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## Gender Reassignment Procedure in Spain a Field of Abuse and Circumvention

**Keywords:** gender reassignment, gender reassignment procedure, abuse of the law, LGBTIQ rights

**Summary.** Spain in age aspects is a very liberal country, one of these aspects is the approach to gender reassignment. In 2023, after 15 years of the 2007 law, there has been a change in this area. Nowadays, the gender reassignment procedure has been extremely simplified. This simplification has also become, as specific case studies show, not only a field for abuse of the law in specific cases, but also a systemic threat due to statistics. These clearly show that this right is used far more frequently by men. In view of the above, it will first be pointed out why the law hitherto in force no longer meets social and legal expectations, the current procedure for gender reassignment will also be presented, and finally the article will point out the areas that give rise to legal and social pathology in this area. The theoretical-legal and dogmatic-legal method will be used in the deliberations.

### Procedura zmiany płci w Hiszpanii: pole do nadużyć i obchodzenia prawa

**Słowa kluczowe:** zmiana płci, procedura zmiany płci, nadużycie prawa, prawa LGBTIQ

**Streszczenie.** Hiszpania pod wieloma względami jest bardzo liberalnym krajem. Jednym z tych aspektów jest podejście do zmiany płci. W 2023 roku, po 15 latach obowiązywania ustawy z 2007 roku, nastąpiła zmiana w tej dziedzinie. Obecnie procedura zmiany płci została skrajnie uproszczona. Jak pokazują konkretne studia przypadków, to uproszczenie stało się nie tylko polem do nadużycia prawa w indywidualnych sytuacjach, ale także zagrożeniem systemowym, co wynika ze statystyk. Wyraźnie pokazują one, że z tego prawa znacznie częściej korzystają mężczyźni. W związku z powyższym, w artykule wskaże się najpierw, dlaczego dotychczas obowiązująca ustawa przestała spełniać oczekiwania społeczne i prawne. Przedstawiona zostanie także aktualna procedura zmiany płci, a na koniec wskazane zostaną obszary, które generują w tej dziedzinie patologie prawne i społeczne. W rozważaniach zastosowana zostanie metoda teoretyczno-prawna i dogmatyczno-prawna.

## 1. Introduction

Spain's history has been intertwined with different political currents, from liberal to conservative. The current shape of the parliament is a reflection of these. This one, in turn, is a reflection of a society that, although it supports different political groupings and the values they represent, on one issue this society, remains

remarkably united, namely, the liberalisation of the law on gender reassignment and the extension of the rights of LGTBIQ people. In 2007, Spain astonished Europe by introducing a legal procedure for gender reassignment. Fifteen years after its adoption, this regulation no longer met public expectations, prompting the adoption of a new law that was far more liberal in its content. In this speech, I will try to find an answer to the question of what accusations were levelled against the 2007 law and what the new law on gender reassignment changed. I will also use concrete examples to show that today the law has become a field for abuse and circumvention. Finally, I will address the question of whether in Spain it is more difficult for children to buy alcohol or to change sex, and indicate where the boundary of reason is because it may be the case that this boundary in the matter of gender reassignment simply no longer exists, and only absurdity remains. The theoretical-legal and dogmatic-legal method will be used in the deliberations.

## **2. Repeal of the 2007 Law Regulating the Rectification of a Person's Gender Reference in the Register**

On 15 March 2007, the Spanish Parliament adopted a law concerning, among other things, the procedure for gender reassignment. At the time, the adoption of the law in question was the result of, as highlighted in academic circles, a 'progressive trend' but also a response to the discrepancies that existed in case law related to the civil procedure for gender reassignment<sup>1</sup>.

After 16 years, the law was repealed. The fundamental reason for the change in the legal regulation, it was argued, was that the law did not meet public expectations regarding the gender reassignment procedure. Three main objections were formulated against the repealed law. The first concerned the subjective exclusion of minors from its scope of application, in a situation where they had 'sufficient maturity' and were in a 'stable transsexual situation', The second concerned the subjective exclusion of transsexual persons who were in a particularly vulnerable situation, *i.e.*, disabled or dependent persons, foreigners, the elderly or the homeless. The final allegation, on the other hand, referred to the gender reassignment procedure itself, namely the obligations under the Article 4, *i.e.*: (1) (a) a diagnosis of gender dysfunction made by a doctor or clinical psychologist, registered in Spain or whose qualifications have been recognised or approved in Spain, and which must refer

