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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report highlights the urgent need for Spain to comply with its obligations under international human rights law regarding the rights of the child and parental rights. Specifically, it calls for effective measures to safeguard children from experimental and life-altering medical procedures that are documented to have irreversible negative impacts on their physical and mental health and well-being.

### (a) Rights of the Child and Parental Rights

#### *Legal Framework*

3. Article 43(1) of the Spanish Constitution recognizes the right to health for every person, without distinction of age.<sup>1</sup>
4. Article 27(3) of the Constitution also establishes that '[T]he public authorities guarantee the right of parents to ensure that their children receive religious and moral education that is in accordance with their own convictions.'<sup>2</sup> In this regard, under Article 12 of the Constitution, the age of majority is 18.<sup>3</sup> Until then, children are under the authority and special protection of their parents.
5. According to Article 39(2) of the Constitution, public authorities shall ensure full protection of children.<sup>4</sup> In particular, Article 39(3) states that parents must provide assistance of every kind to children and in other circumstances established by law.<sup>5</sup> Likewise, Article 39(4) states that 'Children will enjoy the protection provided for in international agreements that safeguard their rights.'<sup>6</sup>
6. Article 154 of the Spanish Civil Code states that '[U]nemancipated sons and daughters are under the parental authority of their parents. Parental authority, as parental responsibility, will always be exercised in the interest of the sons and daughters, in accordance with their personality, and with respect for their rights and their physical and mental integrity (...).'<sup>7</sup> Article 155(1) of the Civil Code also states that children must 'obey their parents while remaining under their authority (...).'<sup>8</sup>

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<sup>1</sup> State Agency Official Gazette, *The Spanish Constitution* (Last modified on 19 February 2024) available at [https://www.boe.es/biblioteca\\_juridica/codigos/abrir\\_pdf.php?fich=158\\_Constitucion\\_Espanola\\_The\\_Spanish\\_Constitution\\_.pdf](https://www.boe.es/biblioteca_juridica/codigos/abrir_pdf.php?fich=158_Constitucion_Espanola_The_Spanish_Constitution_.pdf), Article 43(1).

<sup>2</sup> Id., Article 27(3).

<sup>3</sup> Id., Article 12.

<sup>4</sup> Id., Article 39(2).

<sup>5</sup> Id., Article 39(3).

<sup>6</sup> Id., Article 39(4).

<sup>7</sup> State Agency Official Gazette, *Spanish Civil Code*, (25 July 1889) available at <https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763>, Article 154.

<sup>8</sup> Id., Article 155(1).

## *Ley Trans*

7. In March 2023, Spain enacted Law 4/2023 'for real and effective equality for trans people and for the guarantee of the rights of LGTBI people' (hereinafter "Ley Trans").<sup>9</sup> This law grants adults and children as young as 12 years old a right to change their legal sex based on self-identification.<sup>10</sup> This law removes any prior requirements, such as a medical diagnosis or judicial authorization, for a person to legally alter their registered sex.
8. In contrast to the approach adopted by many European countries concerning the protection of the best interests and health of children experiencing gender dysphoria or incongruence<sup>11</sup>, this new law permits any child aged 16 or older to independently apply for a modification of their legal sex at the civil registry without requiring parental consent.<sup>12</sup>
9. Children under 16 and over 14 years old may also submit an application themselves, assisted in the procedure by their legal representatives.<sup>13</sup> However, in the event of disagreement between the parents or legal representatives, among themselves or with the minor, a legal defender would be appointed.<sup>14</sup>
10. Children from the age of 12 and under 14 may request judicial authorization to modify the registration of their sex.<sup>15</sup>
11. The Ley Trans also permits the initiation of proceedings for the suspension and withdrawal of parental authority in cases of disagreements between the parents and the minor regarding the latter's self-identified gender when such proceedings result in a declaration that the minor is in a 'situation of risk.'<sup>16</sup>
12. According to the law's Article 70(3), '[T]he refusal of a minor's family environment to respect his or her sexual orientation and identity, gender expression or sexual characteristics, as a fundamental component of his or her personal development, must be taken into account for the purposes of assessing a risk situation, in accordance with the provisions of article 17 of Organic Law 1/1996, of January 15.'<sup>17</sup> Pursuant to said provision, '[T]he non-acceptance of sexual orientation, gender identity or sexual characteristics of the minor' shall be considered a risk indicator.'<sup>18</sup>

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<sup>9</sup> State Agency Official Gazette, *Law 4/2023, of February 28, for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people* (1 March 2023) available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5366>.

