

# **LAW ON GENDER IDENTITY AND RIGHTS OF INTERSEX PERSONS**

## **BASIC PROVISIONS**

### **Scope**

#### **Article 1**

This law regulates the right to gender identity, the right to express gender identity, the rights of transgender and intersex persons, the manner of exercising and protecting the rights of those persons, the prohibition of discrimination based on gender identity and sexual characteristics, supervision of the implementation of this law, as well as other matters concerning the rights and duties of transgender and intersex persons.

### **Principles**

#### **Article 2**

This law is based on the principles of:

1. Respect of human rights and dignity of transgender and intersex persons and their right to self-determination.
2. Prohibition of discrimination of transgender and intersex persons.
3. Inclusion of transgender and intersex persons in all spheres of social life on an equal basis;
4. Inclusion of transgender and intersex persons in all decision-making processes related to their rights and obligations.
5. Recognition of the legal consequences of the newly acquired gender of a transgender person;
6. Recognition of the legal continuity of personal rights and obligations of transgender and intersex persons.

# Terms

## Article 3

In this law:

- ♣ “Gender” is a term that denotes the socially established roles, positions and statuses of women and men in public and personal life, which serve as a basis for biological gender-based discrimination due to social, cultural and historical differences;
- ♣ “Gender identity” is a term that denotes a person’s personal and intrinsic perception of their gender, and which may, but not necessarily, coincide with the biological sex at birth, including personal perception of one’s own body (which may include, if wilfully selected, a modification of body appearance and body functions, by medical or other means), as well as other modes of gender expression, such as apparel, manner of speaking, gesture and the like;
- ♣ “Gender binary” is a term that represents a classification of people exclusively into two sexes – male and female – and based on them into gender identities and roles of men and women.  
Gender identity can be binary and non-binary;
- ♣ “Transgender person” is a person whose gender identity differs from their biological sex and is used interchangeably with the term “trans” or “trans\*” as an umbrella term for all persons whose gender identity differs from their biological sex;
- ♣ “Gender incongruence” is a term that denotes a pronounced and persistent discrepancy between a person’s gender (the way they perceive it) and their biological sex;
- ♣ “A person’s biological sex” is a term that denotes biological and anatomical characteristics of the body a person was born in, which are usually divided into male and female, partially defined and undefined;
- ♣ “Self-determined gender identity” is a term for a gender with which an applicant for gender reassignment identifies, and for which they seek legal recognition. It differs from biological sex and is used for the purposes of this law;
- ♣ “Medical transition” is the process of body adjustment to a person’s gender identity through various medical procedures;

- ♣ “Intersex condition” is an umbrella term for numerous variations of sexual development which refer to an atypical structure of genitals, chromosomes, and/or hormones;
- ♣ “Intersex person” is an umbrella term for a person born with genital anatomy that is not covered by the scope of the typical medical definitions of male or female sex, i.e. a person born with anatomy of genital organs that does not fit into the medically known form of male or female sexual characteristics;
- ♣ An intersex and transgender person can identify as a man, a woman, as an intersex person, a trans person, or “other”;
- ♣ “Sexual characteristics” is a term used for chromosomal and anatomical characteristics that include primary characteristics such as external and internal genitalia, and/or chromosomal structure and hormones; and secondary characteristics, such as muscle mass, hair distribution, breasts, physiognomy;
- ♣ “Other” is a term that denotes a person who is referred to as “other” (abbreviation “D”) in the register, as a gender-undefined person;
- ♣ “Interdisciplinary team” is a term that denotes a team appointed by the Minister of Health for a period of three years, consisting of 2 physicians specialized in transgender and intersex conditions, 1 psychologist specialized in working with transgender and intersex persons, 1 representative of organizations for the protection of the rights of transgender and intersex persons, and 1 legal expert in human rights;
- ♣ “Any” and “person” are terms that denote anyone residing in the territory of the Republic of Serbia or any territory under its jurisdiction, regardless of whether they are a citizen of the Republic of Serbia, another country, or stateless;
- ♣ “Public authority” is a term that denotes a state body, a territorial autonomy body, a local self-government body, as well as an organization authorised to exercise public authority.

All terms used in this law in grammatical masculine gender include the same terms in feminine gender.

# Right to Gender Identity and Free Development of Personality

## Article 4

Everyone has the right to gender identity and free expression and recognition of gender identity.

Everyone has the right to the free development of their personality and respect of physical and mental integrity in line with their gender identity and intersex condition.

Everyone has the right to be recognized in the legal order in accordance with their gender identity and intersex condition, and to be identified accordingly in their identity documents.

It is prohibited to require a person to provide evidence of partial or complete surgical interventions, hormonal or any other psychiatric or psychological treatments in order to enjoy the right to gender identity.

## Prohibition of Discrimination

### Article 5

All forms of discrimination on grounds of gender identity and sexual characteristics are prohibited.