<sup>1</sup> M.R. Lloveras Ferrer, *Una ley civil para la transexualidad*, Barcelona 2008, p. 4; M. D. Cerverilla Garzón, *Transexualidad, Cambio De Sexo Y Tribunales* [in:] *Justicia y personas vulnerables en Iberoamérica y en la Unión Europea*, ed. T. lo Blanch, 2021, p. 577. [In:] Y. Bustos Moreno, *La transexualidad (De acuerdo a la Ley 3/2007, de 15 de marzo)*, [https://www.researchgate.net/publication/337085691\\_La\\_transexualidad\\_De\\_acuerdo\\_a\\_la\\_Ley\\_32007\\_de\\_15\\_de\\_marzo](https://www.researchgate.net/publication/337085691_La_transexualidad_De_acuerdo_a_la_Ley_32007_de_15_de_marzo) [Accessed on: 20.07.2025].

to: “1) The existence of a degenerative disorder; which means that the existence of a dissonance between the initially registered morphological sex or generic physiological sex and the gender identity established by the applicant or psychosocial sex, as well as the stability and permanence of this dissonance. 2) The absence of a personality disorder that could have a decisive influence on the existence of the dissonance referred to in the previous point. b) To undergo medical treatment for almost two years in order to adapt their physical characteristics to those corresponding to the declared sex. Accreditation of compliance with this requirement must be made by means of a report from a registered medical practitioner who carried out the treatment or, if not, by means of a report from a specialised forensic medical practitioner. It is not necessary for a person’s gender to be corrected for the treatment to include gender reassignment surgery. The medical treatment referred to in point (b) of the preceding paragraph is not a necessary requirement for the granting of a rectification of registration if there are health or age-related reasons that do not prevent continuation and a medical certificate of such a circumstance is provided”<sup>2</sup>.

In addition, the LGBTIQ communities have pointed out that the 2018 updated World Health Organisation International Classification of Diseases (ICD-11) in which transsexuality is not any more considered a mental or behavioural ailment or disorder, a ‘condition related to sexual health’, a ‘sexual dysfunction’ or a ‘disorder related to sexual complaints’<sup>3</sup>, which in practice, according to the indicated communities, ‘depathologises’ and ‘destigmatises’ the situation of transsexual persons and changes its perception from a strictly medical perspective to a human rights perspective and thus confirmed the legitimacy of making changes to the law<sup>4</sup>.

Significantly, in relation to the 2007 law, the Spanish Constitutional Court (the original Tribunal Constitucional) spoke out, declaring in a judgment – BOE-A-2019-11911 – that the restriction of access to gender reassignment for

<sup>2</sup> Compare, Article 4 of Law 3/2007 of 15 March, Regulating the Correction in the Register of the Mention of the Sex of a Person, LLEI 3/2007, de 15 de març, reguladora de la rectificació registral de la menció relativa al sexe de les persones. («BOE» 65, de 16-3-2007.); <https://www.boe.es/eli/es/l/2007/03/15/3/dof/cat/pdf>. Act repealed [Accessed on: 20.07.2025].

<sup>3</sup> More about that, P. Krawczyk, Ł. Świącicki, *ICD-11 vs. ICD-10 – przegląd aktualizacji i nowości wprowadzonych w najnowszej wersji Międzynarodowej Klasyfikacji Chorób WHO ICD-11 vs. ICD-10 – a review of updates and novelties introduced in the latest version of the WHO International Classification of Diseases*, “Psychiatria Polska” 2020, nr 54(1), pp. 7–20, [https://www.psychiatriapolska.pl/pdf-103876-79668?filename=ICD\\_11%20vs.%20ICD\\_10%20\\_.pdf](https://www.psychiatriapolska.pl/pdf-103876-79668?filename=ICD_11%20vs.%20ICD_10%20_.pdf) [Accessed on: 20.07.2025].

<sup>4</sup> M. del Mar HERAS Hernándezel, *Principio De Autodeterminación De Género. Apuntes Prácticos Sobre El Procedimiento De Rectificación De La Mención Registral Relativa Al Sexo The Principle Of Gender Self-Determination. Practical Notes On The Procedure For Rectification Of The Registry Mention Relating To Sex* [https://revista-aji.com/wp-content/uploads/2024/06/AJI20bis\\_18.pdf](https://revista-aji.com/wp-content/uploads/2024/06/AJI20bis_18.pdf) [https://revista-aji.com/wp-content/uploads/2024/06/AJI20bis\\_18.pdf](https://revista-aji.com/wp-content/uploads/2024/06/AJI20bis_18.pdf), p. 526-8 [Accessed on: 20.07.2025].

