



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Greece
Title:	Modification of the sex and name of a person, as written on a degree which was issued by a state vocational training establishment prior to this person's gender reassignment surgery
Date:	22 September
Expert:	Sophia Koukoulis-Spiliotopoulos
Context	
Issue at stake:	Recognition of the consequences of gender reassignment
Ground of discrimination:	Sex
Source:	Miscellaneous
Field:	Other
Applicable law:	Article 23 of the EU Charter of Fundamental Rights; Directive 2006/54/EC; Article 8 ECHR; Articles 9 and 9A of the Greek Constitution; Article 3(2)(b) of Act 3896/2010 transposing Directive 2006/54/EC.

Content

Case development: A man who had undergone gender reassignment surgery lodged an application with the competent Greek court for a modification of her registered name and sex. This application was upheld, the requested modification was registered with the competent registry office and the transperson obtained a new identity card under her new (female) sex and name. She then requested that a degree obtained prior to the surgery be also accordingly modified. The competent service of the Ministry of Education sought the opinion of the State Legal Council on this question. In its Opinion No. 180/2015, the SLC noted that under Greek legislation there was no possibility to issue a new degree. However, a certificate bearing the transperson's new (female) personal details and stating that a degree had already been issued for this same person could be delivered. This certificate should not mention that the personal details had changed following gender reassignment surgery, as this would constitute a revelation of sensitive personal data, and therefore an interference with private life contrary to Article 8 ECHR.¹

Key points of analysis:

The SLC relied on Article 8 ECHR, and on Articles 9 and 9A of the Constitution, which require the protection of private and family life and the protection of personal data, respectively. Furthermore, the SLC relied on Article 19(3) of Presidential Decree (PD) 323/2003,² which stipulates that vocational training degrees 'are only issued once and may not be modified'. It noted that there is no provision regarding the replacement of a degree in case of change of personal details. There was therefore no possibility to issue a

¹ SLC Opinion 180/2015, issued on 27 July 2015, available at: http://www.nsk.gr/web/nsk/anazitisi-gnomodoteseon?p_p_id=nskconsulatories_WAR_nskplatformportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3 (in Greek), accessed 24 August 2016.

² OJ A 272/2003.

new degree. However, a certificate could be issued, which would bear the transperson's new details and would state that this same person had already obtained a degree, with a reference to the registration number of that degree. The SLG ignored EU law and did not deal with the issue under the gender equality principle.

The SLC gives opinions at the request of public authorities which are not binding, unless the competent Minister endorses them.³ It is not clear whether the Minister of Education, whose services sought the above opinion, has accepted the opinion. Meanwhile, in February 2016, several members of Parliament tabled a parliamentary question to the Minister of Justice regarding this opinion. The Minister of Justice replied that the legal recognition of gender identity would soon be introduced by virtue of a bill under elaboration.⁴ Moreover, on 6 June 2016, the General Secretariat for Transparency and Human Rights of the Ministry of Justice issued a 'Press release regarding the legal recognition of gender identity' stressing that the issuance of legislation for the recognition of gender identity constitutes a Government priority. A Law Commission is intensively elaborating a bill to this effect, to be introduced in Parliament in the coming months. Members of this Commission together with a competent Ministry of Justice official visited Malta, with the assistance of the Council of Europe, in order to exchange relevant best practices. This bill will ensure the fundamental rights of a section of our society, in accordance with the recommendations of international organisations. Moreover, it is necessary to sensitise public opinion to the need to respect differences.⁵

The SLC did not refer to EU law nor did it examine whether the refusal to modify the degree would constitute gender discrimination. However, according to Paragraph 3 of the Preamble to Directive 2006/54/EC,⁶ 'the Court of Justice has held⁷ that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person'. In the same vein, Article 3(2)(b) of Act 3896/2010 transposing Directive 2006/54/EC,⁸ reads: 'Any less favourable treatment of a person related to gender reassignment also constitutes discrimination on the ground of sex'.

As the issue at stake is related to vocational training, it falls within the scope of Directive 2006/54. Moreover, as this Directive constitutes a particular expression, in the field of employment and occupation, of the general principle of gender equality which is embodied in Article 23 of the EU Charter of Fundamental Rights (Charter), the case also falls within the scope of this Charter Article. Furthermore, it falls within the scope of Articles 7 and 8 of the Charter, which proclaim the right to respect for private and family life and the right to the protection of personal data, respectively.

A refusal to modify the sex and name written on a degree issued prior to gender reassignment surgery will create dangerous confusion regarding a transsexual's identity,

³ Articles 2 and 7(4) of Act 3086/2002 'Organisation of the State Legal Council and status of officers and employees thereof', OJ A 324/ 23.12.2002.

⁴ See reply of the Minister of Justice, dated 9 February 2016: available at: http://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=f0796b7b-32e3-4a3f-a9c7-a5980135921d, accessed 20 July 2016.

⁵ Ministry of Justice, General Secretariat for Transparency and Human Rights 'Press release regarding the legal recognition of gender identity': available at: <http://www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/ct/Idetails/itemid/2545/mid/797/.aspx>, accessed 25 July 2016.

⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26/07/2006, pp. 23–36.

⁷ See e.g. CJEU Case C-423/04 *Richards* [2006] ECR I-3602, Paragraph 24; Case C-13/94 *P/S* [1996] ECR I-2143, Paragraphs 19-21.

⁸ Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010.

will seriously affect his/her dignity⁹ and will cause serious inconvenience to him/her at administrative, professional and private levels. This issue therefore also falls within the scope of Article 1 of the Charter which requires the respect and protection of human dignity. This is more so in the present case, as the official documents certifying the transsexual's identity (public registry documents, identity card) bear her new sex and name. All the aforementioned provisions of the Charter embody general principles of EU law recognised by CJEU case law predating the Charter.

In the author's view, since the above refusal to modify the sex and name can concern transsexuals alone, it would constitute direct discrimination on the ground of gender reassignment, i.e. direct discrimination on the ground of sex in matters of vocational training, which is prohibited by EU law.¹⁰

The solution recommended by the SLC does not establish equality and does not serve the purpose invoked by the SLC, i.e. the protection of the transsexual's private life and personal data, since the certificate to be issued will contain an exact reference to the original degree (by mentioning its registration number).

Internet link sources:

State Legal Council (SLC) Opinion No. 180/2015, issued on 27 July 2015, available at: http://www.nsk.gr/web/nsk/anazitisi-gnomodoteseon?p_p_id=nskconsulatories_WAR_nskplatformportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3 (in Greek), accessed 1 September 2016.

Act 3086/2002 'Organisation of the State Legal Council and status of officers and employees thereof', OJ A 324/ 23.12.2002, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 1 September 2016.

Presidential Decree (PD) 323/2003, OJ A 272/2003, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 1 September 2016.

Greek Consitution: available in Greek, English, French and German on the Parliament's website: <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>, accessed 1 September 2016.

⁹ Cf. *mutatis mutandis* CJEU Case C-13/94 *P/S* [1996] ECR I-2143, Paragraph 22.

¹⁰ Cf. by analogy CJEU Case C-177/88 *Dekker* [1990] ECR I-3941, Paragraph 12; Case 42/92 *Habermann-Beltermann* [1994] ECR I-1668, Paragraph 15.