

In regards to *Ley para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI*

28 November 2022

Dear President Pedro Sánchez Pérez-Castejón,
Dear Minister María Jesús Montero Cuadrado,
Dear Minister Irene Montero Gil,

This letter, on behalf of The European Region of the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA-Europe), a regional non-governmental organisation focused on the rights of LGBTI people with over 700 members in 54 countries in Europe and Central Asia, is in regards to the reform of legal gender recognition legislation in Spain, currently with the Parliament. We are concerned by recent reports regarding amendments which would weaken the law and limit access for minors.

Significant developments in the clarification of how human rights standards apply to legal gender recognition have taken place in recent decades. International human rights standards in terms of legal gender recognition state that processes should be accessible, affordable, administrative, quick, and based on self-determination.¹ Further, in its review of the Council of Europe Committee of Ministers Recommendation (2010)5, the Steering Committee on Anti-discrimination, Diversity and Inclusion notes that:

“Explicit or implicit age restrictions may obstruct the best-interest-principle for young as well as elderly transgender persons. In *Schlumpf v. Switzerland* (2009), the Court held that the personal circumstances of the persons should be prioritised over a mechanical application of the law.”²

The report further recommends that:

“Member States should ensure that LGR procedures for children centre on the best-interest-of-the-child principle and should review explicit or implicit age restrictions that may obstruct that principle in order to ensure children’s access to legal recognition, health and security.”³

Self-determination is the basis of legal gender recognition processes in Belgium, Denmark, Luxembourg, Norway, Ireland, Iceland, Malta, Portugal, and Switzerland. Of these, Luxembourg, Malta, Switzerland, and several regions of Spain offer self-determination for minors based on the individual maturity of the child, following the framework of the best interest of the child. Notably, the most recent of these – Switzerland – allows for minors with the authorisation of their parents to access self-determination, and creates a judicial process only when the parents do not give authorisation. Additionally, an administrative process (i.e. non-judicial) for minors exists as well in Austria, Estonia, Germany, Italy, Norway, and Slovenia.

¹ Madrigal-Borloz, V. (2018). Report to the UN General Assembly of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Available at: <https://undocs.org/A/73/152>

² CDADI (2022). Thematic Report on Legal Gender Recognition in Europe: First thematic implementation review report on Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Available from: <https://rm.coe.int/thematic-report-on-legal-gender-recognition-in-europe-2022/1680a729b3>

³ Ibid.

In Spain, according to FRA, 50% of trans respondents were aware of their own gender identities by the age of 14; 66% by the age of 17.⁴ Trans children, primarily, need access to information, support, and respect – all of which are best provided by allowing trans youth to participate in their daily lives with documents that respect and reflect their gender identities. The human rights-based approach for legislation relevant to trans children follows the same principles as above, and is based on the evolving capacity of the child to participate in decisions that are about them.

We refer you to both the ILGA-Europe Rainbow Map (<https://rainbow-europe.org/country-ranking>) and the Transgender Europe Trans Rights map (<https://tgeu.org/trans-rights-europe-central-asia-index-maps-2020/>), which set out clearly the standards that should be part of and reform of legal gender recognition legislation, as well as provide guidance to the best practices in the field.

Historically, Spain has been a leader in protection of the rights of LGBTI people in Europe, with early adoption of registered partnerships and anti-discrimination measures including the ground of sexual orientation as well as legal gender recognition. Indeed, in 2011, when ILGA-Europe began our ranking system with the Rainbow Map, Spain was in 2nd place among the 50 countries ranked.⁵ In the intervening years, Spain has slipped both as other States have increased and expanded protections and interpretations of international human rights standards have matured; in 2022 Spain sits at 10th place, scoring just under 62%.⁶ In light of the forthcoming Spanish Presidency of the European Union in July 2023, Spain's leadership is particularly important and can set the tone for the future of the protection of rights of LGBTI people across the EU.

We call on you to continue the above processes to fully protect and defend the human rights of all Spanish citizens, including those who are trans including trans young people, creating legal contexts that are fully in line with modern European and international standards with regards to the rights of LGBTI people.

Kind regards,

Katrin Hugendubel
Advocacy Director, ILGA-Europe

⁴ EU Fundamental Rights Agency (2020) 'LGBTI Survey Data Explorer', available from: <https://fra.europa.eu/en/data-and-maps/2020/lgbt-survey-data-explorer>

⁵ See <https://ilga-europe.org/report/rainbow-europe-2011/>

⁶ See <https://www.rainbow-europe.org/country-ranking>