minors is incompatible with the Spanish Constitution. Non-compliance with the following articles has been questioned: 15 (right to physical and moral integrity), 18.1 (right to personal and family privacy), 18.4 (a limit to data processing) and 43.1 (right to health protection), in conjunction with 10.1 (dignity of the person and free development of personality) of the Spanish Constitution<sup>5</sup>. In its reasoning, the Court pointed out that '[...] the subjects excluded from the possibility of gender reassignment are subject to very significant limitations on the constitutional subjective rights already indicated. These restrictions are in themselves of great intensity and affect constitutional goods of the greatest importance, and are exacerbated when the minor reaches 'sufficient maturity'. However, that the court has emphasised the limitation does not only cause inconvenience to certain constitutional principles and rights, it carries with it some important benefits for other legal interests that are also of constitutional significance, since, through this legal restriction, the legislator makes use of the special protection of minors that is incumbent upon it under the mandate of Article 39 EC. These advantages, the importance of which the Court does not underestimate, are gradually relativised as the age of majority increases for two reasons. On the one hand, as the minor reaches the age of majority, he or she acquires a greater degree of understanding and, therefore, his or her special needs for protection diminish as a result of the Civil Code's regulation on the emancipation of minors (Articles 314 et seq.). On the other hand, as argued in the order, the risk of remission of transsexual symptoms decreases as one approaches adulthood.

Consequently, the Court considered that the legal restriction in question, in its opinion for minors who are 'sufficiently mature' and in a 'stable situation of transsexuality', which circumstances are assessed under the requirements of Article 4, was too far-reaching and even detrimental to the minors. The above is based on the thesis that the harm to their right to privacy and the principle guaranteeing them a space of freedom in the formation of their identity is significantly increased. Moreover, in these circumstances, the harm is even more intense because it is an automatic provision that does not provide for any intermediate regime – *i.e.*, change of name.

Thus, Art. 1 of Law 3/2007, insofar as it applies to the normative presumptions indicated in the law regulation, without allowing for a channel of individualisation for those minors who have 'sufficient maturity' and are in a 'stable situation of transsexuality' and without providing for special treatment for these presumptions, constitutes a measure that restricts the constitutional principles and rights we have considered in a disproportionate manner, given that the harm to them clearly

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<sup>5</sup> Spanish Constitution of 27 December 1978, translated by T. Moldova, [https://biblioteka.sejm.gov.pl/wp-content/uploads/2015/10/Hiszpania\\_pol\\_300612.pdf](https://biblioteka.sejm.gov.pl/wp-content/uploads/2015/10/Hiszpania_pol_300612.pdf) [Accessed on: 20.07.2025].

exceeds the lesser needs for special protection manifested by these particular categories of minors, for which reason it is appropriate to declare it unconstitutional<sup>6</sup>.

All these premises led to the fact that on 28 February 2023, a new law concerning transgender persons was adopted – Law No. 4/2023 of 28 February on the real and effective equality of transgender persons and on the guarantee of the rights of LGBTI persons<sup>7</sup>.

### **3. The Gender Reassignment Procedure in the 'Law of 28 February 2023, No. 4/2023 on the Real and Effective Equality of Transgender Persons and on the Guarantee of the Rights of LGBTI Persons'**

The entry into force of the new law has dramatically changed the procedure for gender reassignment in Spain. According to the wording of Article 43(1), any person with Spanish citizenship who has reached the age of 16 has been granted the right to apply independently to the Civil Registry Office for the rectification of an entry in the register relating to gender. Significantly, however, persons who have not reached the age of sixteen but have reached the age of 14, may file the application themselves with the assistance of their legal representatives, but when there is disagreement between the parents or legal representatives, with each other or with the minor, as to the decision regarding the change of sex, a representative is appointed to represent the minor's interest before the court (paragraph 2). Even more interestingly, with regard to persons under 14 years of age but older than 12 years of age, there is also the possibility of requesting a change of sex but here there is a mandatory request to the court for permission to change the mention of sex in the register within the meaning of Chapter I bis of Title II of Law 15/2015 of 2 July on jurisdiction) (paragraph 4). Which is important to note already at this stage of the discussion of the Act, in none of the above paragraphs does the legislator use the concept of children, it uses term persons to whom the legislator grants full awareness of the scope of the action to be taken, and only in the case of children younger than 14 years of age does it transfer the decision to the court. With regard to persons with disabilities, the legislature grants them the necessary support measures to enable them to rectify the reference to their sex in the register.

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<sup>6</sup> Section of the Constitutional Court, BOE' No. 192 of 12 August 2019, pages 89782-89810, (Sección del Tribunal Constitucional, BOE» núm. 192, de 12 de agosto de 2019, páginas 89782 a 89810), BOE-A-2019-11911, <https://www.boe.es/buscar/doc.php?id=BOE-A-2019-11911> [Accessed on: 20.07.2025].

<sup>7</sup> «BOE» 51 01.march .2023., BOE-A-2023-5366, <https://www.boe.es/eli/es/l/2023/02/28/4/con> [Accessed on: 20.07.2025].

(paragraph 3)<sup>8</sup>. It is worth adding that the issue of the entry into force of such a liberal law on gender reassignment has been noted in Poland<sup>9</sup>.

