



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

### FLASH REPORT

<b>Country:</b>	Spain
<b>Title:</b>	The Constitutional Court established in judgment 99/2019, of 18 July 2019, that transsexual children can request a name and sex change in the civil registry
<b>Date:</b>	18 October 2019
<b>Expert:</b>	María - Amparo Ballester – Pastor
<b>Context</b>	
<b>Issue at stake:</b>	The Constitutional Court has established that children with sufficient maturity and who are in a stable situation of transsexuality can request their change of sex and name in the civil registry
<b>Grounds of discrimination:</b>	Transgender
<b>Field of application:</b>	Other field
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Article 1 of the Law 3/2007, of 15 of March 2007 <sup>1</sup>

### Content

**Case development:** This case concerns a child born on 20 March 2002, registered in the civil registry as female and under a female name. From a very young age, the child said he felt male and preferred to use a male name. He was accepted as such in his family and social environment. On 1 July 2014, he was diagnosed by a medical team - composed of a psychiatrist, an endocrinologist and a psychologist - of the gender identity unit of a medical entity for the provision of services not funded by the public health system. The report stated that '[t]he patient has a male phenotype, and is fully adapted to his male role',<sup>2</sup> without detecting any relevant psychiatric pathology that may influence his decision to change sex. Consequently the endocrine doctor was referred to prescribe a hormonal treatment. The report also stated that the patient meets the requirements requested by the gender identity law to request the change of name and sex in the registry, as well as in other relevant documents.

In July 2014, the child's parents requested the rectification of the child's sex and name in the civil registry, but were rejected because he was a minor. The parents of the minor then filed a lawsuit. They alleged that transsexuality is an innate condition of the person, and not the result of a decision of the person that, therefore, requires a capacity for discernment. So, denying legitimacy to minors to rectify their sex that appears in the registry prevents the free development of the personality of the child according to their sexual identity (established by Article 10.1 Spanish Constitution) and violates their fundamental rights to moral integrity (established by Article 15 Spanish Constitution), to privacy (established by Article 18 Spanish Constitution) and respect for private life (Article 8 of the European Convention of Human Rights).

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<sup>1</sup> Law 3/2007, of 15 March 2007, <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-5585>.

<sup>2</sup> This information was retrieved from a medical report which is not publicly available.

On 16 March 2016, the Supreme Court asked the Constitutional Court if it was contrary to the Spanish Constitution to set an age requirement (of 18 years) to request a change in sex and name in the civil registry in cases of transsexuality as required by Article 1 of the Law 7/2007. The judgment of the Constitutional Court 99/2019, of 18 July 2019, declared Article 1 of Law 3/2007 unconstitutional and established that children with sufficient maturity and who are in a stable situation of transsexuality can request their change of sex and name in the civil registry.

**Decision of the court:** The judgment of the Constitutional Court 99/2019 stated, on one hand, that, excluding a minor from the right to change name and sex in civil registry, although it implies a restriction on their rights and constitutional principles, can be justified to safeguard the child's best interest, considering the serious negative consequences that could be followed by a rash decision. However, on the other hand, the Constitutional Court also stated that establishing one's identity is not just another act of the person, but a vital decision, in the sense that it puts the person in a position to develop their own personality. Therefore, if the change in the civil registry is prevented, the right to the free development of personality (established in Article 10 of the Spanish Constitution) and the right to privacy (established in Article 18 of the Spanish Constitution) would be jeopardised. The Constitutional Court resolves the dilemma by stating that children will have the right to change their name and sex in the civil registry when they prove sufficient maturity and when they are in a stable state of transsexuality.

**Key points of analysis:** The judgment of the Constitutional Court 99/2019 has clarified the right of children to change their sex and name in the civil registry in case of transsexuality, establishing their right to such change only in cases when they have sufficient maturity and a stable state of transsexuality. Maturity and stability of the state of transsexuality are requirements of a subjective nature, so the decision on the change in the civil registry of transgender children is uncertain and could depend not only on the personal circumstances of each child but also on the personal assessment of registry officials. Nevertheless, the solution provided by the Constitutional Court seems proportionate and justified.

**Internet link source:** Judgment of the Constitutional Court 99/2019, of 18 July 2019, <https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2019-11911.pdf>.