In regards to Ley para la igualdad real y efectiva de las personas trans

Dear D. Pedro Sánchez Pérez-Castejón, Presidente del Gobierno de España,
Dear Dña. Irene Montero, Ministra de Igualdad,

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 600 members in 54 countries in Europe and Central Asia, is in regards to the forthcoming reform of legal gender recognition legislation in Spain. We are concerned by recent reports from our members indicating opposition to the draft legislation which allows recognition on the basis of self-determination by one of the parties in the government coalition. With this letter, we seek to clarify the international human rights standards and modern European benchmarks in terms of the legal gender recognition framework, comment on the proposed bill “Ley para la igualdad real y efectiva de las personas trans” registered by ERC, CUP, JxCat and Más País on 17 March 2021, and to make clear the impact that this debate has on trans people in Spain and abroad.

Significant developments in the understanding of legal gender recognition have taken place in the last two decades. International human rights standards in terms of legal gender recognition\(^1\) state that processes should be:

- Accessible
- Affordable
- Administrative
- Quick
- Based on self-determination (and thus including no restrictive requirements)

The proposed bill “Ley para la igualdad real y efectiva de las personas trans” [number] registered by ERC, CUP, JxCat and Más País on 17 March 2021 certainly meets these benchmarks and provides a clear step forward in protecting the human rights of trans people in Spain.

Self-determination is the basis of legal gender recognition processes in Belgium, Denmark, Luxembourg, Norway, Ireland, Iceland and Malta. Notably, in none of these countries has a self-determination model resulted in increased incidence of fraud or misuse of the legislation.\(^2\) Furthermore, self-determination-based legal gender recognition does not create circumstances where individuals who commit gender-based violence could elude prosecution, as prosecutions of this nature are based on the circumstances at the time of the offense, as is the case for all criminal proceedings. Additionally, gender equality data and statistics are not harmed by allowing for self-determination, but rather functionally improved: barriers to legal gender recognition ensure that many trans people are not accurately registered with the state\(^3\), and are thus discounted in the context of gender equality monitoring. Finally, self-determination-based legal gender recognition

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\(^1\) 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


clearly improves both access to legal gender recognition itself\(^4\) as well as quality of life for trans people. Quoted in the Study, one Spanish trans woman said that after legal gender recognition, “I have never been so happy in my life.” (p. 14) Furthermore, Spanish trans respondents in the Study “referred to the steps they had taken either to move abroad or to consider moving abroad as part of the LGR process or when transitioning.” (p. 47)

In regards to a diagnosis requirement, in 2019, the World Health Organization formally depathologised trans identities, removing all mental health diagnoses from the 11\(^{th}\) edition of the International Classification of Diseases and Related Health Problems (ICD-11).\(^5\) Historically, the movement to depathologise trans identities has been very strong in Spain specifically, with the organisation Stop Trans Pathologisation launching first in Spain in 2007, before expanding to work on regional and international depathologisation as well.\(^6\) Inclusion of a mental health diagnosis in a new legal gender recognition process both defies modern scientific consensus, on which the ICD reform took place, on the need for this diagnosis while also creating a legal barrier to accessing legal gender recognition once ICD-11 is adopted in Spain. When Spain implements ICD-11, an impossible circumstance will appear where a diagnosis is required but does not exist. Additionally, trans people in Spain reflecting on the mental health diagnosis requirement indicated that they felt it was mandatory to “follow a script” when speaking with those mental health providers who must sign off on their transition – meaning that trans people seeking a diagnosis to access legal gender recognition are not able to receive the care that they need in the process at all, because of fear that being honest about their identities or struggles could lead to being barred from recognition entirely.\(^7\)

Regarding minors, trans and gender diverse children are in the center of ongoing public debate about the human rights of trans people. However, this debate clearly fails to take into account the actual needs of these children. 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.\(^8\) 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.

Finally, we are deeply concerned about the mental health and wellbeing of trans people in Spain as this process continues, based both on actions from Spain, such as the hunger strike just launched to call for the government to unblock action on this bill\(^9\), as well as observations of the consequences of long, public, and dehumanising discourse in the UK on trans people, where transphobic hate crimes have quadrupled since 2015\(^10\) when reform of legal gender recognition began. Trans people are

\(^{4}\) Ibid. According to the report, while 20.9\% of trans people in cluster 5 countries (based on self-determination) have accessed legal gender recognition, only 14.0\% have done so in cluster 2 countries (Spain is in cluster 2).


\(^{6}\) See https://stp2012.wordpress.com/


\(^{9}\) See https://www.publico.es/sociedad/ley-trans-setenta-personas-trans-ponen-huelga-hambre-pedir-desbloqueo-ley-trans.html

\(^{10}\) See https://www.bbc.co.uk/news/av/uk-54486122
highly vulnerable to negative mental health outcomes as a result of their exposure to marginalisation, discrimination, and hate speech. We are concerned to see the proliferation of vague arguments, baseless transphobic assertions regarding the rights of cis women, and fearmongering, and encourage you to ensure that government representatives cease in engaging this rhetoric and return to a good-faith legal negotiation to move the process forward.

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.

As in legislative processes, it is vital to come in good faith, to directly and precisely name potential problems, and to work together to find concrete solutions. The negative mental health and wellbeing consequences from the ongoing public debate about the basic human rights of trans people in Spain cannot be overstated. 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