

A Valorative Approximation on the Legislative Policies in Spain to the Reality of Girls and Children Disconforms with the Assigned Gender

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Abstract: The trans phenomenon is part of the Spanish social life, its diffusion and its treatment by different media becoming more and more explicit. The publication of news, emission of debate programs, documentaries, books and articles of opinion or study, in which the situation of trans people is addressed, is not sporadic. The social, political and cultural transformations that have taken place during the process of establishing and consolidating a parliamentary democracy in our country have contributed to this.

In this context, the greater presence and prominence of girls and boys who are dissatisfied with their assigned gender has generated an acceptance on the part of their families, constituting associations to defend the rights of their daughters and sons.

For this the requirement of legislative policies that contemplate the agreements of the Convention on the Rights of the Child, and its legislative application in the Spanish territory, will be the basis to promote legislative initiatives in the various autonomous communities that exceed the established in the law 3/2007 regarding the trans question.

These autonomous laws have been approved and are valued from family associations in an unequal manner, while still claiming a law of state implementation. This, together with their daily work, will be what will shape the analysis of this text.

Key words: trans, minors, gender identity, right to self-determination

JEL code: K38

1. Other Looks, Other Legislations

The consideration of childhood as a period of existence that should serve to start in the social life of those who will be true social actors over the years, has been a commonly accepted vision until relatively recently. But this approach is now considered reductionist when establishing as the only criterion the vital process of integration learning in the established social order, not taking into account that, in societies like ours, childhood is a social construction. It's an age group like others, which is within the social structure itself and interacts with its environment. But it has the peculiarity of being seen as a moldable field insofar as it represents the potential of the human being as a social being, indeterminate, but conditioned (Rodríguez, 2000)

The International Convention on the Rights of the Child of the United Nations was approved as an

international treaty by the United Nations in November 1989. It has been the result of a 10-year work that includes contributions from the various societies, cultures and religions participating in it.

It is the first international law on the rights of children, its application being mandatory for signatory states. These states must inform the committee of the child's rights about the steps they have taken to implement the provisions of the convention. It is also the obligation of the signatory state to adopt the necessary rules to give effect to all the rights recognized in the convention.

From a definition of a child as “every human being from birth to 18 years of age, unless, by virtue of the law applicable to him, he has reached the age of majority” (art. 1), the Convention affirms the condition of the child as a subject of rights, and a human being with dignity and with evolving capacities. It indicates that all rights must be applied to all children, without exception, and it is the obligation of the state to take the necessary measures to protect the child from all forms of discrimination. And it indicates as a guiding principle that all measures regarding the child must be based on the consideration of the best interests of the child, with the state assuring adequate protection and care, when the parents, or other responsible persons, do not have the capacity to do so.

Pávez (2012) values this convention as a clear example of the social construction of childhood, since it understands that there is a transformation of the modern concept of childhood through the promotion of a more respectful and egalitarian culture of children's rights in public policies, education and families. However, it also indicates that there is a certain concept of childhood and the generational relations of power that derive from it. As an example of this, it does not grant political rights such as voting, or ignoring the reproductive rights of adolescents. Other critical views are those of Gaitán (2008), who assumes that the rights established in the convention represent the adult-centric relationship that Western and European societies maintain with girls and boys, having been imported as a universal model of childhood. On the other hand, Alanen (1994) concludes that the desirable and measurable child welfare based on the model developed in the rich countries is implicitly characterized in the concept of childhood of the Convention, and that this supposes the invisibility of the enormous diversity in which children live around the world.

Even so, the International Convention on the Rights of the Child of the United Nations is a strong impulse to the study of children, both internationally and in Spanish territory. Publications, congresses, seminars and other activities related to childhood have been happening since then, having a clear reflection in the academic, social, cultural and political, among others.

Regarding the consequences in the legal field, its main exponent was the approval of the “**Organic Law 1/1996, of January 15, of Legal Protection of Minors, of partial modification of the Civil Code and of the Law of Civil Procedure**” (hereinafter referred to as Organic Law 1/1996). It establishes as an objective the configuration of a law and a legal system that progressively reflect a conception of minors as active, participatory and creative subjects, capable of modifying their own personal and social environment. And also to participate in the search and satisfaction of the needs of others.

But this law has undergone important changes after a long process where professionals, in addition to jurists, have taken part in all areas related to minors. This has meant that in the drafting of legal texts have been collected especially educational, psychological or social aspects to strengthen the protection of those.

