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## TRANSIT THROUGH GENRES: IS IT A RIGHT?

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... To point out the 'sex' of people in one or more legal documents is to elevate the binarism to law and perpetuate the legitimacy of a system that excludes some bodies more than others, and that domesticates them all without exception to conform to a convention. biological, social and legal of two.

Elizabeth Vásquez, 2015

**Abstract:** This article analyzes two stories of people who, having initiated a process of bodily intervention to "adjust" to the "opposite" sex, go to the courts of the city of Cuenca-Ecuador with the purpose of requesting a change of name or the sex change. The first case shows an administration of justice that is more open to discussing categories such as "gender identity"; By doing so, it makes possible the exercise of the actor's rights and the expansion of the idea of citizenship. The second case presents the conservative side of the administration of justice, the one that remains anchored to the biomedical approach to transsexuality and that, therefore, not only limits the exercise of the plaintiff's rights, but also restricts the possibility of moving towards a concept of sexual citizenship. These stories show that the law is not homogeneous and, therefore, its cracks can be used to obtain the recognition of certain rights.

**Keywords:** Body, sexuality, transsexuality, justice, gender identity

## INTRODUCTION

As a researcher I adhere to the conception of sexuality as a sociocultural construction. I consider it necessary to strip it of the biological essence in which it has been placed. According to Nieto (2003), the constructionist approach to sexuality destabilizes the conceptual immobility of sex and gender and favors the emergence of the theory of performativity, which highlights the ambiguity, uncertainty

and fluidity of identities and bodies. of social actors.

As Nieto (2003) himself points out, in the model of the social and cultural construction of sexuality, it is culture that illuminates the processes of interpretation of sexuality. From this position there is only a contextualized understanding of it. It is the different societies that give meaning to sexual behaviors, experiences and acts. It is the different cultures that construct the meanings of what is "normal", what is "perverse" and what is "deviant". Sociocultural processes shape sexualities and bodies, thus in plural.

But, although it is the social and cultural context that sets the limits of what is considered sexually acceptable or intolerable, individuals also manage their own sexuality and at some point may question the social meaning of sexuality and even alter it. For Nieto, therefore, cultural discourses on sexuality must incorporate the interpretative reading that individuals make of the cultural meanings of sexuality, as well as the subjective significance regarding their actions (Nieto, 2003).

I also consider myself a feminist researcher and, based on the contributions of feminism, I question the alleged "objectivity" of scientific knowledge and problematize the representation of the "other" that constructs my own research work (Gregorio Gil, 2006).

As a feminist researcher, I try to highlight and eradicate from my practice the mechanisms in which androcentrism manifests itself. I don't know if I actually achieve it, because, while I write, I think about how the formality of the requirements established for "academic" writings somehow condition my entire staging. Even so, I try to reflect on the power relations that I often provoke, putting "the us" first when mapping "the other" (Gregorio Gil, 2006).

I am committed to the analysis and

visibility of subaltern experiences. I deliberately distance myself from any type of essentialism and advocate the variability of such experiences. I maintain that it is possible to construct and deconstruct identities from the research practice itself, by recognizing that although power relations occur in “the field” that place the subjects involved in disadvantaged positions, these can and must be altered (Gregorio Gil, 2006).

What my research produces, of course, is situated knowledge and what I expose is in no way “the truth” about reality. I try to reveal the power relations that characterize the experiences of trans people in their passage through the field of (in)justice, I recognize that the act of categorizing itself represents an expression of power, I demand the deconstruction of those categories with which the Legal discourse – in the same way as science and religion – attempts to pigeonhole them and I strive to discover the categories with which trans people themselves blur the notion of gender identity as a fixed entity.

In my work I seek to identify the ways in which the social relations of sex, sexuality, race and ethnicity are mutually articulated. I explore the way in which the discourses and practices studied reveal these relationships or, on the contrary, hide them (Wade, Urrea Giraldo and Viveros Vigoya, 2008). The concept of intersectionality is central to this task. Gil Hernández (2008) warns that the modalities of relationship between these categories are not infinite and suggests, in methodological terms, highlighting the type of relationship that is intended to be emphasized. In my case, I try to identify the discourses and practices that construct “non-hegemonic bodies, that is, those perceived as non-heterosexual, non-masculine, non-white, non-middle class” (Gómez, 2004:161).

