

The Gender Accordance Act¹

D R A F T

*Please note that this document is an unofficial translation created for international advocacy purposes by the Trans-Fuzja Foundation. The Polish version of the document (including substantiation) can be found on the website of the Polish Sejm under no 1469 (<http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?documentId=AA0CB1BCA4CE5088C1257B8F00361E90>).

The document has been drafted by the Trans-Fuzja Foundation, Anna Grodzka, MP and Anna Śledzińska-Simon, J.D.

Any questions regarding the translation and the Act itself can be directed to wiktor.dynarski@transfuzja.org [NGO] and to anna.grodzka@sejm.pl [SEJM].

Acknowledging the fundamental value of dignity and freedom of every human being, the right to self-determination of one's identity and the obligation of public authorities to guarantee everyone equal enjoyment of constitutional rights and freedoms; determined to ensure everyone the effective protection of the right to physical and psychological integrity, respect for private life and personal security; bearing in mind the current knowledge about gender identity and the evolution of international standards recognizing gender identity as the basis of legal gender recognition, it is to be adopted that:

Chapter 1

General Provisions

Article 1

The Act defines the procedure and consequences of gender accordance of persons whose gender identity differs from the gender assigned to them at birth.

Article 2

¹ Although the document regulates gender recognition procedures, the direct translation of its name implies “accordance”. We have decided to leave the direct translation of the name to not confuse the document with the British Gender Recognition Act.

Whenever the Act uses the term:

- 1) Irreversible medical interventions – it shall mean carrying out invasive or noninvasive medical activities, which permanently affect the external or internal sex characteristics and also cause irreversible changes in the body's structure and functions, which are related to sex².
- 2) Gender assigned at birth – it shall mean the gender inscribed in the birth certificate according to the Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 212, Item 1264).
- 3) Gender identity – it shall mean the deeply felt, internal and individual experience of one's gender, which does or does not accord to one's legal gender.
- 4) Applicant – it shall mean the person who files a motion for gender accordance.

Article 3

The Act shall apply to persons whose gender assigned at birth differs from their gender identity.

Chapter 2

Gender Recognition Proceedings

Article 4

1. Gender recognition cases shall fall under the jurisdiction of regional courts, and be heard by a panel of three professional judges.
2. The court in the applicant's place of residence shall have jurisdiction in such cases or, if the applicant does not have a fixed place of abode, the court where the applicant currently resides.
3. To proceedings initiated by the motion for gender recognition, the provisions of the Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws, No 43, Item 296) on non-litigious proceedings shall apply with changes provided for in this Act.

Article 5

²Hereby sex means the biological characteristics linked to gender, not sexuality (translation note).

1. A person whose gender identity differs from their legal gender assigned at birth may file a motion for gender recognition, when they jointly fulfill the following requirements:

- 1) have Polish citizenship;
- 2) be over 18 years of age or over 13 years of age and act upon the approval of legal guardians or, in absence of such, upon the approval of the guardianship court;
- 3) be unmarried.

2. The motion for gender recognition shall fulfill the conditions of a motion to initiate a non-litigious proceeding. The following documents shall be attached to the motion:

- 1) the applicant's statement that gender identity differs from their legal gender
- 2) affidavits of two medical doctors specialized in psychiatry or sexology – or an affidavit issued by a medical doctor specialized in either of the above-mentioned fields and a psychologist specialized in sexology – which shall confirm a durable gender identity differing from the person's legal gender

3. The court hearing the case may find the applicant's statement and the affidavits (as mentioned in par. 2) a sufficient evidence, provided that they do not raise any doubts..

Article 6

To issue the affidavit as mentioned in Article 5, par. 2, p. 2 or the court decision does not require that the applicant submits to any kind of medical intervention, in particular hormone therapy or surgery aimed at reassigning either external or internal sex characteristics or to change the organism's structure or those functions which are related to sex.

Article 7

1. It shall be forbidden to execute any kind of irreversible medical interventions aimed at reassigning the external or internal sex characteristics on persons who possess characteristics of both sexes or whose sex cannot be explicitly determined based on those characteristics, without their consent, unless it is absolutely necessary for saving the person's life or health.

2. Those persons, mentioned in par. 1, may agree to undergo irreversible medical interventions upon reaching the age of 13 years.

Chapter 3

Consequences of a gender recognition decision

Article 8

1. The valid decision of gender recognition shall constitute a basis for issuance of a new birth certificate and changing the name and the surname.
2. The issuance of a new birth certificate on the basis of the court decision on gender recognition does not harm any legal relations between the applicant and any third party, in particular between the applicant and parents or between the applicant and children, born before the gender recognition decision became valid.
3. Upon the validation of the court decision on gender recognition, all rights and obligations dependent on belonging to a certain gender shall follow from the gender accorded in this decision, unless a statute provides otherwise.