Two laws will be the result of this reformatory journey. On the one hand, the “**Organic Law 8/2015, of July 22, of modification of the system of protection of childhood and adolescence**” (hereinafter called Organic Law 8/2015). The other is “**Law 26/2015, of July 28, on the modification of the protection system for children and adolescents**” (hereinafter referred to as Organic Law 26/2015).

The set of all of them offers a legal framework in defense and protection of minors, their rights and their duties. As a matter of interest for this text, it is worth noting that the criteria established by General Comment No. 14 (2013) on the right of children to make their best interests a primary consideration are formulated (Article 3, paragraph 1).

These criteria establish a triple nature of the child's concept of best interest. It is considered a substantive and subjective right of the minor directly invocable before the Courts; a general informative and interpretative principle in the sense that, in view of several possible interpretations of a norm, the one that corresponds to the best interests of the minor will always be chosen; and a rule of procedure with all the guarantees, since if the legally established procedure is not followed, the right is violated, and it can be appealed before the Court.

A reflection of this orientation is found in the modification made in the Organic Law 26/2015, in the writing of art. 11. It states that "they will be guiding principles of the actions of the public authorities in relation to minors (...): 1) The free development of their personality according to their sexual orientation and identity".

The adoption of these criteria will affect issues such as the right of the child to be listened and attended. The term maturity is introduced in substitution of judgment, which must be evaluated by specialized personnel. In any case, it is considered that the minor has sufficient maturity when he is twelve years old. The right of defense is also extended with respect to what is established in article 10 of the Organic Law 1/1996, in that the minor may submit individual complaints to the Committee on the Rights of the Child according to the terms of the Convention on the Rights of the Child and of the regulations that develop it. Likewise, the minor may request legal assistance and the appointment of a judicial defense counsel, as the case may be, to undertake the necessary judicial and administrative actions aimed at protecting and defending their rights and interests. Finally, the Public Prosecutor may act in defense of the rights of minors.

Another concept that is going to be defined in more detail is the one referred to the risk situation.

It will be understood as "one in which, due to circumstances, family, social or educational deficiencies or conflicts, the minor is harmed in his personal, family, social or educational development, in his well-being or in his rights in a way that , without reaching the entity, intensity or persistence that would support the declaration of the situation of abandonment and the assumption of the guardianship by the Ministry of Law, the intervention of the competent public administration is necessary, to eliminate, reduce or compensate the difficulties or maladjustment they affect him and avoid his abandonment and social exclusion, without having to be separated from his family environment "(Article 17.1 Organic Law 1/1996).

2. The Care and Legal Protection of Girls and Boys Who are not Conforming with the Assigned Gender

This is the starting point to address a reality that is scarcely known and increasingly visible, as well as the legislative policies in this regard. It is about knowing and recognizing girls and boys who show disagreement with the gender identity assigned at birth and who, supported and accompanied by their families, come to light to express their gender identity freely decided and that does not coincide with the called biological sex. And it is precisely the various associations of family members who carry out a continuous work of claiming the situation of discrimination and helplessness suffered by their daughters and sons in the administrative, school, health, leisure and social spheres. In this sense, legislative policies are demanded to protect and defend the rights of these children.

The legislative response has been limited at the state level, but profuse and diverse in the regional framework

The “**Law 3/2007, of March 15, Regulatory of the registry rectification of the mention relative to the sex of the people**”, of state scope, has as object “*to regulate the necessary requirements to accede to the change of the inscription relative to the sex of a person in the civil registry, when said registration does not correspond to their true gender identity. also contemplates the change of the proper name so that it is not discordant with the sex claimed.*”

This law represents an important change with respect to the situation that preceded it. Attending to psychological, psychosocial sex, regardless of the merely physical aspects, suppresses the need for total reassignment surgery required by the doctrine of the Supreme Court. Registration rectification of the sex due to this cause becomes an administrative procedure by extracting it from the judicial scope, not requiring a final judicial ruling that authorizes the registry change of sex. You can go directly to the civil registry, full civil effects are granted to the rectification of sex and whoever obtains it can live in accordance with his new gender for all legal purposes. And also contemplates the change of proper name so that it is not discordant with the sex claimed.

