

Legal Gender Recognition: Good Practice Argentina

Julia Ehrt

TGEU Executive Director

julia@tgeu.org

The Law in Argentina



In July 2012 the trans legislation in Argentina came into force

Before that Argentina did not have a gender identity law at all

Access to hormones, surgeries and legal recognition required juridicial authorization (5-10 years). Otherwise surgery was illegal (penal code / regulation of medical practice).

Art. 1: The right to identity



All persons have the right:

- a) To the recognition of their gender identity;
- b) To the free development of their person according to their gender identity;
- c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.

Art. 2: Definition of gender identity in the law



Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.

Art. 3: Access to the law



All persons can request that the recorded sex be amended, along with the changes in first name and image, whenever they do not agree with the self-perceived gender identity.

Art. 4: Requirements



Prove that they have reached the minimum age of eighteen (18) years, with the exception established in Article 5 of the current law.

To submit to the National Bureau of Vital Statistics or their corresponding district offices, a request stating that they fall under the protection of the current law and requesting the amendment of their birth certificate in the records and a new national identity card, with the same number as the original one.

To provide the new first name with which they want to be registered

In no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment has taken place

Art. 9: Confidentiality



Only those authorized by the document holder or provided with a written and well-founded judicial authorization can have access to the original birth certificate.

The amendment of the recorded sex and the change in first name will never be given to publicity, except with the authorization of the document holder. The publication in newspapers prescribed by Article 17 of the Law 18248 will be omitted in these cases.

Art. 11: Right to free personal development



All persons older than eighteen (18) years, according to Article 1 of the current law and with the aim of ensuring the holistic enjoyment of their health, **will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments** to adjust their bodies, including their genitalia, to their self-perceived gender identity, **without requiring any judicial or administrative authorization.**

There will be **no need** to prove the will to have a **total or partial reassignment surgery** in order to access comprehensive hormonal treatment. The only requirement will be, in both cases, **informed consent by the individual concerned**

Art. 11: Right to free personal development



Public health officials, be they from the state, private or trade union-run health insurance systems, **must guarantee** in an ongoing way the rights recognized by this law.

All medical procedures contemplated in this article are included in the **Compulsory Medical Plan** (that is, they are not subjected to additional costs for those having private or trade union-run insurance plans), or in whatever system replaces it, as decided by the enforcing authority.

Art. 12: Dignified treatment



The gender identity adopted by the individual must be respected, particularly in the case of girls, boys and adolescents using a first name that is different from the one recorded in their national identity documents. Whenever requested by the individual, the adopted first name must be used for summoning, recording, filing, calling and any other procedure or service in public and private spaces."

Summery of the Argentinian Law



The law respects the self determination of trans people

The law has no prerequisites such as infertility, sex reassignment surgery, divorce or diagnosis

The law protects trans people from disclosure of former name and gender

The law is open to everyone

The administrative procedure is fast: 2-3 weeks to complete the whole process

The law guaranties acces to trans related health care on the basis of informed consent

Legal Gender Recognition: „not so bad“ and Good Practice in Europe



No law in Europe takes a human rights approach such as the Argentinian law does.

- **1999: Estonia, change of legal gender**

- To our knowledge first country in Europe to abolish compulsory sterilization and sex reassignment surgery as prerequisites for change of gender
- BUT: change of name stays surprisingly cumbersome

- **2004: UK Gender Recognition Act**

- Second LGR law in Europe without compulsory sterilization or compulsory sex reassignment surgery as requirements
- BUT: divorce still in place, process still medicalized, proof of GID (gender identity disorder) required

- **2007: Spain**

- No compulsory sterilization or sex reassignment surgery required
- BUT: proof of GID and hormonal treatment, language in the law very medical

Legal Gender Recognition: „not so bad“ and Good Practice in Europe



- **2009: Austria and 2011: Germany**
 - *Constitutional courts rule that mandatory medical interventions for a change of name and gender are unlawful*
- **2011: Portugal**
 - No compulsory sterilization or sex reassignment surgery requirement
 - Very fast procedure (eight days)
 - BUT: evaluation by multidisciplinary team to proof GID!
- **2013: Sweden**
 - No compulsory sterilization or sex reassignment surgery required
 - *First country without diagnosis requirement*
 - BUT: language in the law still is quite medical, practice suggest less than optimal execution of the law

TGEU's LGR checklist



- **Purpose of the Checklist:**

- Easy to use tool to assess the quality legal gender recognition or of proposed legislation
- Should guide policy makers when drafting legislation and guide activists in advocating for legal gender recognition

- **How does it work:**

- Has three sections: Procedures, Requirements, Effects
- If one of the question is answered negatively then this issue should be reviewed
- If a question is not addressed in the law at all, the issue should be included

The checklist is a living document and is constantly developed further!

