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NEWS REPORT

Country:	Sweden
Title:	Reports from Ministry of Social Affairs with suggestions on regulations regarding medical procedures for sex change and change of gender in national register
Date:	2 October 2018
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<u>Context</u>	
Issue at stake:	Change of legal gender
Ground of discrimination:	Sex
Source:	Ministry Publications Series Ds 2018:17
Field:	Transgender identity
Applicable law:	

Content

Law development: In 2014, a Government committee suggested that anyone who wishes to change their legal gender as it appears in the population register should be free to do so. All indirect or direct requirements of medical assessment care or treatment before an individual is able to change their gender as recorded in the population register should be abolished.¹ In May 2017, the Minister for Health and Social Affairs declared that the Government was planning to put forward a legislative proposal on the matter during 2018, whereby the current Act concerning recognition of gender in certain cases (SFS 1972:119) would be replaced with two new acts, decoupling the legal and the medical sides of the process from each other.

In late spring 2018, the Ministry of Social Affairs presented two reports; one with a draft proposal on an act on medical procedures on sexual organs and removal of sex glands, and the other with a draft proposal an act on change of gender in the national registration.²

Applications for medical procedures on sexual organs are reviewed by the Judicial Council of the National Board of Health and Welfare. Under the current law, to be eligible to undergo medical procedures for sex change the applicant must be at least 18 years of age, and must meet three qualifying criteria. The applicant must, over a long period of time, have felt that he or she belongs to the other gender, must have presented him/herself for a period of time in accordance with this gender identity, and must be expected to live in accordance with this gender identity also in the future. To prove the fulfilment of these criteria, the Judicial Council of the National Board of Health and Welfare requires a statement from a medical expert, and normally also a statement from a psychiatrist and a

¹ Government Report SOU 2014:91.

² Ministry Publications Series DS 2018:11 and Ministry Publications Series DS 2018:17.

report produced by a social worker.³ In practice, this means that an application cannot be approved until the applicant has passed an assessment period at a gender clinic. The assessment period is normally around two years long.

The first report proposes an act regarding medical procedures on for a sex change. The report suggests that the requirement of having presented him/herself to the outside world in the preferred identity be removed, as such a requirement may impose pre-set ideas on gender behaviour.⁴ The report also suggests that the review of the Judicial Council of the National Board of Health and Welfare, be abolished, leaving the decision to the treating doctor. If a person is denied medical assistance, the decision may be appealed to the Judicial Council of the National Board of Health and Welfare. The third important change suggested by the Ministry is the repeal of the age limit of 18 years. The report does not propose any lower age limit, instead all applications regarding persons under 18 years of age shall be subject to review by the Judicial Council of the National Board of Health and Welfare (as is currently the case with applications from adult persons), who may only approve application if there are extraordinary reasons. The report suggests that children over 15 years of age may file their own applications, without the consent of the parents.

The other report puts forward a legislative proposal on the administrative change of gender and the assignment of a new social security number or coordination number. The starting point of the proposed act is that a change of gender in public records should be simple, quick and transparent, and that the individual's self-determination should be given priority as far as possible. In line with these ambitions, the proposed act does not require the applicant to present any evidence regarding the change of gender identity. Nor does the act address a specific group (such as transgender persons) but applies to every person over 12 years of age. For children between 12 and 15 years, the application is to be made by the custodians, and the child's consent is required. In a case where the custodians cannot agree, the municipal social welfare committee may permit the application to be filed if that is necessary with respect to the best interest of the child. A child who is over 15 years of age may apply for an administrative change of gender independently of his/her custodians. In these cases, the custodians shall be informed once the application has been approved. The requirement of a simple, quick and transparent process, as well as the emphasis on the individual's self-determination, shall apply irrespective of the applicant's age.

The reports are only preparatory documents that must be followed up by actual legislative proposals. The plan of the Government is to present a legislative proposal in early fall of 2018, so that the acts can enter into force in July 2019. In respect to this plan, it should be noted that Sweden will hold general elections on 9 September 2018, and that the outcome of the elections may have implications for the process.

Key points of analysis: The reports are only preparatory documents that must be followed up by actual legislative proposals. The plan of the Government is to present a legislative proposal in early fall 2018, so that the acts can come into force on 1 July 2019.

Internet link source:

https://www.regeringen.se/4990f8/contentassets/313687fc78b643e7be24a8ab994477e5/vissa-kirurgiska-ingrepp-ds-2018_11.pdf;
<https://www.regeringen.se/49b48e/contentassets/7a67fe76fe0a44c1b2f3c8d5ed8fa6d1/andring-av-det-kon-som-framgar-av-folkbokforingen-ds-2018-17.pdf>.

³ Judicial Council of the National Board of Health and Welfare, Recommendations regarding assessments in matters concerning recognition of gender in certain cases // Rekommendationer angående utlåtanden i ärenden gällande lagen om fastställande av könstillhörighet i vissa fall, July 18, 2017, Registration Number 10.2-25178/2016.

⁴ Ministry Publications Series DS 2018:11, p. 65.