<sup>10</sup> Id.

<sup>11</sup> Joshua P. Cohen, *Increasing Number Of European Nations Adopt A More Cautious Approach To Gender-Affirming Care Among Minors* (6 June 2023) available at <https://www.forbes.com/sites/joshuacohen/2023/06/06/increasing-number-of-european-nations-adopt-a-more-cautious-approach-to-gender-affirming-care-among-minors/>.

<sup>12</sup> *Law 4/2023*, Article 43(1).

<sup>13</sup> Id., Article 43(2).

<sup>14</sup> Id.

<sup>15</sup> Id., Article 43(4).

<sup>16</sup> Id., Article 70(3).

<sup>17</sup> Id.

<sup>18</sup> State Agency Official Gazette, *Organic Law 1/1996, of January 15, on Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Law* (17 January 1996) available at <https://www.boe.es/buscar/act.php?id=BOE-A-1996-1069>, Article 17.

13. Regarding the provision of consent by a child to undergo medical interventions to alter their external physical and sexual characteristics in line with their self-determined sense of “gender identity”, the Ley Trans refers to Law 41/2002, which governs patient autonomy and rights and obligations regarding medical information and clinical documentation.<sup>19</sup> According to that law, any minor aged 16 or older can consent to medical intervention, except when it poses a serious risk to their life or health. In that case, the physician will determine if consent must be given by the minor's legal representative while also considering the minor's opinion.<sup>20</sup>
14. The provisions of the Ley Trans raise serious concerns regarding their compatibility with Spain's human rights obligations under international human rights law, particularly in relation to both children's rights and parental rights, including children's right to the highest attainable standard of physical and mental health and their right to receive appropriate direction and guidance in the exercise of their rights by their parents or legal guardians.

### *Impact of the Ley Trans on Children's and Parents' Rights*

15. According to a recent government-commissioned study conducted in the United Kingdom, titled ‘Independent Review of Gender Identity Services for Children and Young People’ (hereinafter “Cass Review”), social transition in childhood may change the development trajectory for children with early gender incongruence.<sup>21</sup> The study, known as the world's largest review of the evidence for treatments for young persons experiencing gender dysphoria, found that children who had socially transitioned at an earlier age and/or prior to being seen in a clinic were more likely to proceed to a medical pathway.<sup>22</sup>
16. So-called “social transitioning” in childhood sets children on a path toward lifelong medicalization, including puberty-blocking drugs, cross-sex hormones, and body-altering surgeries, all of which can result in irreversible effects, including permanent sterilization.<sup>23</sup>
17. In Spain, there has been a significant increase in the number of children who socially transition and subsequently pursue medical interventions. According to a study conducted by the Feminist Movement Confluence in Spain, the rise in patients attending first visits to gender identity units has been more pronounced among adolescents and young adults, with a notable increase among females.<sup>24</sup> For example, in Murcia, between 2017 and 2022, 60% of minors treated in Pediatric Endocrinology were girls. Of the total number of persons treated for gender dysphoria, 64% were

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<sup>19</sup> Id., Article 57.

<sup>20</sup> State Agency Official Gazette, *Law 41/2002, of November 14, regulating basic patient autonomy and rights and obligations regarding information and clinical documentation* (15 November 2002) available at <https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188>.

<sup>21</sup> Dr. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People*, (April 2024) available at <https://cass.independent-review.uk/home/publications/final-report/>, pg. 32.

<sup>22</sup> Id., pg. 31.

<sup>23</sup> T.D. Steensma, et al., *Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*, *Clinical Child Psychology and Psychiatry* 16(4):499-516 (2011), available at <https://pubmed.ncbi.nlm.nih.gov/21216800/>.