Although I recognize the difficulties that the use of the queer category represents in

our language (Echeverría, 1997), I want to say, finally, that I am attracted to queer theory, that which can be related to any expression “against”, “no”, or “anti” heterosexist (Doty, 1997). Queer theory questions the boundaries between the binaries of gender and sexuality and includes all non-heterosexist positions that, by principle, cannot be ordered. For Doty (1997), queer spaces are revealed when we abandon the use of a single specific category of sexual identity and recognize that the experiences of individuals are variable, alternate and blur the limits of bodies and identities.

The suggestion of a queered alternative is not merely an interest in adding what has been excluded from dominant epistemologies and research practices, which would otherwise remain unaltered. A queered position requires a comprehensively resistant ontological change in its exceptions to dominant normativity. Queering as a starting point in social research is a vigorous questioning of what has restricted what can be known, who can be the one who knows, and how knowledge is generated and disseminated. A queered position begins by dislocating the agent from his constitution... queers participate in their own positioning through the experience of both authors and authorities... they are, at the same time, their creative agents. (Gardner Honeychurch, 1997:117).

A queered approach in social research produces visibility regarding what does not have a name or does not fit, denounces the partiality of exclusive statements of a heteronormative nature and insists on the importance of recognizing the differences within the queered presence – which places us before the need to activate an intersectional analysis. A queered perspective in social research involves thinking outside of heteronormative epistemologies and reflecting on the implications of the body and the erotic in research practices. A queer position

is always political, linking the interests of academia with those of a transformative social practice (Gardner Honeychurch, 1997).

## **TRANSITION THROUGH GENRES: IS IT A RIGHT?**

### **JESS VALENTÍN: AN UNPRECEDENTED STORY**

On January 7, 1977, a Civil Registry office (Cuenca-Ecuador) registered the birth of Jesús Valentín, of “male sex,” born on December 31, 1976. It was his father who requested the registration of his son and “It also states that it is the eighth birth.” In the observations, the Civil Registry official indicates that the “parents are married.”

At 21 years old, Jesús Valentín goes to the Civil Registry and requests to change his first name, Jesús, to Jess. The provincial head of the entity authorizes the change and supports his decision in the legal regulations: “for this only time, the first name of the registered person is changed, from Jesús to JESS, so that in the future it appears JESS VALENTÍN, maintaining a relationship between his “new and old names because they are the same person.” Two years later he married and his son Juan David was born. He almost immediately gets divorced. In the following years, Jess Valentín must respond to several lawsuits filed against him by his ex-wife to deprive him of parental authority over his son, demand payment of alimony owed, and keep him away from Juan David, through a protection measure. Shortly after obtaining the divorce, Jess Valentín goes to the Civil Registry again and requests a new name change, this time, from Valentín to Valentina, a request that is denied by the head of the Civil Registry, who indicates that, in accordance with the law, “the names of a person may be changed only once.”

Based on this refusal, Jess Valentina goes to the administration of justice and presents

a protection action against the head of the Civil Registry. On the day of the hearing, in the midst of the required formalities, the judge asks the plaintiff to present his request. As there is an understanding that ordinary people are not capable of presenting their own demands, it is their defense lawyer who intervenes and points out:

Jess Valentina has chosen to present this protection action, already tired of so much humiliation, discrimination, and ridicule, which she has endured since her adolescence, until now, for the simple reason of having opted for a gender identity... and a sexual orientation that identifies as a woman, which is why she went to the Civil Registry, so that this institution could grant her... a name in accordance with her gender identity, since the name she holds, Jess Valentín, does not identify her as a woman... Valentina cannot enjoy of the rights declared in the Constitution, therefore, at the time of presenting the ID, her name does not identify her as a woman and the ridicule begins, of which she has been a victim. Now – with the constitutional state of rights and justice – we can Valentina can make effective the right to choose the name that matches her gender...