However, it is inspired by a pathologizing and medicalized vision of transsexuality. The legal requirements for registration change are the presentation of a report by a doctor or clinical psychologist confirming the diagnosis of gender dysphoria, and being under medical treatment for at least two years to “accommodate their physical characteristics to those corresponding to sex reclaimed”. And this must be accredited by the doctor who made it or, failing that, by a specialized forensic doctor. It should be noted that those who have already performed the sex reassignment surgery are excluded (Sillero, 2014). To this is added that the law limits its application to people of Spanish nationality and over 18 years, ignoring other intersectional aspects, such as social class or gender, all of great relevance for trans¹ people, especially for the sectors excluded (Platero & Osborne, 2016).

The situation of children and adolescents disagree with their gender is totally ignored in this norm. But the desire to include their needs will be an inspiring element of trans people’s struggle for their rights. In the regional legislations are going to produce more important advances as far as how to approach this varied and complex subject. Next, those sections dealing with minors will be exposed as a priority, without neglecting to indicate more general matters that also concern them.

The beginning of regional laws related to trans takes place from 2009 and will continue until today. Navarre, through the “**Provincial Law 12/2009, of November 19**” and the Basque Country, through the “**Law 14/2012, of June 28**” both “**of non-discrimination for reasons of gender identity and recognition of the rights of transsexual people**”, will be the first communities to approve legislation related to this problem. Taking as a reference the principles of Yogyakarta on the application of international human rights law in relation to sexual orientation and gender identity, both coincide in terms of broadening the legislative treatment of the situation of transgender people beyond the registry change through comprehensive care that covers a whole series of anti-discrimination and anti-transphobia measures. Active policies are proposed in the educational and labor fields, as well as in matters concerning health care and health.

However, in the opinion of Platero and Osborne (2016), these laws show a vision of transsexuality as a transition from one sex to another, which implies a reification of gender binarism, which is also linked to body modification. In the law of Navarre, a definition of gender identity is given on the idea of dissonance between the

¹ The term trans groups those who, in one way or another, actively reject the binary heteronormative system, both in relation to sexual orientation and gender identity and the expression thereof.

sex assigned at birth and the person's feeling. But it situates transsexuality as a personal conflict, which can be traumatic, and thus stops providing attention to the possible discrimination that the person can live in their environment, that is, transphobia. Both laws are also criticized for continuing to reinforce the need for a medical-psychiatric diagnosis to access certain rights, as established by Law 3/2007, to which they are limited.

Along with these critical aspects, it is worth highlighting others that represent an important advance with respect to Law 3/2007 regarding the intersectional perspective. Both laws establish as beneficiaries of the law all persons residing in its territory, including immigrants. This norm will be part of the rest of the legislative initiatives. And, in Basque law 14/2012, intersex persons are expressly mentioned in relation to guaranteeing their advice, as well as specific attention to gender-based violence is extended to transgender women.

In relation to childhood and youth, both communities are guaranteed by law health care, having *"full right to receive timely diagnosis and medical treatment relating to their transsexuality, especially hormone therapy."* It is also established as a commitment the development of a clinical guide that regulates the process of comprehensive care for transgender people. Regarding educational attention, various actions are established through a series of articles in order to avoid discriminatory situations and protect the rights of transgender people, both in schools and colleges and colleges. Related to these issues is the establishment of an advisory service for trans people and their families.

The publication in May 2016 of a *"Comprehensive Care Guide for people in situations of transsexuality"* by the Basque Government offers a series of recommendations on the actions to be carried out in the educational, social and health areas. It is not a mandatory document, but rather aims to establish guidelines for action. In the case of minors, it recommends possible basic organizational measures to be adopted in the school, as well as regarding the procedures to be followed in health processes. It offers the agency "Berdindu" as an information and assistance service for trans people and their families.

Decree 234/2015, of December 23, published in BOPV of January 11, 2016, establishes the regulation on the administrative documentation of transsexual persons, whose purpose is "to regulate the administrative documentation from which transgender persons may dispose in as much as they have not proceeded to the registry rectification of the mention relative to the sex in the civil registry or, in the case of the transsexual people with residence in the Autonomous Community of Euskadi, until the moment in which they can proceed to the registry change in the country of origin" (art.1).

The interested person can request this documentation, either on its own or duly represented. In the event that the person is a minor, the request must be made by their legal representatives, in any case having the right to be heard and express their opinion, in accordance with the provisions of art. 16 of Law 3/2005 of February 18, on care and protection of children and adolescents.

The people carrying the documentation regulated in this decree shall have the right to be treated according to their freely determined gender identity, to be identified by the name corresponding to their freely decided gender identity, and to the adequacy of the administrative documents, with the exception of the necessary references in the confidential medical history of the person and in the official record of the student. These measures also affect girls, boys and young people.