<sup>24</sup> Confluencia Movimiento Feminista, *Las leyes trans y el “modelo afirmativo” en España. Análisis descriptivo de su impacto en personas adultas y menores* (2023) available at [https://movimientofeminista.org/wp-content/uploads/2023/02/leyes-trans-y-modelo-afirmativo-en-espana\\_cmf2023.pdf](https://movimientofeminista.org/wp-content/uploads/2023/02/leyes-trans-y-modelo-afirmativo-en-espana_cmf2023.pdf), pg.5.

under 19 years old, with the highest concentration occurring during adolescence, specifically between the ages of 15 and 19.<sup>25</sup>

18. In the Valencian Community, between 2012 and 2021, the number of girls, including adolescent girls, attending outpatient and gender-related mental health consultations increased by 9,100%.<sup>26</sup> Similarly, In Andalusia, at the Transgender Care Unit in Malaga, the percentage of minors (as compared to adults) in Endocrinology steadily rose from 11% in 2016 to 48% in 2022.<sup>27</sup>
19. The sharp rise in children seeking medical transition raises important concerns regarding their health. This is particularly pertinent in light of findings from the Cass Review, which revealed that puberty blockers effectively suppress puberty and that such suppression can have adverse health effects, including compromised bone density.<sup>28</sup>
20. Moreover, given that a substantial number of young people who start treatment with puberty blockers later go on to receive cross-sex hormones, there is no evidence to indicate that puberty blockers provide the intended “pause” for reflection.<sup>29</sup> Additionally, there are concerns that these blockers may affect the course of development over time of an individual’s understanding and identification with their biological sex.<sup>30</sup>
21. When healthcare professionals discuss potential interventions with patients, they typically reference the long-term benefits and risks based on outcome data from individuals who have undergone similar treatment.<sup>31</sup> However, such data is lacking for interventions involving children experiencing gender dysphoria, making it practically impossible for them and their families to make fully informed decisions.<sup>32</sup>
22. These concerns are compounded by Article 17 of the Gender Identity Law, which prohibits any form of therapy intended to ‘modify the sexual orientation or identity or gender expression of persons’, even with the consent of the person concerned or their legal representative.<sup>33</sup> This may undermine efforts to provide non-coercive support that helps individuals make informed decisions without feeling obligated or forced to follow a certain path.
23. On the one hand, this prohibition effectively prevents children and their parents from exploring other potential treatments that may better suit their needs, leading them down a path that involves medical puberty blocking, hormonal treatments, and so-

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<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Dr. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People*, (April 2024) available at <https://cass.independent-review.uk/home/publications/final-report/>, pg. 32.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id., pg.33.

<sup>32</sup> Id.

<sup>33</sup> State Agency Official Gazette, *Law 4/2023, of February 28, for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people* (1 March 2023) available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-5366>.

called “affirmation” surgeries. On the other hand, children transition in many other cases without any parental consent or involvement whatsoever.<sup>34</sup>

24. Children’s consent involves more than just capacity and competence. Clinicians have a duty to ensure that any proposed intervention is clinically appropriate and that children and their parents or legal guardians are provided with evidence-based information about the risks, benefits, and expected outcomes.<sup>35</sup> However, the fundamental lack of credible evidence in this area makes informed choice virtually impossible.
25. The wide-ranging concerns surrounding the long-term outcomes of medical and non-medical interventions in the area of so-called ‘gender medicine’ make such interventions experimental in nature, rendering children extremely vulnerable to lifelong and irreversible negative side effects on their health and well-being, in violation of their best interests as well as their right to health and their right to receive appropriate direction and guidance from their parents or legal guardians when these key figures are excluded from the decision-making process.

