



Constitutional Court

**PRESS RELEASE ON
JUDGMENT 99/2019**

The Belgian 2017 Gender Recognition Act is partly unconstitutional for its discriminatory treatment of persons who define themselves as neither male nor female and of persons with a fluid gender identity

The Belgian Constitutional Court holds that the federal Gender Recognition Act of 25 June 2017 is unconstitutional on several points.

The Act contains a lacuna in so far as the sex registration in the birth certificate is limited to the binary categories of male or female. Based on the principle of self-determination, the federal legislature enables individuals to change the sex registration in their birth certificate in accordance with their inner conviction. From this perspective, it is not reasonably justified that persons with a non-binary gender identity are required to accept a sex registration in their birth certificate based on the male/female classification when this does not correspond to their inner perceived gender identity. However, it falls solely upon the legislature to remedy this unconstitutionality.

The Court, in addition, annuls the provisions that render the modification of the sex registration in the birth certificate in principle irrevocable and only allow for a single first name change for transgenders. Despite the fact that through an exceptional procedure before the Family Court one can revert back to the original sex, this cannot be considered justified in light of the objectives pursued as it discriminates persons with a fluid gender identity.

1. Context of the case

The Belgian Constitutional Court has been requested to rule on the **constitutionality of the Gender Recognition Act of 25 June 2017, which facilitates the procedure to change the sex registration in the birth certificate at the civil registry**. The NGO's **Çavaria, Regenbooghuis and Genres Pluriels** have brought an action before the Court for **partial annulment** of the Act because the **modification of the sex registration in the birth certificate** and the **first name change** for transgenders are **in principle irrevocable**. Moreover, they argue that the Act does not take into account persons with a **non-binary gender identity**.

The federal Act of 25 June 2017 « to reform the regulations applying to transgenders as far as the modification of the registration of sex in the legal acts of the civil register is concerned and their consequences » aims to accommodate international human rights obligations and take into account developments in other countries. The legislature has opted for the **principle of self-determination as the starting point** for the procedure to change the sex

registration in the birth certificate and the first name change for transgenders. Although the **medical requirements** have been **removed**, certain restrictions remain.

2. Review by the Constitutional Court

2.1. Terminology (B.2)

The Court first clarifies the meaning of the terminology used in the judgment. « **Gender identity** » refers to a person's inner conviction, which can differ from the sex registered at birth determined on the basis of biological, chromosomal and physical characteristics. The term « **transgender** » relates to persons whose gender identity does not correspond to the sex registered at birth. Within the framework of this judgment, reference is made to « **persons with a fluid gender identity** » with respect to persons whose gender identity evolves over time and to « **persons with a non-binary gender identity** » with respect to persons whose gender identity does not correspond to the binary male/female classification.

2.2. Binary system of sex registration (B.6-B.7)

The applicants argue that the **binary system of sex registration** is discriminatory for persons with a non-binary gender identity and violates their right to respect for private life, given that they are required to accept a sex registration in their birth certificate which does not correspond with their gender identity. The Court notes that the **legislature relies on the principle of self-determination** to enable individuals to change the sex registration in the birth certificate to their inner perceived gender identity. **In light of this aim, the Court does not consider it reasonably justified that persons with a non-binary gender identity, as opposed to persons with a binary gender identity, are required to accept a sex registration in their birth certificate that does not correspond to their inner perceived gender identity.** To the extent that the Gender Recognition Act limits the modification of the sex registration in the birth certificate to a binary choice, it contains a **lacuna (i.e. a void) that violates the principle of equality read together with the right to self-determination.** The Court acknowledges that there are **various options to remedy this unconstitutionality.** These include the creation of one or more additional categories which allow to accommodate the sex and gender identity of all persons at birth and thereafter, as well as the possibility to remove the registration of sex or gender as an element of a person's civil status. However, the Court emphasizes that it **falls solely upon the legislature to remedy this unconstitutional lacuna.** In the meantime it remains possible for persons with a binary gender identity to request a modification of the sex registration and the judgment does not affect changes that have already taken place.

2.3. Irrevocability (B.8)

Secondly, the applicants invoke a discrimination of **persons with a fluid gender identity** and a violation of their right to respect for private life by the Gender Recognition Act, because they are subjected to a sex registration that does not correspond to their inner perceived gender identity. They contest the, in principle, **irrevocable nature** of the change of the sex registration in the birth certificate, as well as the fact that a **first name change can be requested only once by transgenders.**

Even though the legislature was aware of the existing diversity with regard to gender identity, it only provided for an **exceptional procedure before the Family Court to revert back to the original sex**, invoking the prevention of fraud, information requirements on the consequences of a modification and the principle of the inalienability of a person's civil status.

The Court does not consider it reasonably justified that persons with a fluid gender identity, contrary to persons with a non-fluid binary gender identity, are required to accept a sex registration that does not correspond to their inner perceived gender identity. Neither is it reasonably justified that they are subjected to an exceptional procedure before the Family Court if they wish to change the sex registration in their birth certificate more than once.

The Court notes that the modification can only take place after a compulsory reflection period of minimum three months. During this period, the Public Prosecutor can issue a negative opinion for violation of the public order. Even after the modification, the Public Prosecutor can seek its annulment for being contrary to the public order. The Court therefore sees no reasons why these measures would not suffice to **prevent fraud** in the case of additional modifications.

The legislature has furthermore provided for a multitude of guarantees to dissuade frivolous changes. In addition to the compulsory **reflection period** and the **monitoring power** of the Public Prosecutor in case of a breach of public order, the modification of the sex registration is accompanied with considerable **information requirements**. Persons who declare the inner conviction that their gender identity does not conform to the sex registered in their birth certificate, are notified by the civil registrar of the administrative and legal consequences of changing the sex registration in the birth certificate. In addition, they receive a brochure containing information about transgender organizations, including their contact details.

The Court finds it not reasonably justified that the **inalienability of a person's civil status** is solely mitigated with regard to persons with a non-fluid binary gender identity, as the legislature's aim is to create maximum opportunities for self-development for all individuals, without having to meet excessive demands.

The Court therefore annuls the provisions that make the sex registration in the birth certificate in principle irrevocable. Correspondingly, the Court also annuls the one-time first name change for transgenders. As a result, the first name can be changed again following a subsequent modification of the sex registration in the birth certificate.

This press release is a document produced by the Registry of the Belgian Constitutional Court and the law clerks charged with media relations. It does not bind the Belgian Constitutional Court. A summary, by its very nature, contains neither the necessary reasoning as developed in the judgment, nor its specific nuances.

The judgment No 99/2019, available in French, Dutch and German, can be found on the website of the Belgian Constitutional Court, www.const-court.be.

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