The procedure itself for the change of sex in Spain is for the person concerned to fill in an application to initiate the procedure for rectification of the mention of sex and to submit it to the official of the civil registry office (as far as territorial competence is concerned, the competent office according to Article 45 is the one where the applicant will submit the application) (Article 44(2)). The exercise of the right to rectify the reference to sex may in no case be made conditional on the prior presentation of a medical or psychological opinion concerning the incompatibility of the sex mentioned in the birth registration or on a previous change in the appearance or functioning of the person's body through medical, surgical or other procedures (paragraph 3). Importantly, the simplification of the procedure in this regard, in Spanish science, is positively perceived when this takes place in relation to children, although in Spain, the preferred phrase is persons under the age of 18<sup>10</sup> (Article 12 of the Spanish Constitution, Spaniards become of age at eighteen).

Once the request has been made, the person making it is summoned to appear in person before an official of the Civil Registry Office in order to declare the inconsistency of the sex mentioned on the birth certificate and to request the corresponding rectification. In the case of 14-year-olds, the change in question is also conditional on the participation of the legal representatives of the person seeking the change and their consent. The person changing sex may also choose new surnames, but in parallel he/she may stay with his/her current surname (paragraph 4). Upon receiving the declaration from the applicant, the registrar is obliged to inform the applicant of the rules on reverting to the previous sex, and of the assistance and information measures available to the applicant throughout the rectification procedure in the fields of health, social affairs, employment, education and administration, including the measures available to the applicant to protect him/her from discrimination, promote respect and encourage equal treatment. In addition, the official is obliged to inform the entitled person of the existence of

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<sup>8</sup> More about that, M<sup>a</sup> C. Gete-Alonso y Calera, *La Rectificación Del Sexo En La Nueva Legislación Española (A propósito de Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI)*, "Revista de ciencias sociales (Valparaíso)" 2023, no. 82, pp. 30-31.

<sup>9</sup> Spain: Change of gender in documents on request from the age of 16, <https://www.rp.pl/polityka/art37662971-hiszpania-zmiana-plci-w-dokumentach-na-zyczenie-od-16-roku-zycia>; Spain: Parliament adopted the "trans law". The new law allows 12-year-olds to change their gender, <https://www.polsatnews.pl/wiadomosc/2023-02-16/hiszpania-parlament-przyjal-ustawe-trans-nowe-prawo-umozliwia-12-latkom-zmiane-plci/> [Accessed on: 20.07.2025].

<sup>10</sup> M. Herrero Oviedo, *La Ley Trans Y La Modificación De La Mención Del Sexo: Menores Y Mayores ¿Transexuales?*, "Revista de Derecho Civil" 2024, vol. XI, no. 1, p. 144.

associations and other organisations for the protection of rights in this field to which he or she may turn (paragraph 5).

In the case of persons under the age of 18 but older than 14, all persons involved in the procedure are obliged to take into account the welfare of the minor. The representative, therefore, in relation to parents and legal guardians, is additionally obliged to inform them of the legal consequences of the gender reassignment being carried out and of the related rectification in the register, as well as of the necessary information which should be communicated to those concerned in a clear and accessible manner (paragraph 6). Completion of the above procedure results in the drafting of a preliminary application for gender reassignment (paragraph 7). The next stage is, as it were, the approval of the application. This takes place, in accordance with paragraph 8 of the cited article, Within a maximum period of three months from the first appearance at the Office and the submission of the initial request for rectification. The applicant is then summoned to appear before the official and confirm the application, thereby also confirming the permanence of the decision taken). The procedure for rectification of the register is completed by a decision of the Civil Registry official within a maximum of one month from the date of the statement confirming the application. The decision is based on the full material of the case, including the original application and its confirmation (paragraph 9). There is a legal remedy against the decision – an appeal based on the rules of civil procedure to the General Directorate of Legal Security and Public Faith (*la Dirección General de Seguridad Jurídica y Fe Pública*) (paragraph 10). In the case of persons with disabilities, the legislator has guaranteed them the necessary support measures (paragraph 11).

Another important issue is to determine what effects the rectification of gender reassignment has. According to Article 46, the decision to rectify one's gender is constitutive in nature, producing effects as soon as it is registered in the civil status register (paragraph 1). As soon as it is registered, the person concerned acquires all the rights deriving from his new status. (paragraph 2). The rectification of the mention of sex in the register and, where applicable, the change of name and surname does not result in a change of the legal status which, prior to the registration of the change in the register, applied to the person concerned within the meaning of Organic Law 1/2004 of 28 December on Comprehensive Measures for Protection against Gender-Based Violence (paragraph 3). A person who corrects a registration reference regarding sex from male to female may be a beneficiary of affirmative action specifically adopted in favour of women on the basis of article 11 of the Organic Law 3/2007 of 22 March on effective equality between women and men, for situations arising after the entry into force of the change of register, but not for legal situations prior to the correction of the register. However, the

person who corrects the registration reference from female to male will retain the consolidated property rights resulting from these positive actions, without the possibility of restoration or return (paragraph 4)<sup>11</sup>.