#### *Spain’s Obligations under International Human Rights Law*

26. As a State Party to the Convention on the Rights of the Child (“CRC”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), Spain is under the obligation to respect and protect the right of every child to the highest attainable standard of physical and mental health, as well as their right to receive appropriate direction and guidance by their parents or legal guardians in the exercise of their rights. This is in conformity with Article 18(4) of the ICCPR<sup>36</sup>, Articles 12(1) and 13(3) of the ICESCR<sup>37</sup>, Articles 5, 14(2), and 24(1) of the CRC<sup>38</sup>, and Article 26(3) of the Universal Declaration of Human Rights<sup>39</sup> (“UDHR”).
27. Despite the legal recognition and protection, under the Spanish legal framework, of the abovementioned rights of the child and of their parents or legal guardians, the Ley Trans effectively nullifies these rights by allowing children aged 16 and above to modify their legal sex without the involvement or consent of their parents.
28. As a result, children aged 16 find themselves navigating such critical decisions absent the involvement of their families and devoid of a structured support and evaluation system.

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<sup>34</sup> *Contra el Borrado de las Mujeres*, Legislación (last accessed on 18 September 2024) available at <https://contraelborradodelasmujeres.org/legislacion/>.

<sup>35</sup> Dr. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People*, (April 2024) available at <https://cass.independent-review.uk/home/publications/final-report/>, pg. 34.

<sup>36</sup> *International Convention on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 18(4).

<sup>37</sup> *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), Articles 12(1) and 13(3).

<sup>38</sup> *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), Articles 5, 14(2), and 24(1).

<sup>39</sup> *Universal Declaration of Human Rights* (10 December 1948) UNGA Res 217 A (UDHR), Article 26(3).



29. This is particularly concerning in the context of so-called “gender medicine” given that, as noted above, there is increasing evidence that renders this type of treatment unsafe and experimental on children, including having negative and irreversible health effects.
30. In this regard, according to Article 18(1) of the CRC, the ‘best interest of the child’ is to be the basic concern of parents, guiding them as they fulfill their rights, duties, and responsibilities vis-à-vis their children.<sup>40</sup> Article 3(2) of the CRC emphasizes that the rights and duties of parents must be taken into account to ensure the necessary protection and care for the child's wellbeing.<sup>41</sup> Under this and other key international human rights treaties, the full and effective exercise of parental rights and responsibilities is understood as crucial for realizing the child's best interests.<sup>42</sup>
31. Furthermore, owing to their age and level of maturity, international law clarifies that children do not have the capacity to autonomously provide their full and informed consent<sup>43</sup>, including on sensitive matters related to their health. Failing to provide this support would leave vulnerable children without the necessary protection, increasing the risk of violations and abuses of their human rights.
32. Lastly, the Ley Trans also puts parents and legal guardians in a very precarious position, as they risk state interference if they do not support their child's ‘transition’. This could result in parents and legal guardians facing the potential loss of custody over their children. Such a scenario directly contravenes international human rights law, particularly regarding the respect and protection of parental and legal guardians' rights, as it unlawfully subjects them to threat of suspension or even loss of parental authority.

### **(a) Recommendations**

33. In light of the aforementioned, ADF International suggests the following recommendations be made to Spain:
- a. Prohibit any medical, legal, or social procedures aimed at altering the sex of children, including but not limited to hormonal treatments, surgical interventions, and legal recognition of gender changes;
  - b. Amend Law 4/2023 to ensure full conformity with Spain's obligations under international human rights law;
  - c. Ensure that children who experience gender dysphoria or incongruence undergo a comprehensive assessment to inform an individualised care plan that includes screening for neurodevelopmental and mental health conditions;

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<sup>40</sup> CRC, Article 18(1).

<sup>41</sup> Id., Article 3(2).

<sup>42</sup> Georgia du Plessis, *Parental Rights Protecting Parents, Empowering Generations (2024) ADF International*, available at [https://adfinternational.org/wp-content/uploads/2024/06/Parental-Rights\\_A5-White-Paper\\_Digital-Version.pdf](https://adfinternational.org/wp-content/uploads/2024/06/Parental-Rights_A5-White-Paper_Digital-Version.pdf), pg. 54.

<sup>43</sup> CRC, Preamble.

- d. Establish provisions for children considering so-called 'detransition', ensuring access to appropriate support services while recognising their right to seek alternative care, independent of the providers involved in previous treatments;
- e. Review all laws and policies that do not recognize or uphold the right of children to receive appropriate direction and guidance by their parents or legal guardians in the exercise of their rights, in full conformity with international human rights law.





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