After the Navarrese and Basque legislations regarding transsexuality, it will be necessary to wait for about two years to attend several legislative initiatives in other autonomous communities that were approved in their respective parliaments.

In the course of the year 2014 will be Galicia, Andalusia, Catalonia and the Canary Islands territories that

will have a law on the trans, which is a new step in the treatment of this issue.

The “*Law 2/2014, of April 14, for equal treatment and non-discrimination of lesbian, gay, transsexual, bisexual and intersex in Galicia*” focuses on the title of the same and all its articles are aimed at raising in a generic way, various measures in favor of the development of non-discrimination policies of the LGTBI collective and the promotion of equality and visibility thereof. Contributes in his art. 3 different concepts of discrimination as the most novel, and also indicates possible inclusion policies in the workplace and education.

It is striking that the only reference to transsexuality is given in art. 20, whose wording shows a medicalized and clinical vision, in addition to a pathological substrate, establishing that “*health care will be guaranteed, according to the need and clinical criteria, of the practices and for therapies related to transsexuality*”. That is, that transsexual people who request to undergo hormonal treatment, or a partial or total surgery, will be subject to what they dictate the health authorities.

To this is added that there is no allusion to issues so demanded by trans people in terms of registration change in those areas that fall under the autonomic government, such as health, education and the administrative bodies themselves, or that are ignored the existence of children and adolescents as part of that reality. The inclusion of the family environment as a space to be considered in order to guarantee that there is no discrimination based on sexual orientation or gender identity in adoption processes, or that equal treatment is taken into account, is a contribution to be taken into account.

It can be concluded that this legislative rule supposes a limited response to the problems and needs of the trans collective, which does not diminish its content and its objective of generating a social conscience in favor of equality and non-discrimination.

After this initiative, and in contrast with it, the Andalusian Parliament unanimously approved the “*Law 2 2014, of July 8, comprehensive for non-discrimination on grounds of gender identity and recognition of the rights of transsexual people of Andalusia*” a few months later. Taking the Argentine law as an example, the result of this legislative rule represents an important change with respect to the legislation existing in our country up to that date.

The sanction of the Argentine law on gender identity promulgated on May 23, 2012 establishes that the registry rectification can be carried out without any prior medical or professional requirement, but simply that the person who so wishes may request it. This measure is based on defining “gender identity as an internal and individual experience as each person feels it” (art. 2) and in “recognizing this identity by appealing to free personal development according to gender identity and to be treated according to their gender identity, and in particular, to be identified in that way in the instruments that accredit their identity with respect to the name/s of pile, image and sex with what is registered there” (art. 1).

The starting point of the Andalusian legislation is to proclaim that the free self-determination of each person’s gender must be affirmed as a fundamental human right.

This idea is broadened in that art. 2 defines it as “the right to access comprehensive care, recognition of gender identity, free development of personality and to be able to have an appropriate identification, as well as to exercise of freedom according to gender identity, all in the social life and public services of the Junta de Andalucía”.

From this paradigm of self-determination (Platero & Osborne, 2016), which implies the non-requirement of medical reports to access rights, and that is set at a legal level in art.5 referred to general criteria of action, the rest of the sections are developed. The idea of human dignity is reaffirmed as a fundamental right and a key factor in

respect for the development of the personality.

Unlike the previous laws, in this case, transsexuality is defined as “having a gender identity different from that assigned at birth”, which means rejecting the idea of transiting from one sex to another as a traumatic experience, a question raised in the law of Navarre, and moves away from the clinical consideration of transsexuality exposed in the Galician law.

The concept of gender identity refers to “the internal and individual experience of gender as each person feels it deeply, including the personal experience of the body and others such as dress, manner of speaking and manners”, thus being written in the explanatory memorandum of said legal norm.

Thus, the normative paradigm of complete depathologization is established, that is, the consideration of transsexuality is left aside as a disease. And this means delinking the exercise of the right to a comprehensive treatment to provide previous medical diagnoses.

It also raises the special protection for transgender women, whom they consider vulnerable, and may be victims of gender violence.

Article 19 of this law is dedicated to minors. It consists of several points, through which it establishes the right to the protection and attention necessary to promote its integral development, the ruling criterion of the best interest of the minors in the administrative intervention, or the collaboration of parents, guardians or legal representatives to guarantee these rights.