Article 9

1. The court decision on gender recognition shall not affect any entitlements resulting from the social insurance relations, which exist upon its validation.
2. In case gender constitutes a relevant criterion to determine the conditions of granting social insurance benefits, this criterion shall be determined on the basis of the valid court decision on gender recognition decision. The benefits shall be assessed on the basis of calculation from the period before the decision became valid

Article 10

1. The valid court decision on gender recognition shall constitute a basis for issuance of new documents concerning the applicant, including certificates and diplomas confirming the completion of a school, studies, courses or acquiring certain qualifications and certificates of employment by both public and private institutions before the decision became valid.
2. The basis of the issuance of the new documents mentioned in par. 1 shall also be the valid court

judgment delivered in proceedings determining gender in accordance to Article 189 of the Code of Civil Proceedings Act of 17 November 1964 (Journal of Laws No. 43, Item 296) or in proceedings rectifying the civil registry records in accordance to Article 31 of the Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 36, Item 180), before the Gender Accordance Act came into force,

3. Public and private institutions, mentioned in par. 1, shall be obliged to issue new documents free of charge and promptly, taking into account the personal data of the applicant such as the name, surname and gender in pursuance to the new birth certificate.

Article 11

After the validation of the court decision on gender recognition, in pursuance to which the name and surname were changed, public and private institutions shall not disclose the applicant's gender assigned at birth or the name and surname carried before the court decision, without the applicant's consent, unless it is required by a particular public or legal interest.

Article 12

Persons mentioned in Article 3 of the Act who are covered by social insurance or entitled to free healthcare in pursuance to separate provisions shall have the right to healthcare services, necessary to function in accordance to gender identity, in pursuance to and on the basis of principles established in the the Act on Healthcare Services Financed by Public Resources.

Chapter 4

Amending, temporary and final provisions

Article 13

In the Act - Penal Code of 6 June 1997 (Journal of Laws 1997 No. 88 Item 553) Article 156¹ shall be added, which reads as follows:

„§ 1. Who carries out an irreversible medical intervention aimed at reassigning external or internal sex characteristics on a person defined in Article 7 of the Gender Accordance Act, after she or he has reached 13 years of age and consented to the procedure, shall not be deemed to have committed an offence prescribed in Article 156 § 1.

Article 14

Article 49¹ shall be added to the Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 36, Item 180) and read as follows:

“Art. 49¹.

1. In pursuance to the valid court decision on gender recognition a new birth certificate shall be issued for the person concerned; the name and surname changed in accordance to the Name and Surname Change Act of 17 October 2008 (Journal of Laws No. 220, Item 1414), as well as gender in accordance to the court decision shall be included in the new birth certificate.

2. After the issuance of new birth certificate pursuant to the valid court decision on gender recognition , a marginal inscription shall be added to the current birth certificate; the current birth certificate shall not be disclosed except the situations prescribed in par 3.

3. The full copy of the current birth certificate shall be given on request of the person whose new birth certificate has been issued to confirm their identity and the identity of their children born before the validation of the court decision on gender recognition decision to confirm their affiliation parentage, and on request of a court and no copies shall be given, , unless the court request it in relation to a case, in which the court shall deem it necessary..

4. A child born before the validation of the court decision on gender recognition of their parent may request access to the civil registry records in part concerning the current birth certificate of such a person if the important social interest require so.

5. The court judgment delivered in proceedings determining gender in accordance to Article 189 of the Code of Civil Proceedings Act of 17 November 1964 (Journal of Laws No. 43, Item 296) or in proceedings rectifying the civil registry records in accordance to Article 31 of the Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 36, Item 180) before entry into force of the Gender Accordance Act shall be a basis to issue a new birth certificate for the person concerned.”

Article 15

The Name and Surname Change Act of 17 October 2008 (Journal of Laws No. 220, Item 1414) shall be amended as follows:

1) in Article 5, par. 1, after point 2 point 2a shall be added and read as follows:

„2a) to the name or names and the surname consistent with the gender accorded in result of the valid court decision on gender recognition;

2) in Article 12 par. 3 shall be added and read as follows:

„3. The decision on the change of the name or surname shall be issued by the director of the civil registry office in the jurisdiction where where the new birth certificate was issued, in pursuance to the valid court decision on gender recognition decision and on request of the person concerned”.

Article 16

In the Act on Implementation of Certain EU provisions with regard to Equal Treatment of 3 December 2010 (Journal of Laws No. 254, Item 1700) after Article 3, para. 5, a new point 5a shall be added and read as follows:

„5a) sex – shall mean also as gender identity that is a permanent, deeply felt encounter and experience of one’s gender which does or does not accord to one's gender assigned at birth.

Article 17

In the Act on Healthcare Services Financed by Public Resources of August 27 2005 (Journal of Laws 2004 No. 210 Item 2135) Article 15, para. 2 a new point 19 shall be added and read to as follows:

„Healthcare services, including the adaptation procedures, aimed at reassigning sex to gender identity”

Article 18

The provisions of the Chapter 3 of this Act shall apply to the proceedings determining gender in accordance to Article 189 of the Code of Civil Proceedings Act of 17 November 1964 (Journal of Laws No. 43, Item 296) initiated before the Gender Accordance Act came into force

Article 19

The Act shall enter into force three months after its promulgation.