Public authorities and their employees shall ensure respect of the prohibition of discrimination on grounds of sexual orientation, gender identity, gender expression and sexual characteristics, and promote respect and equality for everyone regardless of their sexual orientation, gender identity and sexual characteristics when deciding on their rights and obligations.

# RIGHTS OF TRANSGENDER AND INTERSEX PERSONS

## Right to Healthcare from Compulsory Health Insurance Fund

### Article 6

A transgender and intersex person has the right to healthcare in accordance with the principle of fairness and respect of human rights and values in healthcare.

A transgender person has the right to all necessary medical and aesthetic-corrective measures that eliminate the discrepancy between their biological sex and gender identity from compulsory health insurance funds, in accordance with the regulations governing healthcare and health insurance.

A person with an intersex condition has the right to all necessary medical and aesthetic-corrective measures aimed at the reproductive or sexual anatomy of the intersex person from compulsory health insurance funds, in accordance with the regulations governing healthcare and health insurance.

The mere fact of the existence of a transgender or intersex condition must not adversely affect the decision of the competent body to grant the transgender and intersex person their rights to biomedically assisted fertilization.

## Right to Information and Informed Consent of Transgender and Intersex Persons

### Article 7

A competent healthcare professional shall provide information in a timely manner to a transgender person who wants to surgically adjust their biological sex to their gender identity, to enable them to consent to the proposed medical procedure.

A competent healthcare professional shall provide necessary information in a timely manner to an intersex person, to enable them to consent to the proposed medical procedure.

No medical procedure shall be performed on transgender or intersex persons without their informed consent.

Any medical procedure implemented immediately after birth or during the earliest childhood of an intersex person, with the aim of defining their genitalia in accordance with the sexual characteristics of one of the two recognized sexes (castration, sterilization, aesthetic genital surgery), if such a measure can be postponed until the child is capable of giving independent consent, shall be deemed illegal.

In exceptional circumstances, should it be in the best interests of the child and important for their health, the legal representative of an intersex person under the age of 15 may consent to the proposed medical procedure after having been duly and adequately informed by a representative of the Interdisciplinary Team.

## **Psychosocial Support**

### **Article 8**

Transgender and intersex persons and their family members shall be provided with individually tailored psychosocial counselling and support by psychologists and physicians, as well as gender identity and intersex conditions experts.

## **Right to Personal Data Protection**

### **Article 9**

Personal data referring to transgender and intersex conditions represent particularly sensitive personal data.

The data referred to in Paragraph 1 of this Article may be processed only based on the written consent of the data subject, in accordance with the provisions of the Law on Personal Data Protection.

# Right to Change of Documents

## Article 10

In order to confirm their self-determined gender identity, every person has the right to change the sex marker and personal name in all their identity documents.

# Sex Marker Change for Transgender Persons

## Article 11

In order to confirm their self-determined gender identity, a transgender person has the right to change their sex marker in the register of births by marking their sex as male, female or “other” in the sex marker section.

The abbreviation for the term “other” in registers is “D”.

The first instance decision concerning sex marker change in the register of births from Paragraph 1 of this Article shall be made by the municipal administration, i.e. the city administration, i.e. the Belgrade City Administration based on a statement given by a transgender person to a notary public in the form of a notarial deed, in accordance with the provisions of the Law on Register Books.

The legal representative of a transgender minor has the right to request sex marker change for the transgender child in the register of births by marking their sex as male, female or “other” in the sex marker section.

The first instance decision concerning sex marker change in the register of births from Paragraph 4 of this Article shall be made by the municipal administration, i.e. the city administration, i.e. the Belgrade City Administration, in accordance with the provisions of the Law on Register Books.

In order to confirm their self-determined gender identity, upon the day of coming of age, a transgender child has the right to sex marker change in the register of births based on a statement given to a notary public in the form of a notarial deed, by marking their sex as male, female or “other” in the sex marker section, in accordance with the provisions of the Law on Register Books.

# Sex Marker Change for Intersex Persons

## Article 12

The legal representative of an intersex minor has the right to request sex marker change for the intersex child in the register of births by marking their sex as male, female or "other" in the sex marker section.

The first instance decision concerning sex marker change in the register of births shall be made by the municipal administration, i.e. the city administration, i.e. the Belgrade City Administration, based on the prescribed certificate of a competent healthcare institution on the diagnosed intersex condition.

In order to confirm their self-determined gender identity, upon the day of coming of age, a child diagnosed with an intersex condition has the right to sex marker change in the register of births based on a statement given to a notary public in the form of a notarial deed, by marking their sex as male, female or "other" in the sex marker section, in accordance with the provisions of the Law on Register Books.

On the basis of a birth certificate in which the marked sex marker is "other", all public authorities shall issue a new document pertaining to the person, which includes the sex marker "other".

## Name Change

### Article 13

In order to confirm their self-determined gender identity, a person has the right to change their name in accordance with their gender identity or intersex condition.