Health care focuses on taking into account the stage of puberty in order to seek a balanced development of gender identity decided, favoring the right hormonal treatment to their needs.

The recent publication on the website of the Ministry of Health of the “*Integrated Welfare Process for Health Care for Transgender People in Children and Adolescents*” (January 2017)² is an important step forward in guaranteeing such comprehensive assistance without establishing diagnostic codes of illness to transsexuality or to establish as a prerequisite to hormonal therapy the assessment of the Community Mental Health Unit (USMC).³

Similarly, from the Ministry of Education, Culture and Sport formalizes the *Protocol of action on gender identity in the Andalusian education system*, which will be included in the *Order of April 28, 2015, which modifies the Order of 20 of June 2011, by which measures are adopted to promote coexistence in schools supported by public funds and the right of families to participate in the educational process of their children is regulated*. The purpose of this document is to establish guidelines and orientations to adequately address the education of underage students who do not conform to their gender identity, guaranteeing the free development of their personality and non-discrimination on grounds of gender identity.

It also indicates institutionally coordinated actions to prevent, detect and avoid situations of transphobia, exclusion, school harassment or gender violence, exercised on trans students.

Cite the student by the chosen name, appear with said name and the corresponding gender in the administrative documentation (class lists, grades, student card, etc.), guarantee freedom in the use of the clothing with which the student or student identify themselves, and the access of trans students to toilets and changing rooms corresponding to their gender identity, are some of these measures.

² This document has been prepared by professionals from various medical specialties, and has had the external review of various scientific associations, but also those formed by families with transgender girls and boys, such as the Association of Mothers, Parents and Relatives of LGTBI (AMPGYL), Chrysallis Association and Daniela Foundation.

³ These two aspects are written as recommendations and do not have a binding nature, although they propose specific criteria so that the trans is not considered a pathology or that there should be a prior medical assessment.

All this set of institutional norms make up a legislative framework that seeks to encompass and respond to the demands of the transgender population, but also to generate a social environment favorable to the acceptance of sexual diversity and combat discrimination.

Months later it will be the parliaments of Catalonia and the Canary Islands that give way to legislative initiatives related to the rights of trans people.

In the first case the *“Law 11/2014, of October 10, to guarantee the rights of lesbian, gay, bisexual, transgender and intersex and to eradicate homophobia, biphobia and transphobia”* begins its preamble expressing its recognition to the trans associationism in the following terms: “Law that gathers the historical demand of the rich associative framework that has led for decades the vindication of the rights of lesbians, gays, bisexuals, transgenders and intersexuals, who have achieved in the last years a social and political recognition which had been denied to them, but which is still far from full normalization”.

And in that line formulates the creation of a consultative and citizen participation organism, the National Council of Lesbians, Gays, Bisexuals, Transgenders and Intersex, whose function is to receive information on the application of the law and formulate proposals to improve the performance of public services. In addition, the Council will have representation in government participation bodies of the areas that the government establishes referring to the content of the law.

Other novelties to highlight would be those that have to do with the inclusion of intersex and transgender people as realities to be considered and addressed. Or the definition of the concept of discrimination and its various forms, the establishment of a regime of infractions and corresponding sanctions, categorized, according to a scale, into minor, serious and very serious. Its purpose is to fight marginalization, discrimination, harassment and violence against these social sectors outside the binary and heterosexual norms, and it is significant to set the criteria for reversing the burden of proof in the case of complaints. Mechanisms are established to guarantee the right to equality of this population, both at the level of access to public establishments, and in terms of having the right to attention and reparation.

In relation to minors, this law states that their right to the free development of personality and their ability to make decisions must be taken into account.

Of course, it guarantees the treatment to them with regard to their health and sanitary attention. At the educational level, an article of guidelines is drawn up to favor an equal and non-discriminatory situation in educational centers.

There is a chapter on families, which is expressed in art. 22 of it. In line with the Navarre legislation, it is guaranteed that there is no discriminatory evaluation in the adoption processes, special emphasis is placed on the institutions promoting equal treatment of the most vulnerable LGBTI persons by reason of gender and age, and adds that “public administrations must establish the necessary mechanisms so that the administrative documentation is adapted to the affective relationships of LGTBI persons and the heterogeneity of the family event” (art. 22, point 6).

As far as the Canary Islands are concerned, the *“Law 8/2014, on non-discrimination for reasons of gender identity and recognition of the rights of transsexual persons”* continues the path marked by the previous ones, with particular dedication to equality.

