

(May 2020)

Transgender People – gender change in the law

Ruling of the High Court of the canton of Zurich of 19 September 2019 (NC180003)

Initial Situation

The law does not provide any guidance on the requirements for changing the legally registered gender in terms of Art. 7 paragraph 2 lit. o ZStV. The resulting uncertainty has led to a non-uniform handling of such cases by the local registry offices. Despite ongoing efforts to revise the law to facilitate the gender change, it remains unclear if and at what time said change will be implemented. Therefore, the aspired alleviation can currently only be considered as an indication of the predominant values observed by the public as well as in politics.

The Swiss Federal Supreme Court has last expressed its stance on the matter in 1993. In its landmark ruling, the court opposes the recognition of a gender change solely based on the inner conviction of the individual in question and professes the necessity of an irreversible physical sex change (BGE 119 II 264). In compliance with this ruling, sterilization was widely recognized as a general requirement for the granting of a legal gender change by the courts.

A new ruling by the High Court of the canton of Zurich now deviates from this and provides clarity on the requirements a Swiss resident must fulfill to change their legally registered gender.

Prerequisites for a change of the official gender

Initially, the court proclaims the prohibition of any demands placed on the transgender person to undergo medical procedures for the gender change to be granted.

This is done in agreement with the recent ruling of the European Court of Human Rights, according to which any precondition requiring the transgender individual to undergo a permanent change of their appearance is illegal (see *ECHR judgement A.P. Garçon and Nicot v. France*, April 6, 2017). This includes both medical operations and hormonal therapy. Furthermore, any impairment of the reproductive ability is not to be a determining factor when granting the gender change.

It is, however, to be considered whether an individual has undergone a transition from a psychological, social, and objective perspective.

Psychologically, the transgender person must have completed the transition internally and fully identify with their desired gender.

Thereafter, it is required that this inner conviction be made visible in the social environment, which includes the recognition of the transition by family and friends as well as by the work environment. This constitutes the social component of the legal conditions for a gender change. However, the general acceptance of the transition and the new gender by this environment cannot be the determining factor, as opposed to the demand for said acceptance by the transgender individual. This is done to avoid making the gender change dependent upon the tolerance of others.

From an objective perspective, the transgender person must be recognisable as a member of the gender they identify with by an unrelated third party. This impression is based on an overall assessment and may take into account the choice of clothes, hairstyle and the individual's general behavior. However, the complete concealment of any marks revealing the original gender is not required and again, any permanent physical changes cannot be expected. Due to the stress on the overall impression, the specific requirements are handled on a case-by-case basis.

Said criteria only apply to Swiss residents. For Swiss nationals with a foreign residence, the rules of the international private law (IPRG) are applicable. In the case of the completion of a gender change outside of Switzerland, the recognition of the foreign ruling as well as the modification of the civil status can subsequently be requested. This may entail a significant facilitation of the process and alleviate the requirements placed on the transgender person.

Summary

The ruling of the High Court of the canton of Zurich lists three legal criteria for the approval of a requested gender change. It considers psychological, social, and objective factors.

Primarily, the full completion and acceptance of the transition by the transgender individual constitutes the relevant psychological aspect. This inner conviction must then secondarily be made visible in the social environment, thereby demanding its acceptance and the treatment of the transgender person as a person of the gender they identify with.

Lastly, the transgender individual must, from an objective point of view, be recognisable as a person of said gender by an unrelated third party.

The so far widespread practice to require the transgender person to undergo permanent physical changes or to subject themselves to medical procedures such as operations or hormonal therapy is illegal.

The requirements stated above are applicable to Swiss residents only. In case of a foreign residence, the regulations of the international private law (IPRG) must be observed by Swiss nationals. If the gender change is completed outside of Switzerland, the individual may request for the foreign ruling to be recognized by the Swiss authorities along with the modification of the registered civil status. Both situations can lead to a significant alleviation of the conditions for a gender change.

We gladly advise you regarding gender change and change in civil status in national and international cases.



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