A further issue to be discussed is the question of a possible return to the previous sex. According to Article 47, six months after the registration of the rectification of the mention of sex in the civil registry, the persons who have requested the rectification may return to their previous sex, following the same procedure as in the case of a change<sup>12</sup>.

#### **4. The Extent of Possible Abuse Arising from Article 44 of the Law No. 4/2023 of 28 February on the Real and Effective Equality of Transgender Persons and on Guaranteeing the Rights of LGBTI Persons**

The change made to the gender reassignment procedure has undoubtedly simplified it. However, when observing the practice, the legitimacy of such a profound simplification is questionable. On the one hand, there are specific cases that call into question the reason for such a change of sex and on the other hand, the rationality of such a procedure is also questionable.

In analysing the first of these issues, it is necessary to refer to specific social and professional groups that have recently been requesting gender reassignment in exceptionally large numbers. And perhaps they are searching for their self, or perhaps the desire to change sex is conditioned by entirely different reasons, somewhat more down-to-earth.

The answer to this question requires going to the soldiers' applications in the first instance. Investigations carried out by journalists show that, from one unit stationed in Ceuta (a Spanish city in the north of Africa), 41 soldiers have already taken advantage of the opportunity to correct their gender on the basis of what is colloquially known as the *Ley-de-Trans*, or 'Trans Law' of 2023, but, significantly, only four of them have made an official, official name change. The others, however, dress as before, wearing beards and trousers. Moreover, when asked by journalists about their gender preferences, they acknowledge that, although they are women, they are lesbian. Moreover, some in the journalistic investigation explicitly acknowledged that the correction of the gender on the register is a result of the fact that, 'a woman serving in the army is entitled to a higher salary. This is to compensate for the inequalities that women experience in different situations'. Furthermore,

<sup>11</sup> M<sup>a</sup> C. Gete-Alonso y Calera, *La Rectificación Del Sexo*, *op. cit.*, p. 3738.

<sup>12</sup> « BOE » no. 51, 1 march 2023, pages 30452 to 30514 (63 pages); Law No. 4/2023 of 28 February on real and effective equality for transgender persons and guaranteeing the rights of LGBTI persons.

a mother in the army is entitled to 15 per cent higher pay. For every military rank, a woman is also entitled to an allowance. Those with gender reassignment have, at their request, been granted single rooms with an en-suite bathroom in the barracks, explaining, 'they would feel awkward in a shared bathroom with members of either gender'. Gender reassignment also allows previously male and now, after gender reassignment, female members to have longer hair and earrings, while men are explicitly forbidden to do so. It is also worth supplementing that the Spanish government was intended to seek to increase the presence of women in the armed forces<sup>13</sup>. Hence, over the last decade, a whole series of plans and legislation undertaken<sup>14</sup> have, however, proved of dubious effectiveness when compared to the *Ley-*

<sup>13</sup> Hiszpańscy żołnierze zmieniają płeć, żeby mieć wyższe pensje, <https://opoka.org.pl/News/Swiat/2024/hiszpanscy-zolnierze-zmieniaja-plec-zeby-miec-wyzsze-pensje>; M. Chavarría, La cabo Roberto, una mujer que se cambió de sexo en el ejército: 'Por fuera soy un hombre heterosexual y por dentro soy lesbiana', [https://www.larazon.es/actualidad/cabo-roberto-mujer-que-cambiado-sexo-ejercito-externamente-soy-hombre-hetero-internamente-mujer-lesbiana\\_2024030665e8369fd-3310300012b85e6.html](https://www.larazon.es/actualidad/cabo-roberto-mujer-que-cambiado-sexo-ejercito-externamente-soy-hombre-hetero-internamente-mujer-lesbiana_2024030665e8369fd-3310300012b85e6.html) [Accessed on: 20.07.2025].