In any case, some of the rights in education and health are specified, in addition to adding in its article to the transgender people in terms of their right to receive comprehensive care and protection that serves a dignified life and active aging. However, the issue of infractions and sanctions is not addressed.

It is also worth mentioning the insertion of an article (art. 17) which shows how, during the sex reassignment process, it will be established by regulation that transgender people have adequate administrative documentation.

Finally, the treatment given to transgender children reiterates their right to receive from the public authorities of the Canary Islands the protection and integral attention necessary for the development of their personality in the family, school and social environment, as well as as to receive the social benefits established by law.

Specifically, his full right is indicated to receive the opportune diagnosis about his transsexuality and the consequent medical treatment, especially the hormonal therapy during the prepubertal stage. It establishes that such treatment must occur under the authorization of the person who holds the guardianship of the minor, and given the previous firm recommendation by two professionals specialized in the treatment of transsexuality. In case of refusal on the part of parents and guardians to authorize the treatment, this may be appealed before the judicial authority, which will attend to the criterion of the benefit of the minor.

And in the field of education, they will be assured of their right to access the various services and facilities of the center in accordance with the identity of the sentient gender, but also to see that identity and the chosen name reflected in the administrative documentation of the center subject to public exhibition, regardless of their status in the Civil Registry.

The next autonomous community that will legislate on the trans question is Extremadura with the *“Law 12/2015, of April 8, of social equality of lesbian, gay, bisexual, transgender, transgender and intersex and public policies against discrimination by sexual orientation and gender identity in the Autonomous Community of Extremadura”*.

This law will be a compendium of the Andalusian and Catalan laws. Within the right of trans people to the full enjoyment of all human rights, the recognition of personality is defined.

It will be in his art. 3.1.b where it is stated that “every person has the right to build a self-definition for himself with respect to his body, sex, gender and sexual orientation. The orientation, sexuality and gender identity that each person defines for themselves is essential for their personality and constitutes one of the fundamental aspects of self-determination, dignity and freedom. No person may be pressured to hide, suppress or deny their sexual orientation, expression or gender identity.

The application of this orientation is evident in chapter II, where measures are established in the field of health, articles 15 and 16 establishing those related to healthcare for transgender children and the comprehensive care protocol for intersex persons. For the former it indicates the right to receive such hormonal treatment at the beginning of their puberty, in order to avoid the development of unwanted secondary sexual characteristics. Wide cross-hormonal treatment when there is evidence that their body development does not correspond to that of children under their age, thus promoting the development of desired secondary sexual characteristics.

Regarding the treatment protocol of intersex people, the law establishes that it should be comprehensive and adequate. It raises the commitment of the Extremadura public health system to ensure the eradication of sex allocation practices in newborn babies based solely on surgical criteria and at a time when the real identity of the newly born intersex person is unknown, although the exception is made when the health of the baby is at stake.

The concern for transgender minors includes a whole series of points to take into account to guarantee the rights of girls to boys in the school environment, measures that go in the same sense as the law and Andalusian protocols.

This law embraces the issue of infractions and sanctions drafted in the Catalan law, as well as the constitution

of a body to participate and consult on the rights of LGBTBI⁴ collectives, where those entities whose work in this regard has been significant are represented.

In 2016, trans legislation will be extended to other territories of the Spanish geography. Specifically, the Community of Madrid, the Murcia Region and the Balearic Islands will be the places that will see the approval of laws in this regard.

The Plenary Assembly of Madrid will give its majority support to the “*Law of Identity and Expression of Gender and Social Equality and Non-Discrimination of the Community of Madrid*”, while in the Murcia Region will be published later the “*Law 8/2016, of May 27, social equality of lesbians, gays, bisexuals, transsexuals, transgender and intersex, and public policies against discrimination based on sexual orientation and gender identity in the Autonomous Community of the Region of Murcia*”. They follow the trail of precedents and take those great part of their articles when establishing the criteria and rules to follow. In the case of the Murcian Region it is practically a copy of the Extremaduran law, both in its content and in the writing. As regards the Community of Madrid, the law introduces some novel aspects and specifies the processes of health care, education and registration, among others.

Of interest is the urgent nature formulated in the preamble regarding a reformulation of the Gender Identity Disorder Units (UTIG), replacing them with the so-called Gender Identity Units (UIG), which must be integrated by appropriate professionals to guarantee a integral treatment and adjusted to the personal circumstances and the state of health of the transsexual person.

