

SPAIN'S JUDGES CRITICIZE PROPOSED TRANSGENDER LAW

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civilly recognized sex by an administrative process in the Civil Registry—no medical report or other measures required—including for those as young as 12 years old.

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Spain's General Council of the Judiciary (CGPJ), a consultative body of judges charged with evaluating the constitutionality of proposed laws, has put up an obstacle to the Spanish coalition government's proposed 'Trans Law.' [In a unanimous vote](#), it approved an evaluation of the law that judged some aspects of the text to violate the rights of women, to be contrary to the best interests of children, and to potentially lead to "fraudulent situations."

The [proposed law](#) would allow anyone to change their civilly recognized sex by an administrative process in the Civil Registry—no medical report or other measures required—including for those as young as 12 years old. Minors, 14-16 year olds, would have to be accompanied by a parent or guardian. Those as young as 12 years old would need a judicial authorization to change their name, still accompanied by a parent.

Currently, at minimum, a person must provide proof of a diagnosis of gender dysphoria to change sex legally.

The new law proposes including additional elements such as fines for insulting transgender persons based on their sexuality, education measures to include "knowledge and respect for sexual, gender and family diversity" in school curriculum, and other anti-discrimination measures—such as prohibiting 'conversion therapy.'

In the unanimously approved opinion, the judges concurred that in the current draft of the law, “the principle of special protection of minors is not complied with,” nor is the best interest of children given necessary primacy. The minimum requirement of being accompanied by a parent or guardian for a minor to legally change his or her sex “is not enough to protect the interest of minors within that age range who lack a sufficient degree of maturity or whose transsexual situation is not stabilized.”

The CGPJ recommends those under 18 years old be required to produce evidence of their “sufficient maturity” and “stability in the transsexual situation,” which would essentially require presenting a relevant report to a judge before sex could be changed legally.

The CGPJ also questioned provisions contained in the draft that, according to the judges, contradict the fundamental right to equality, since the law would discriminate against those who accept the gender they were born with. The law promotes the “undesired effect of generating situations of positive discrimination and, therefore, of generally indirect discrimination of those people not contemplated in its subjective scope of application, especially significant with respect to non-transsexual women.”

They cited the example of transgender women in sports, who, the CGPJ acknowledged, generally have an inherently stronger physique than a woman’s. Additionally, as a general observation, the members doubt that a “comprehensive and transversal” tool is the “adequate, necessary and proportionate tool to achieve the objective of protecting ‘trans’ and LGTBI people.” Instead, they recommended a law that addressed discrimination in more specific contexts and circumstances.

Two groups of judges also formulated concurring minority opinions that further criticised the draft law.

One group of judges wrote that “the mere declaration of will cannot alone be a sufficient element for the effectiveness of the right” to a legal sex change.

“Accreditation must be demanded—by the means that the legislator deems proportionate and timely—of the disagreement with the sex mentioned in the birth registration,” the judges added.

Another group also critiqued the draft for having detrimental effects on ideological and religious freedoms, freedom of expression, and the right of parents to have their children receive religious and moral education based on their own convictions. They also questioned the definition of ‘direct discrimination’ contained in the bill, considering that it does not comply with the principles of criminal legality and legal certainty in as much as it includes situations that have not yet occurred.

Nevertheless, the government insists that it will push the law through as is.

Irene Montero, Minister of Equality whose department wrote the draft law, [Tweeted](#) that her ministry’s “roadmap” on the issue is “clear” and that it is “urgently processing this law so that it reaches Congress during this session.”

“The rights of trans and LGBTBI people will be law,” Montero concluded her message.