<sup>14</sup> Examples of such acts could be: Strategic plan for effective gender equality (PEIEMH 2022–2025), Plan Estratégico para la Igualdad Efectiva de Mujeres y Hombres [https://www.inmujeres.gob.es/areasTematicas/AreaPlanificacionEvaluacion/docs/PlanesEstrategicos/Plan\\_Estrategico\\_2022\\_2025.pdf](https://www.inmujeres.gob.es/areasTematicas/AreaPlanificacionEvaluacion/docs/PlanesEstrategicos/Plan_Estrategico_2022_2025.pdf) [Accessed on: 20.07.2025]. III Plan for Equality between Women and Men in the General State Administration and its Public Bodies (AGE) . III Plan para la Igualdad entre mujeres y hombres en la Administración General del Estado y en sus organismos públicos. (AGE), BOLETÍN OFICIAL DEL ESTADO No. 1, Friday, January 1, 2021, Section I, p. 3. [https://www.boe.es/eli/es/res/2020/12/29/\(2\)/dof/spa/pdf](https://www.boe.es/eli/es/res/2020/12/29/(2)/dof/spa/pdf) [Accessed on: 20.07.2025]. Díptico LO 1/2004 on gender violence, Díptico LO 1/2004 sobre la Violencia de Género <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/OD-4-DIPTICO-VIOGEN.pdf> [Accessed on: 20.07.2025]. II National Action Plan for the Implementation of the Agenda for Women, Peace and Security, II Plan Nacional de Acción para la aplicación de la Agenda Mujeres, Paz y Seguridad. <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/OD-5-IIPLAN-NACIONAL-ACCION.pdf> [Accessed on: 20.07.2025]. GENDER MAKES SENSE: A way to improve your mission (2nd Edition) Civil-Military Cooperation Centre of Excellence (CCOE) 2013, <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/OD-7-GENDER-MAKES-SENSE.pdf> [Accessed on: 20.07.2025]. The process of inclusion and integration of women in the Armed Forces, Proceso de incorporación e integración de la mujer en las FAS. <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/OD-8-Proceso-incorporacion-integracion-mujer-FAS.pdf> [Accessed on: 20.07.2025]. Normative pillars in the SAF on equality, Pilares normativos en las FAS en materia de igualdad. [https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/Pilares\\_normativos\\_en\\_las\\_FAS\\_en\\_materia\\_de\\_Igualdad.pdf](https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/Pilares_normativos_en_las_FAS_en_materia_de_Igualdad.pdf) [Accessed on: 20.07.2025]. Agenda for women, peace and security, Agenda Mujeres, Paz y Seguridad. [https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/10\\_AGENDA\\_MUJERES\\_PAZ\\_Y\\_SEGURIDAD.pdf](https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/10_AGENDA_MUJERES_PAZ_Y_SEGURIDAD.pdf) [Accessed on: 20.07.2025]. The triptych of protection against harassment, Tríptico Unidad de Protección frente al Acoso. [https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/11\\_TRIPTICO\\_UNIDAD\\_DE\\_PROTECCION\\_FRENTE\\_AL\\_ACOSO.pdf](https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/11_TRIPTICO_UNIDAD_DE_PROTECCION_FRENTE_AL_ACOSO.pdf) [Accessed on: 20.07.2025]. A gender perspective in crisis management, La perspectiva de género en la gestión de crisis <http://cemixugmadoc.ugr.es/pages/7-publicaciones/7a-biblioteca-conde-tendilla-directorio/29laperspectivadegeneroenlagesiondecrisis> Brak daty dostępu A practical guide for victims of harassment, Guía práctica para la Víctima de Acoso. <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/Guia-practica-para-la-victima-de-acoso-sexual-accesible.pdf> [Accessed on:

*de-Trans*, or ‘Trans Law’ of 2023. Indeed, within the last year of the law’s operation, around 200 soldiers and police officers, legally changed their gender from male to female and statistically increased the number of women in the uniformed services<sup>15</sup>.

Paradoxically, however, as the number of requests for gender rectification increased, so did the number of cases in which soldiers changed their gender just to obtain a promotion, as found by successive courts in individual cases<sup>16</sup>.

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<sup>15</sup> *Hiszpania: Legalna zmiana płci wzrosła o 400%*, <https://afirmacja.info/2024/03/23/hiszpania-legalna-zmiana-plci-wzroslo-o-400/> [Accessed on: 20.07.2025].

<sup>16</sup> Un juez deniega el cambio de sexo de un militar por fraude de ley: su única intención era ascender, <https://noticias.juridicas.com/actualidad/noticias/18344-un-juez-deniega-el-cambio-de->

Another aspect, as interesting as the one above, related to gender reassignment concerns the issue of prisoners. Well, one of them, while serving a prison sentence in Alicante, Spain, for numerous robberies, thefts and kidnappings, recognised that he was a woman and, what is more, with the approval of the Directorate of the Penitentiary, was transferred to a female block<sup>17</sup>. Shortly afterwards, as a homosexual woman, this person, had sexual relations with another inmate, resulting in a pregnancy. “As a result, the prison management decided to set up two shifts in the showers to avoid sexual contact between declared trans and female inmates – biological women”<sup>18</sup>.