In relation to the health care of transgender children, it is indicated that they will be entitled to receive hormonal treatment at the beginning of puberty to avoid the development of unwanted sexual characteristics, and that it is crossed at the appropriate time of puberty, thus promoting sexual characteristics desired side effects develop.

The norms of attention to intersex people are also exposed.

For the educational subject, art. 23 of this legislative text proposes the elaboration and implementation of an educational protocol that contemplates the rights of minors in the same sense as the previous autonomic norms.

Another of the added issues are those related to adoption and foster care, indicating that there can be no discrimination based on gender identity or expression when assessing suitability in adoption and foster care processes. Likewise, measures are promoted in the field of sports, leisure and culture, or in that of international cooperation for development. In this last case, those projects in defense of human rights will be expressly promoted, and against discrimination based on identity or gender expression, in those countries where these rights are denied or present difficulties for their execution.

This journey of legislative initiatives culminates, for the moment, with the community of the Balearic Islands with the “*Law 8/2016, of May 30, to guarantee the rights of lesbian, gay, trans, bisexual and intersex people and to eradicate the LGBTIphobia*”.

From an approach focused on the defense of equal rights and non-discrimination, this legislative text has a content that insists again on many of the indications and guidelines that are part of previous laws on the same subject, inspired mainly by the Catalan law.

Regarding minors, hormonal treatment is considered taking into account the right to personality development, and actions regarding the school environment are indicated along the same lines as other regional legislations.

⁴ The initials LGBTBI are an acronym for Lesbians, Gays, Trans, Bisexuals and Intersex.

This brief review of the laws allows us to assess some elements to keep in mind and that explain this evolution in the different legislations, but also their common aspects and their effects on the lives of trans people and society in general.

3. Associations in Defense of the Rights of Transgender Minors

For this it is important to know what is the opinion and the approach of Chrysallis and Daniela Foundation, organizations with implantation in most of the Spanish territory that group families with girls and boys who are not conformed with the assigned gender. And it is interesting to know about the experience of the association Transhuellas, which is formed by adolescents and young trans people, based in Málaga capital. This organization, in addition to assisting, advising and accompanying adolescents and trans youth who request attention, also offer and provide assistance to families with children who are not in agreement with the established gender.

A central issue is the approval of a state law adequate to the needs and rights of trans people. This proposal for state legislation is justified for several reasons. On the one hand, these associations criticize that the current diversity of existing regional regulations favors unequal treatment, depending on where the affected person resides.

Likewise, the need for a state-level law responds to the elimination of existing legal obstacles to the registration change of sex and name, of Law 3/2007, including minors of legal age.

Fundación Daniela has been carrying out a signature collection campaign since the end of 2015, under the slogan “**Right to be who I am**”, with the aim of achieving the 500,000 signatures required to present a Popular Legislative Initiative (ILP) that allows the parliamentary debate of its proposal of the Integral State Law of Transsexuality. Chrysallis, along with the rest of the associations that make up the Platform for Trans Rights (ATA, Transexualia, Generem, ATC, Aperttura, Vision Trans, AET, EmpoderaT), works for an Integral Law, but from a different methodology. It considers that popular legislative initiatives have little legal direction, and understands that the importance of the issue requires direct pressure on parliamentary groups. In that sense, they have conducted interviews with the different representatives of the same, giving them the draft law called “**Law on recognition and protection of the rights to sexual identity and gender expression**”.

This draft, from the Andalusian and Catalan law, deepens in relation to minors, as it is explained in art. 3 d): “Higher interest of the transsexual and intersexual minor, guaranteeing their sexual identity and their non-discrimination for such reason, as well as the free development of their personality according to their sexual identity”.

Highlight two novelties. One, that the registration change of sex and name must be officially accepted regardless of age, in addition to not having to submit any medical report. And another, in the sanitary field, where it is established that genital surgical operations will be lawful with prior judicial authorization, attending to the best interest of the minor and according to his age and maturity.

The consent of the minor is also granted by proxy in the other specific benefits, or by the minor himself if he is emancipated or is older than sixteen years, in accordance with the legislation applicable to the patient's autonomy as well as the rights and obligations in the matter of information.

In parallel to this institutional activity, these organizations continue their work defending the rights of their children through various means and actions.