Of course, the Civil Registry lawyer is not willing to recognize the existence of any humiliation on the part of the institution he represents. “At no time has any constitutional right been violated or committed,” he points out. And he adds: “It can clearly be seen that the plaintiff – thus, in masculine form – has already made a name change and the law establishes that the names of a person may be changed only once... The Civil Registry law does not allow me allows a second name change to be made.” Up to this point his explanation seems to revolve around the formal application of the law. However, the official then suggests the arguments that fundamentally support the decision of the defendant entity:

... What the Civil Registry Law intends is to prevent people from indiscriminately making changes to their original data that, instead of strengthening their identity, on the contrary, destroys the natural meaning... How unheard of it would be for a person to change and change your name as many times as you consider necessary according to any comfort or benefit you have at the moment, since this would destroy the identity and therefore the identification of the people. It is necessary that the administration of Justice, like all other institutions, help reinforce the protection of identity...

In essence, the Civil Registry refuses to accept that a person can choose a name that “contradicts” the biological information contained in their birth certificate. The thing is that identity has a “natural” substrate that requires the protection of state institutions. If the basis on which identity is built is natural, then it is inconceivable to accept a name change that objects to that biological reality. The existence of variable social, cultural bodies is unimaginable. The name turns out to be the mechanism that allows monitoring the maintenance of an absolute sexual binary (Cavanagh and Sykes, 2009).

The judge gives the floor again to the petitioner, who, through her defender, says:

Twelve years ago Valentina would not have been able to change her name to a name that accredits her as a woman... at that time she was not allowed to choose a name according to her gender identity, so she decided to give herself a name Jess, to at least in some way reduce the discrimination to which she was subjected... you will also find two medical evaluations and you will see that it is not an invention of my client... it is not about a name change, but about finding a name that identifies her as a woman, a guarantee that now appears in the Constitution.

Although she appeals to the rights that the 2008 constitutional text recognizes – the right to gender identity – Jess Valentina’s request remains within the framework of a binary

construction inscribed in heteronormativity (Platero Méndez, 2009). The reference made by the defender to the existence of medical evaluations, as proof that the requested change is not an invention, reflects a biomedical account of sexuality that requires achieving a correspondence between body and gender identity.

The sentence was handed down in March 2011. The judge accepted Jess Valentina’s request, noting that: “human rights are of direct and immediate application, with no more requirements than those established in the Constitution or the law... in the case of constitutional rights and guarantees, administrative or judicial public servants must apply the norm and interpretation that most favors its effective validity.”

Six years after obtaining this ruling, Jess Valentina goes to the Civil Registry again to request the change of “her names from Jess Valentina to those of Jess Valentín.” By then she was 40 years old. As expected, the Civil Registry denied the request because “the change of names is a one-time change and the review of his birth registration shows that he has made use of that right in 1998 and in 2011.” This decision led to the presentation of a new protection claim against the institution. Jesús Valentín pointed out that:

[...] As time goes by, human beings change and we realize that certain decisions, if they did not affect us at that moment, with the passing of the years, can affect the development of identity and therefore of personality, in this case being my personal affection to the maintain a feminine name that does not identify me or represent me before society [...] As a human being I have been suffering from a discrepancy between the sex that was assigned to me biologically, with the name that appears on my identity documents [...] the name that today I have as Jess Valentina does not identify me and not allowing the change in my names affects the development of the personality



considering the name as one of the essential attributes of the same [...] This decision by the administration constitutes a situation of extreme seriousness that It affects my rights to identity, psychological and mental integrity and to the family, since according to the attached documentation, I must indicate that I am the father of a teenage son who, without a doubt, in his current development of his personality is affected by the name with which he is identified.

At the hearing, the judge gives the floor to Jess Valentín's lawyer, who emphasizes his client's right to change his name, so that there is correspondence between the genetically acquired sex and the social identity that is expressed through the name:

... By having a feminine name while being male, his rights are being violated, because he has been suffering discrimination and a discrepancy between what his sex is, which is what he genetically acquired, and the identity he has today before society, because He is being identified with a female name when he is male... what we are trying to do is have his identity recognized because he is aware that he is male and what he wants is for his identity to be changed from female to male. masculine because it is the one he wants to have and the one that is in accordance with his gender, which is masculine...