Yet another interesting issue related to gender reassignment, concerns so-called crimes against the sex in Spain, which include, e.g., domestic violence and abuse and the beating of a woman. One of those accused of precisely this type of crime, during the court proceedings in 2023, already after the entry into force of the gender reassignment facilities, declared that he had changed his gender on the register and was a woman. At the same time, he did not change his name or appearance. But importantly, already after the change, he committed another violation in this regard for which he was arrested. It should first be pointed out that the search of the person was carried out by a female officer, as the detainee was also a woman and it would have been illegal for a man to carry out the mandatory procedure (in Spain, as in Poland, the search procedure is carried out by a person of the same sex). After the search, the detainee was transferred to the fourth investigator court, who was on duty at the time. Interestingly, this already woman was charged with several so called – crimes against the sex that she had already committed before her gender change in the civil registry, but what is still important – in the fourth court of inquiry, the court of violence against women. Paradoxically, however, in this court, she was only convicted of offences committed before the change in the register. For the rest, in relation to offences committed after the gender change, the court considered itself inadequate, because, after all, the perpetrator had the same gender as the victim. Consequently, in the final – Violence Against Women Court did not have jurisdiction and the remaining part of the charge was transferred to another court. Importantly:

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sexo-de-un-militar-por-fraude-de-ley:-su-unica-intencion-era-ascender/ [Accessed on: 20.07.2025]. El juez deniega el cambio registral de sexo a un varón que lo quería usar para ascender, <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/El-juez-deniega-el-cambio-registral-de-sexo-a-un-varon-que-lo-queria-usar-para-ascender> [Accessed on: 20.07.2025].

<sup>17</sup> *Więzień uznał, że jest kobietą. Został przeniesiony do żeńskiego bloku*, [https://www.rmf24.pl/fakty/swiat/news-wiezien-uznal-ze-jest-kobieta-zostal-przeniesiony-do-zenskie,nId,6955408#crp\\_state=1](https://www.rmf24.pl/fakty/swiat/news-wiezien-uznal-ze-jest-kobieta-zostal-przeniesiony-do-zenskie,nId,6955408#crp_state=1) [Accessed on: 20.07.2025].

<sup>18</sup> K. Żak, *Więzień uznał, że jest kobietą. Został przeniesiony do żeńskiego bloku*, [https://www.rmf24.pl/fakty/swiat/news-wiezien-uznal-ze-jest-kobieta-zostal-przeniesiony-do-zenskie,nId,6955408#crp\\_state=1](https://www.rmf24.pl/fakty/swiat/news-wiezien-uznal-ze-jest-kobieta-zostal-przeniesiony-do-zenskie,nId,6955408#crp_state=1) [Accessed on: 20.07.2025].

Penalties for gender-based violence are higher than for domestic violence. For example, minor injuries are punishable by six months to one year in the first case and three months to one year in the second case. If the offence was committed after gender reassignment, the crimes against the sex cannot be applied. [...] We know this is a mockery, but there is nothing we can do. It is not possible to rule fraud against the law. No proof can be required [...] The transgender law is based on the principle of self-determination: a person is the gender they feel<sup>19</sup>.

## Conclusion

According to Spanish statistics, in 2004, legally, only three people managed to change their gender. Statistics done after one week of the 23rd law, showed that there was a wave of requests for rectification in the gender register across the country, in resulting, a after year, that 5,139 people changing their gender. That's almost 15 people a day, or four times as many as in 2022, when 1,306 people changed their gender on the civil registry. In the twelve months since 2 March 2023, when the law came into force, legal gender reassignment has increased by 392%. By contrast, significantly, the majority of applications have come from men – 64%, and even more importantly, this state of affairs continues today. And with the vast majority of applications coming from men, this raises overt and reasonable suspicions of an attempt by men to exploit the advantageous situation associated with their new gender<sup>20</sup>.

Moreover, the research shows that Registry Officers explicitly express concern about the abuse of the right described. However, the key problem is that there are no legal mechanisms to detect abuse of the law in question, as the law is designed in such a way that “a person’s declared choice of gender can only be confirmed and not questioned<sup>21</sup>”. Unless, therefore, a situation arises, as in the judgment against the soldier who changed sex and who admitted that the change of sex was motivated by a desire to extract more pay<sup>22</sup>, an “apparent” change of sex, *i.e.*, one that

<sup>19</sup> El agresor cambia de género y evita el juicio en A Coruña por violencia contra la mujer, <https://www.elidealgallego.com/articulo/a-coruna/maltratador-cambia-genero-elude-juzgado-coruna-violencia-contra-mujer-4688300> [Accessed on: 20.07.2025].

<sup>20</sup> *Hiszpania: Legalna zmiana płci wzrosła o 400%*, <https://afirmacja.info/2024/03/23/hiszpania-legalna-zmiana-plci-wzrosla-o-400/> [Accessed on: 20.07.2025]. In addition, the law also raises questions from the perspective, family law and the existence of marriage, as gender reassignment can lead to the annulment of a marriage and the exercise of parental authority and the belief that parents make decisions in relation to their children. More on this topic, A. Gonzalo Valgañón, *Algunas consecuencias jurídicas que se pueden derivar de la entrada en vigor de la Ley Trans, Some legal consequences that can be derived from the entry into force of the Trans Law*, <https://revpubli.unileon.es/index.php/cuestionesdegenero/article/view/7614/6117> [Accessed on: 20.07.2025].

