex characteristics in Law 927/1979, we consider it necessary to add a series of provisions: a) in relation to protections in the school environment, irrespectively of whether the minor has changed or not his/her gender records, b) in relation to health protection, c) in relation to protection for trans refugees, (d) necessary changes in relevant laws against discrimination on grounds of gender identity. In particular, we propose that Article 7 could be reformulated as follows:

Article 7 - Other provisions.

1. In Article 14 (1) of Law 344/1976 (Registered Rights) the expression "sex change" is removed.
2. The gender identity adopted by a person must be respected, especially in the case of underage girls, boys and adolescents, using the preferred name, which could be different from the one entered on their national identity. When asked by any other person in their school environment, this preferred name should be used when they are addressed, recorded, fill forms and in any other process or service, in both public and private spaces. When the nature of the process makes it necessary to register information in school registries, the registered person's wishes should be reflected in the name, surname, date of birth and the numeration of the document, adding the name chosen by the individuals to the territory of their gender identity if requested by them. In these circumstances, in the school environment, in which the person has to make a public appearance, only the selected name that agrees with their gender identity can be used. Upon a person's request, he/she can have access to toilets that are consistent with his/her gender identity and dress in the schoolroom according to his/her identity.
3. Every person, older than eighteen (18) years old, in order to ensure their full health care, will have full access to surgeries and/or hormone therapy to adapt their body's appearance, including genitalia, if they request it and choose it freely. There will be no need to demonstrate their will to complete or partially undergo a redefinition surgery so they can have full access to hormone therapy. The only condition will be, in both cases, the disclosure of the consent of the person concerned. In the case of a minor, the consent of the parents or the person who has custody is needed. Public health officials, state officials, private professionals and insurance funds representatives must ensure that the rights recognized by this law are respected. All medical procedures listed in this Article, including possible sex reassignment procedures, will not be financed by the individual, but will be fully covered by the individual's Insurance fund.
4. Any final decision on the gender identity of a person of non-Greek nationality, taken either by court or by any other authority of the country of origin, is recognized in Greece.
5. Any person who is under international asylum protection regime according to the Geneva Convention, who wishes to change his/her name and gender in his/her documents, shall indicate the desired name and gender in the Asylum Service. The Asylum Service issues new documents with the new name and gender within thirty (30) days.
6. Any medical treatment, sex reassignment surgery or other surgical interventions that partially or completely interfere with the sex characteristics of a minor shall be prohibited, apart from the cases where there is a written consent. When a written consent of the minor and his/her parents or custodian is ensured, medical personnel should: a) take into account the child's well-being and development as expressed in the Convention on the Rights of the Child; Taking into consideration all the possible parameters in relation to the minor's age, health and maturity.
7. In Article 4 of Law 3769/2009 (Applying the principle of equal treatment of men and women as regards to access and supply of goods and services and other provisions), Paragraph 4 is added after paragraph 3, and has as follows: "4 . Any less favorable treatment of a person because of gender identity and sex characteristics constitutes discrimination on grounds of gender. "
8. Article 2, (2) (b) of Law 3896/2010 (Application of the principle of equal opportunities and equal

treatment of men and women in matters of employment and occupation) is amended as follows: "(b) Any less favorable treatment of a person because of gender identity and sex characteristics constitutes discrimination on grounds of gender."

9. In Law 4097/2012 (Application of the principle of equal treatment between men and women in exercising a self-employed activity), paragraph 4, indent 4, is added as follows: «4. Any less favorable treatment of a person because of gender identity and sex characteristics constitutes discrimination on grounds of gender.»

10. In Law 4285/2014 (Amendment of Law 927/1979 -A139 and adaptation of the Framework Decision 2008/913 / JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia (Criminal Law -L 328) and other provisions) in Articles 1 and 2, the words "sex characteristics" are added after the phrase "gender identity".

11. In Law 4375/2016 (Organization and operation of the Asylum, Appeal, Reception and Identification Service, establishment of the General Secretariat of Reception, adaptation of the Greek Legislation to the provisions of Directive 2013/32 / EU of the European Parliament and of the Council " Procedures for granting and withdrawing international protection status (recast)", in Article 14 (8) (vulnerable social groups), the following point (h) is added: "(h) persons on the grounds of their sexual orientation, their gender identity or their sex characteristics".

The Greek Transgender Support Association submits these proposals in the hope that the competent Ministry of Transparency and Human Rights and all the other relevant ministries, will pay due attention to our remarks and will continue to strive, not only for the full legal recognition of gender identity, but also for the full and holistic enjoyment of fundamental rights and freedoms for all people, regarding the expression of their gender identity or sex characteristics, in all areas of public and private life.

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