TGEU's LGR checklist



Procedures

- Existence of separate procedures for change of name and change of gender
- Body in charge is clearly stated in the text of the regulation
- Procedure is quick and the duration is explicitly regulated
- Procedure is accessible to anyone
- Access of people with limited legal capacity is ensured (e.g. minors, people under guardianship)
- Access of foreign residents is transparently regulated
- Privacy of the procedure is ensured throughout the procedure
- Involved parties that disclose private information about the applicant without permission are held accountable for their actions
- Involvement of third parties is barred (i.e. spouses, children, parents, colleagues)
- Possibility to appeal is clearly regulated
- The applicant is free in the choice of first names including gender neutral names

TGEU's LGR checklist



Requirements

- Decision to change name or gender is based on the self-determination of the applicant
- No interference or opinion of third parties (e.g. mental health experts) is requested
- No proof of any surgical procedure (e.g. sterilization, full or partial sex reassignment surgery), hormonal therapy or other medical treatment (e.g. hair removal) or psychological treatment is required.
- No minimal or maximal age is required in the procedure
- Procedure is fully accessible independent of the applicants civil status (single, married, in registered partnership)
- Procedure is independent of whether the applicant has children their own or not
- To have lived in the acquired gender is not required (no so called 'real life experience')
- The applicant can not be required to alter an existing marriage or partnership

TGEU's LGR checklist



Effects

- Upon the decision the applicant is considered to be a member of the (newly) registered gender for all purposes of life (change of gender has full legal capacity)
- The applicant is considered as a member of the new gender for all legal purposes except for reasons of equity
- The applicant enjoys all rights and duties at par with others of the same registered gender
- A change of name or gender leads to an automatic (ex officio) change in all held registries without a trace
- Prior names and gender may not be made public or searchable, unless there is a well founded overriding interest or consent of the applicant
- A change of name leads to the right to be addressed as belonging to the corresponding gender
- State and non-state actors are obliged to rectify gendered information (e.g. working references, diplomas, school certificates) without a trace as well retroactively
- Existing rights and acquired privileges relating to a marriage remain unaffected
- Next-of-kin relationships stay unaffected, especially custody and visiting rights to children

Arguments and their debilitations



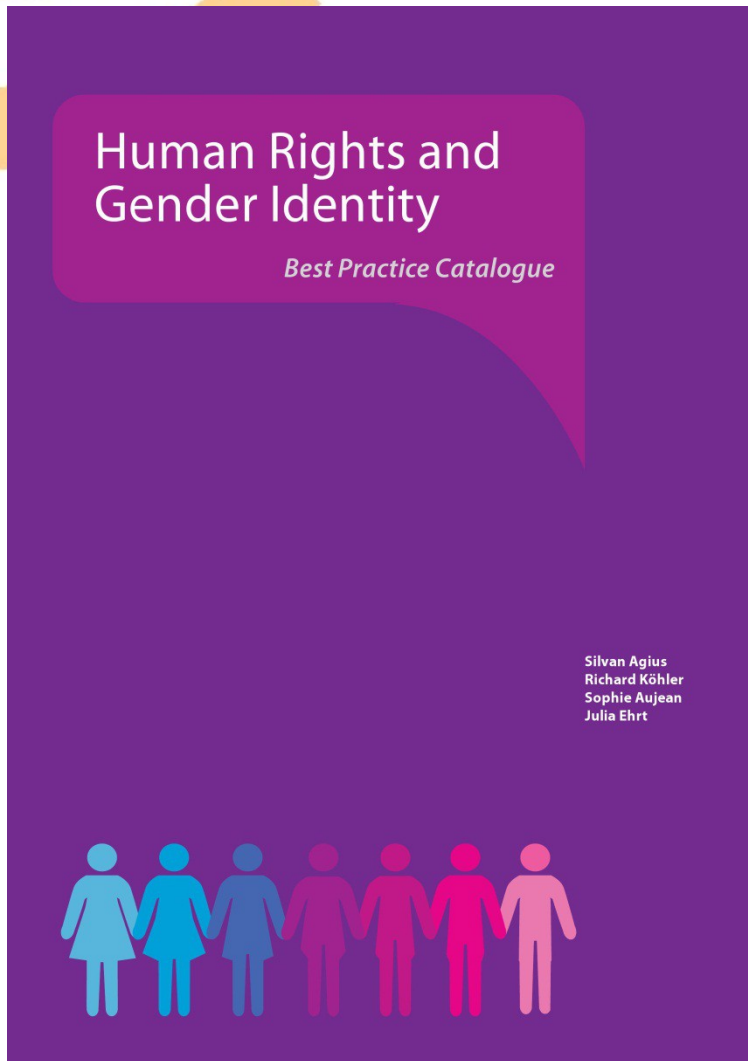
- Diagnosis should be required as trans people suffer from a mental health problem
 - Not all trans persons fall under the definition of a medical diagnosis, in fact a majority does not (see as well the presentation of Joz Motmanns)
- Fraud argument e.g. LGR to escape criminal punishment or to get gendered benefits
 - Criminal: unreasonable argument
 - Gendered Benefits: negative effects of LGR clearly overrides any potential positive benefits
 - No country liberalizing this the law has reported this as a problem
- A real life test demonstrates the seriousness of the person
 - No, it opens doors for outright discrimination as it requires person to live in a gender without proper documentation

Arguments and their debilitations



- State obligation to protect citizens from harmful decision therefor an external proof to verify identity has to be in the law
 - Current evaluation (psychological assessment) is based on the information the applicant gives (diagnosis by elimination), no objective criteria for GID exist
 - Changing legal gender is not harmful as it is reversible
 - Legal procedure is independent from medical procedure gender
 - Most current legislations do not fulfil this anyway, but a model based on informed consent would
- Without external evaluation everybody could change gender all the time, this will create chaos
 - No country has seen chaos after having liberalized their legislation
- Society is not prepared for pregnant men and women with sperm
 - No matter what the law says, pregnant men and women with sperm are a social reality, so the law need to take this into account
 - Newborn children of trans people and their parents suffer from lack of or insufficient documents (birth certificates, id documents), the state has an obligation to protect those children not hamper their development

More good practices as well in other areas of law and practice



Online available at:

www.tgeu.org/best_practice_catalogue_human_rights_gender_identity