

ADI 4,275¹

The Right of Transgender People to Change Their Legal Name and Gender

Country:

Brazil

Court:

Federal Supreme Court

Competent Court:

Full Court

Format of the Session:

In-person

Rapporteur:

Justice Marco Aurélio

Drafter of the Decision:

Justice Edson Fachin

Decision Date:

March 1, 2018

Matter:


CASE SUMMARY

A Direct Action of Unconstitutionality (ADI) that questions the interpretation of article 58 of the Public Records Law (Law 6,015/1973), which regulates civil registration, specifically regarding a person's birth name (the citizen's first name or Christian name). The law aims to grant transgender people the right to change their first name and gender in the civil registry, without the need for gender-affirming surgery or hormone treatments. The action was brought on the basis of the principles of human dignity and the free development of one's personality and sought to guarantee the possibility of making changes based exclusively on self-identification.

LEGAL REASONING

- 1.** Gender identity refers to each person's inner and individual experience of the gender with which they recognize themselves. Some people have a gender identity corresponding to their sex at birth (cisgender people). Cisgender people are either people born with male genital organs who perceive themselves as belonging to the male gender or people who were born with female genital organs and perceive themselves as belonging to the female gender.
- 2.** Other people identify with a gender different from their biological sex (transgender people). In these cases, although the person was born with a male genital organ, they identify themselves with the female gender (transgender woman); or, although they were born with a female genital organ, they perceive themselves as belonging to the male gender (transgender man).
- 3.** Human dignity grants every person the free development of their own personality, which includes the right to have their gender identity recognized by the State and, consequently, the possibility of living, being recognized, and treated based on this identity (article 1, item III of the 1988 Federal Constitution).

¹ In adjudicating Extraordinary Appeal (RE) 670,422/RS, a general repercussion case that had Justice Dias Toffoli as its rapporteur, the Federal Supreme Court reaffirmed the right of transgender people to modify their vital records directly through administrative channels, without having to undergo medical and surgical treatments.

4. Transgender people have the right to change their first name and gender in the civil registry through an administrative procedure that only requires their self-identification signed in a written declaration. The effectiveness of this right does not entail the submission of medical or psychological reports or any kind of surgical procedure or hormone treatment.

DECISION OF THE COURT

The Federal Supreme Court upheld the case and recognized the right of transgender people to modify their first name and gender, regardless of conditions such as undergoing gender-affirming surgery, hormone treatments, or presenting medical or psychological reports.

ADDITIONAL NOTES



part 1



part 2