<sup>21</sup> *Hiszpania: Legalna zmiana płci wzrosła o 400%*, <https://afirmacja.info/2024/03/23/hiszpania-legalna-zmiana-plci-wzrosla-o-400/> [Accessed on: 20.07.2025].

<sup>22</sup> *Un juez deniega el cambio de sexo de un militar por fraude de ley: su única intención era ascender* <https://noticias.juridicas.com/actualidad/noticias/18344-un-juez-deniega-el-cambio-de-sexo-de-un->

is related only to a desire to obtain a favourable situation for oneself related to the status of women, remains outside the control of the law. Moreover, in relation to anti-discrimination against LGBTIQ persons, the formulation of doubts about the sincerity and intentions of a gender reassignment can carry a penalty of up to €150,000 for discrimination against trans and LGBTIQ persons. But that's not all, because it is important to remember that, according to Article 79(4) of the 2023 Law, it is punished a criminal offence for:

- 1) discriminatory harassment on the basis of sexual orientation and identity, sex or gender characteristics, or;
- 2) actions, understood as unfavourable treatment of a person, which has resulted in a complaint, claim, grievance, lawsuit or remedy by the person to prevent discrimination on the basis of sexual orientation and identity, sex or gender characteristics, or;
- 3) the refusal to assist persons who have experienced discrimination on the basis of sexual orientation, gender identity, sex or gender characteristics, by anyone who, by virtue of his or her status or position, has a duty to deal with the victim. and the penalty for this is in Spain in the case of very serious violations by a fine of between €10,001 and €150,000, and, depending on the offender and the area in which the violation occurred, and what's more – additional penalties may also be imposed (Article 80(3) of Law 2023).

The above raises the now somewhat rhetorical question of whether such a defined penalty does not effectively deter officials from at least thinking to question the sincerity of the intentions of the applicant for gender reassignment. I will leave the above to the reader's judgement. On the other hand, in order to shed some light on the issue, it should be pointed out that after one year of the law being in force, out of almost 6,000 applications for gender reassignment, only 85 have been rejected, for a total of 5,900 people have applied for gender reassignment since the Transsexual Act came into force, of which the Civil Registry has rejected 85 applications (1.44% of the total)<sup>23</sup>. It is also necessary to add that there are a number of associations and other trans platforms that have directed criminal suspicion notices against journalists who have strongly opposed the law pointing out its pathological consequences<sup>24</sup>.

It is also worth noting another point, in 2000 Spain struggled to combat the abuse of alcohol by minors, it was explicitly said that there was a serious problem

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militar-por-fraude-de-ley:-su-unica-intencion-era-ascender [Accessed on: 20.07.2025].

<sup>23</sup> Las cifras de la Ley Trans: casi 6,000 solicitudes de cambio de sexo y solo 85 rechazadas EFE | Madrid – 6 septiembre, 2024, <https://efeminista.com/cifras-ley-trans-cambio-sexo/> [Accessed on: 20.07.2025].

<sup>24</sup> *Hiszpania: Legalna zmiana płci wzrosła o 400%*, <https://afirmacja.info/2024/03/23/hiszpania-legalna-zmiana-plici-wzrosła-o-400/> [Accessed on: 20.07.2025].

of alcoholism among minors. Accordingly, on 26 May 2020, the age for the sale of alcoholic beverages was raised from sixteen to eighteen<sup>25</sup>. It should therefore be stated with full conviction that in Spain children can easier change the sex by than to buy alcohol.

At the very end, it is also worth referring to another fact, it is common knowledge that the human brain does not reach maturity until the age of 25<sup>26</sup>, so by bringing about a sex change earlier, are we not interfering with nature's process. This is an open question but it also casts some doubt on the issue under examination.

A further question arises as to whether the legislator may have meant well, but it turned out as it always does, all the more so as such voices are already being raised in the doctrine<sup>27</sup>. In assessing the legislator, it should be pointed out that it is not a question of a mistake, which happens to everyone, but of creating a legal and social pathology. And now a further question arises as to whether the Spanish legislature will understand its mistake or, in the name of misunderstood 'correctness', will lead to blatant violations of the law. The answer to this question will come in the near future, but the consequences are already visible today, such as discrimination against women in sport.

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<sup>25</sup> Ley 5/2000, de 8 de mayo, por la que se eleva la edad mínima de acceso a las bebidas alcohólicas, «BOE» núm. 126, de 26 de mayo de 2000, páginas 18982 a 18983 (2 págs.), BOE-A-2000-9793.

<sup>26</sup> <https://przystaneknauka.us.edu.pl/artukul/mozg-dojrzewa-dluzej-niz-sie-spodziewano> [Accessed on: 20.07.2025].

<sup>27</sup> M. Herrero Oviedo, *La Ley Trans Y La Modificacióm...*, *op. cit.*, p. 138.

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