With regard to achieving the registry change of sex and name, the initiatives have ended in the courts, with

positive results in some cases, but negative results in others. The different legal interpretation of the laws leads to these disparate sentences. This is exemplified in the two cases described below. The first refers to the judicial resolutions adopted by the magistrates holding the Civil Registry of Mislata (Valencia) and Valencia. In them, two transsexual minors are authorized to change the sex with the one that appears in the Civil Registry, and therefore also in the DNI, without waiting for the age of majority and without needing to accommodate their physical characteristics to the claimed gender⁵. The second is the case of a 14-year-old boy who has submitted medical documents and the support of his parents in favor of his request. After receiving denials of his complaint of change of registry sex in various instances, his case reached the Supreme Court, which in turn has asked the Constitutional if it is consistent with the Constitution the article of Law 3/2007 that requires the age of majority for the change of sexual identity in the Civil Registry.

The issue is pending the response of the Constitutional Court⁶.

And they must also face the problems that take place in educational centers, in health care centers, without forgetting that, in relation to trans youth, there are issues that affect their employment and university situation. The news published by the web pages of these associations denounce transphobic acts, ranging from insult to aggression, or behaviors from the medical instances that include the refusal to treat a trans girl, but also the achievements obtained regarding the registry change, reaching the figure of 35 favorable judgments. As reported by the association Transhuellas, which values the Andalusian law as positive, the daily reality continues to show the difficulties and the task that lies ahead for the various professionals to assume this regulation and its protocols, as well as the necessary training in the recognition of sexual diversity in all areas of our society.

Thus, in educational centers, a psychological report is still required to apply the established protocols. The educational inspection solves this impediment in what concerns him, but in the sanitary field complaints and claims are frequent. This association is currently negotiating a protocol for action to be applied at the University of Málaga (UMA) that includes measures of training and non-discrimination, in addition to the recognition of the name and gender chosen by trans students. Cases of flagrant labor discrimination are reported, as evidenced by the case of a trans girl who worked in a well-known hotel in Torremolinos, who was removed from the deal with minors and the contract was not renewed upon learning of her Transwoman condition.

4. Conclusions

These autonomous laws reflect in a certain way the various social and political conditions existing in each community. That is, the moment in which these laws are approved, the existing balance between the political forces of one or another sign, the pressure exerted by trans activism, or the social climate around this problem.

The resulting legal and regulatory framework represents an important step in the defense of the rights of trans

⁵ For Daniela Foundation this judicial decision is an important change in the sense that to date the registry change of name, but not of sex, has been achieved, and constitutes a precedent for the rest of the civil registries of Spain. (Web Daniela Foundation, article entitled "We are on the right track". March 2015). Chrysallis, for its part, values the importance of this type of judicial proceeding, but this does not mean that the situation of transgender children before the civil registry will depend on the interpretation of the judge in charge (The Gazette, April 2015).

⁶ The Supreme Court upholds fundamental principles and rights recognized in the Constitution as the protection of physical and moral integrity, the right to personal privacy and to one's own image, the right to health and the right to the free development of personality. According to his interpretation, "when it comes to a minor with sufficient maturity who makes a serious request to be in a stable situation of transsexuality, the court has doubts that the absolute restriction that supposes the requirement of the age of majority to be able to request the change in the registration of sex and name is in accordance with the principles and fundamental rights cited (Maldonado, 2016).

people and, above all, in their visibility and regulation before the social group. This suggests a condition that, as Bourdieu proposes, has the Right, and that consists in the power to name. For this author, “Law is the form par excellence of acting discourse capable, by virtue of its own, of producing effects. It is not an exaggeration to say what he does to the social world, but on condition that he does not forget that it is made by him” (Bourdieu, 2000). In the case of Spanish society, the importance given to the legislative framework as a scenario for social transformation seems to have been proven. (Osborne & Platero, 2016).

The modification of Law 3/2007 and its adaptation to what is already advanced in the legislative field is still pending. The proposal of trans associations aims to achieve parliamentary approval and unify criteria, but this depends on the process of debate and parliamentary agreement.

Attention to the reality of children disagrees with their assigned gender and, to a lesser extent, intersex babies, has become part of the legislation and collective social debate.

But it is carried out in a cautious and undecided manner, from a predominantly protectionist position that is reflected in all these laws and that prevents children from being seen as active subjects with full rights to decide on their gender identity, with the consequences that this has in his personal, family and social life.

Contributing from social sciences to this debate is essential to achieve the involvement of girls and boys in the topics that interest them directly.

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