



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

NEWS REPORT

Country:	Greece
Title:	Act on gender identity
Date:	04 June 2018
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<u>Context</u>	
Issue at stake:	Legal recognition of gender identity
Ground of discrimination:	Transgender
Source:	Legislation
Field:	Other
Applicable law:	Directive 2006/54/EC, Articles 21 and 33 EU Charter of Fundamental Rights

Content

Policy development: Act 4491/2017¹ of 13 October 2017 consists of two parts. The first part (Articles 1 to 7) regulates the legal recognition of gender identity; it aims to ensure the rights of a person on the basis of his/her gender identity and gender characteristics in all fields.

Key points of analysis: The most important provisions of Act 4491/2017 are the following:

According to Article 1, 'a person is entitled to recognition of his/her gender identity as an element of his/her personality', as well as 'to be respected for his/her personality according to his/her gender features'. Article 2 defines 'gender identity' as 'the inner and personal way in which one feels about his/her gender, irrespective of the sex registered at birth according to his/her biological features. This Article also stipulates that 'gender identity includes both one's personal feeling of his/her body as well as the outer expression of gender which correspond to the person's will. The personal feeling of one's body may be linked to changes due to medical treatment or operations freely chosen.' The same Article further specifies that 'by gender features are meant the chromosomes, the genes and the anatomic features, including primary features, such as the reproductive organs, and secondary features, such as muscle mass, breast or hair development'.

For the 'correction' of a persons' 'registered sex', so that it corresponds to one's will, personal feeling of the body and outer appearance, Article 3 requires the person in question to have full legal capacity. However, minors having reached the age of 17 may apply for sex correction, provided that the person(s) exercising parental care for them agree; for minors having reached the age of 15 a positive opinion of an interdisciplinary committee

¹ Act 4491/2017, 'Legal recognition of gender identity' and other provisions, OJ A 152/13.10.2017.

is also required. According to the same Article, this Committee is set up by a common decision of the Minister of Justice, Transparency and Human Rights and the Minister of Health for a two-year term. It is composed of a child psychiatrist, a psychiatrist, an endocrinologist, a child surgeon and a paediatrician as Chair. This Article requires quite vaguely that all the members of the above Committee be 'specialised in the particular field', Married persons cannot request a legal sex correction. Article 3 also stipulates that no prior gender reassignment or medical examination or treatment related to the bodily or mental health of the applicant is required.

According to Article 4, a 'correction of the registered sex' is made by virtue of judicial decision. The applicant must appear in person before the court, but does not have to be present during the public hearing. The decision is registered with the public registry where the birth certificate is drafted. in such a way that the confidentiality of the 'correction' and of the original birth entry is *erga omnes* ensured. Public services that draft other documents which mention the person's identity or from which the person derives rights, and services that make new entries in registries or lists, such as voting lists, must issue new documents or make the entries under the corrected sex, name and family name. In no case is mention of the sex correction allowed. The new birth certificate can be changed only once according to the same procedure and subject to the same conditions.

Article 5 states that sex correction by judicial decision applies *erga omnes*; the Registrar must notify the Public Prosecutor or to the Ministry of Justice for persons born abroad. Rights and obligations predating the sex correction and tax and social security registration numbers of the person are maintained. If he/she has children, their birth registration is not changed and parental care rights and obligations are not affected.

According to Article 6, Public Registry employees and any other persons professionally involved in sex correction or having learnt about it in the course of their tasks are under a duty of confidentiality. Only the person concerned and those that he/she authorizes in writing have access to the above judicial decision and to any data or document showing the sex correction kept by the competent Public Registry or by any other authority. Third parties are allowed access if they justify a specific legal interest that cannot be satisfied otherwise, following permission by the Agency for the Protection of Personal Data, an independent authority established by Act 2472/1976 (OJ A 50/10.04.1997), as amended.

In its opinion on the bill, the Scientific Service of Parliament (SSP), which controls the compatibility of bills to the Constitution, EU law and international conventions, welcomed, inter alia, the non-requirement of gender reassignment (Article 3 of the Act, above), quoting the European Court of Human Rights (ECtHR), which held that this conflicts with Articles 8 and 3 ECHR. The SSP also recalled that, according to the same judgment (paragraphs 139-142), a prior psychodiagnosis is required by the big majority of Council of Europe Member States. This does not affect a person's physical integrity; it aims to safeguard the interests of the person concerned by preventing an erroneous engagement in a procedure for the recognition of gender identity modification. In this respect, the interests of these persons coincide with the general interest and the ECHR is not violated (*Garçon and Nicot v. France*, April 2017, paragraphs 139-141).

Internet link source: The SSP opinion as well as the final text of the Act are available on the Parliament's website (in Greek): http://www.hellenicparliament.gr/Nomothetiko-Ergo/Katatethenta-Nomosxedia?law_id=75d1ff53-879c-4dcb-bfff-a7f20108f665.