A request shall be filed with a competent authority in accordance with the regulations concerning personal name. The competent authority shall decide on the name change in accordance with the regulations concerning personal name.

The competent authority shall submit a final and executive decision on a personal name change to a competent administration authority for registration in the register.



## Change of Unique Citizen's Identification Number

### Article 14

A transgender and intersex person has the right to change their Unique Citizen's Identification Number in accordance with the Law on Unique Citizen's Identification Number.

## Sex Marker Change in Other Identity Documents

### Article 15

A transgender and intersex person has the right to change their markers for sex, name and Unique Citizen's Identification Number in all identity documents (personal ID, passport, driver's license, employment record, health insurance card, diplomas and other certificates of acquired education and professional qualifications, etc.).

Along with the request for change of personal data referred to Paragraph 1 of this Law, the person shall also submit to the competent authority a statement in the form of a notarial deed.

The competent authority shall issue new identity documents no later than 30 days after the receipt of the request for a new identity document.

If a person requires the issuance of a new diploma or other certificates of acquired education and professional qualifications, or requests a new employment record, they shall return to the competent authority the originals of the identity documents whose change is requested.

## Employment Rights

### Article 16

An employed transgender person who is in the process of eliminating the discrepancy between their biological sex and gender identity shall suffer no negative consequences in regard to their employment rights and obligations.

If an employed person receives a termination of their employment contract or is denied or restricted employment rights, and it appears evident that the defendant has committed an act of discrimination based on gender identity or sexual characteristics, the burden of proving that no discrimination has occurred falls on the defendant-employer.

## Right to Pension Insurance

### Article 17

A person whose sex marker has been changed in identity documents fulfils the conditions for retirement in accordance with the rules valid for their newly acquired sex, taking into account their prior service accrual, and in accordance with the regulations governing pension and disability insurance.

## Right to Marry and Right to Family Life

### Article 18

A person who has changed their sex marker in identity documents has the right to marry.

The enjoyment of rights and freedoms in marital and family relationships is not affected by the fact that a transgender or intersex person has changed their name.

The marriage of a person who has changed their sex marker may be translated into a registered same-sex union, with the consent of the spouse, in accordance with the law governing the registration of same-sex unions.

A transgender or intersex parent retains all the rights and obligations they had toward their child before the recognition of the legal consequences of sex reassignment.

The mere fact that a transgender or intersex condition exists in a parent shall not adversely affect the decision of the competent authority regarding the exercise of parental rights and custody of their child.

# Property and Other Rights

## Article 19

A person who has changed sex marker in their identity documents retains all property law, contract law, inheritance and other property rights; copyright, intellectual property rights, as well as any other rights related to personality, as if no sex marker change occurred in their identity documents.

# Supervision

## Article 20

The competent ministry shall supervise the implementation of this law and the regulations adopted for the implementation of this law.

# PENAL PROVISIONS

## Article 21

A fine of RSD500,000 shall be charged to:

- 1) A competent healthcare professional who performs a medical procedure immediately after birth or during the early childhood of an intersex person, contrary to the provision of Article 7, paragraph 4 of this Law;
- 2) A responsible person in the municipal administration, i.e. city administration, i.e. the Belgrade City Administration, who fails to submit a final and executive decision approving the request for change of the sex marker, contrary to the provision of Article 11, paragraph 3 of this Law;
- 3) A responsible person in a legal person, state authority, territorial autonomy authority and local self-government unit, if upon the receipt of a duly submitted request, they fail to issue new identity documents, contrary to Article 15,

paragraph 3 of this Law;

- 4) A responsible person in a legal person, state authority, territorial autonomy authority or local self-government unit, if within five working days from the receipt of a duly submitted request, they fail to pass a decision on name change; contrary to the provision of Article 13, paragraph 5 of this Law;
- 5) A responsible person in a legal person, state authority, territorial autonomy authority or local self-government unit, if within 15 working days from the receipt of a duly submitted request, they fail to assign a new Unique Citizen's Identification Number, contrary to the provision of Article 14 of this Law;
- 6) A responsible person in a legal person, state authority, territorial authority or local self-government unit, if they fail to issue new documents within 30 days from the receipt of a duly submitted request, contrary to the provision of Article 15, paragraph 4 of this Law.

### **Article 23**

A fine of RSD1,000,000 shall be charged to a legal person:

- 1) if they fail to issue new documents within 30 days from the receipt of a duly submitted request, contrary to the provision of Article 15, paragraph 4 of this Law;
- 2) if a healthcare professional performs a medical procedure immediately after birth or during the earliest childhood of an intersex person, contrary to the provision of Article 7, paragraph 4 of this Law.

## **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 24**

A legal act regulating the Interdisciplinary team from Article 7, paragraph 5 of this Law shall be passed by the Minister of Health within 90 days from the day the Law comes into effect.

## **Article 25**

This Law shall come into effect on the eighth day of its publication in "The Official Gazette of the Republic of Serbia".