The judge directly asks Jess Valentín if he wishes to speak and he does so, pointing out that “years ago I was confused and I made the serious mistake of changing my name, because I did not think about the consequences in the future and now that I have a teenage son, I have inconveniences because he gets confused and friends marginalize him and that is why I have made the decision to have the name that my parents gave me, because I have a lot of problems because of my name, people marginalize me. To the question asked by the judge, she answers: “I am very sure of my decision to change my name.”

From Jess Valentín's story it is clear that

each “biological sex” corresponds to a certain gender and a conclusive sexual orientation. If this design is not fulfilled, then it is the body that must be modified:

... At that time I was confused, then I felt attraction to the same sex, I liked going out with people of the same sex, I stopped having sexual relations, but I didn't understand why I did get desire with other men and women and not with my partner. from that time... I became a transvestite in 2008, I started taking hormones and my physique changed, I got fat, I started wearing makeup, I started wearing long hair...

Once physical and aesthetic changes begin to occur in the body so that there is due correspondence between sex, gender and sexual orientation, then, life must be developed alongside other people who, like the subject, have deviated from the right path:

... In 2011 I let myself be influenced by some friends to change my name, but in 2012-2013 I got tired of that environment, I didn't like it, in reality I wanted to get away from there, I didn't feel comfortable, I wanted to leave my gay friends, I I started wearing my own clothes, I have a job and a social circle of heterosexual friends...

But what is clear is that bodies that move between genders must face the pressure of a society that continues to structure life on the basis of a well-defined “ought to be” for each sex, where there is no place for those who distance themselves., albeit momentarily, of imposed heterosexuality. This is a society that has effective surveillance devices, such as the identity card, to expose anyone who wants to change gender. But along with this type of formal mechanisms, there is social surveillance, that which does not require the State to control bodies, because everyone and oneself become vigilantes.

... I have problems in job interviews or in places where I have to show my ID, people confuse me, they don't know how to treat me... my relationship with my son is good and it was only two years ago that I told him; Everything told me to fix the situation because he is going to graduate, and I can't do any paperwork for him...

Along with the biomedical devices built to prosecute –hormonal therapy, sexual reassignment surgery–, the name change allows us to reach the destination after a long and tortuous journey.

... I spent 3 years with a woman's name, I never changed it and now I think that I am a lesbian because I have a woman's name and I dress like a man, this affects me because people are shocked... I stopped taking hormones a long time ago... now I have gone reversing everything and I don't have anything feminine... I have surgery scheduled to remove the silicone... I have always had to cover myself, now I want to take them off and I know I am going to feel much better...

The sentence was handed down in May 2017. The judge based her decision on Jess Valentín's right to the free development of personality which, in her opinion, is closely related to the ability of a person to decide about their life project. ability that is closely related to maturity to be able to make decisions. It points out that "gender identity refers to the subjective perception that an individual has about himself in terms of his own gender, which may or may not coincide with his sexual characteristics, and which could be considered psychological or psychic sex," establishing clearly. this way an interesting articulation between sex and gender and blurring, in a certain sense, the contours of the two categories. Although she uses the word "suffer" to refer to "the transition that the plaintiff makes in his gender identity," it is interesting how the judge questions the idea of identity as something fixed.

For the judge, the determination of the name, as an attribute of personality, is decisive for the free development of the individual life plan and for the realization of the right to identity, to the extent that it constitutes the distinctive sign of the subject in his coexistence. social. "Maintaining a name that does not correspond to the image that the plaintiff wants to project in the social sphere would affect her life project," she adds.

Although the judge resorts to psychological expertise to support her decision, she does so to emphasize that the plaintiff has decided to project himself with a male gender identity, and that his decision to undergo surgery to remove the breast implants, "involves establishing distinctive features." "in the personality of the actor, which will be related to the identity he wishes to project, so that if the name is not changed, a contradiction would arise with the image he presents to society."

This argument allows the judge to accept the protection action and order that the actor's name be changed to Jess Valentín, "which is the one that the plaintiff chose and that coincides with his current physical appearance and his gender identity." ". When talking about current physical appearance, the judge leaves open the possibility of a new request being made, which for the Civil Registry would be unthinkable. Shortly after having obtained this decision, Jess Valentín regains custody of his son.

### **THE STORY OF PAOLA SOLEDAD: "FOR THE STATE, SHE DID NOT EXIST AS A PERSON"**

M. Cabral (2003) maintains that the set of assumptions that are made around transsexuality – in the laws and the courts – constructs a second-order (trans)sexual citizenship. In this framework, expert verification of transsexuality becomes a requirement to determine the authenticity

of the claim – “what my client says is not an invention”-. And it is the heteronomous imposition of a condition that constitutes the person as transsexual. Below, I present the case of Paola Soledad, who activates the administration of justice due to the refusal of the Civil Registry to attend to her request to change her sex and gender. As in the previous story, although she receives a partly favorable response, the path she has to travel is still tortuous.

“Since I could remember I felt... I knew deep down that I am a woman, but I lived, I don't know, in my world until when my puberty began... I started to get depressed because the development of my sexual characteristics began. secondary and I didn't like that.” Paola Soledad stopped wanting to attend school because she did not feel well. She did not accept being seen as a man.

The family begins to worry about Paola's appearance. Her stepfather forcibly cut her hair and forced her to play soccer. “You are a little man,” she told him, to the silence of her mother. “In the end I beat them, I left my hair, wore unisex clothes, put foundation and makeup. He was an androgynous being.” Paola Soledad finished school at the age of 19 “by push” and decided to leave her house and live independently. She learned the hairdressing trade to survive because it was “the only place where I could be openly, where I could express myself. I said I want to study, I want to be a professional, I want to get married, have a family as a woman. “I always had that in my mind, but I couldn't achieve it because I had men's names.”

My struggle began more or less in 2006, 2007, because I wanted to fully develop within society, but that was not possible for me. Because? Because every time I approached a public or private institution and they had to identify me, it was a big obstacle for me, because the moment they took my ID and looked at my face, they made

a face of surprise or rejection and from there everything changed, From there they either denied me what I asked for or turned around as they commonly say.

Paola Soledad consulted several lawyers, to whom she explained her situation and her desire to change her name and sex, obtaining the response that a sex change could only occur when the person had already undergone reassignment surgery. sexual. “It was very frustrating for me, going from bump to bump to always be given the same answer... For me it was very depressing, very sad to know that for the State I did not exist as a person, because it did not recognize me as such, as I was...”

... I have had to live behind, I have not been able to access a job in the public sector. A friend helped me to be in the hair salon where I lived for many years, not earning enough..., that's why I didn't have the money to pay for a lawyer. I had to go to a legal office for help... It's not just my situation, it's that of all trans colleagues, who live behind society, branded, crossed out, frowned upon. No door is opened to us, no public or private space. Sometimes we have to start things... many colleagues are in sex work because there is no other choice..., because sometimes even in the same families we are rejected and that is very hard for us.

In 2007, at the age of 25, Paola Soledad went for the first time to the free legal clinic at the “Universidad de Cuenca” seeking legal advice to change her name. One of her lawyers responds: “No, no, no. Those things are not done... Have you already had a sex change operation?”

The following year, at the insistence of a friend, Paola Soledad goes to the free legal clinic again and the director of this entity suggests that she wait until the new Constitution (2008) is approved. Once approved, Paola Soledad goes to the Civil Registry in order to request the change of the names and sex that appeared on her birth certificate. After several requests, Paola Soledad receives a response



that such a request is “inadmissible through administrative channels” and that it must be heard in a summary trial by a civil judge.

In March 2009, Paola Soledad filed a protection action against the Civil Registry, based on the right to gender identity, and requested that said entity be ordered to change their names and sex. “Finally I saw a light at the end of the tunnel, I had a lot of expectations that it was going to be like that...”

The day arrived. The hearing was set up and the judge asked for the constant presence of the procedural parties. The secretary reported that “the plaintiff was in the room. In other words, they continued to treat me like a lord... I felt terrible, terrible... but I said: maybe this is the end of the story...” But it was not like that, the judge will have to address Paola Soledad, again and again, in masculine.

... In my personal life I have discovered that my sexual orientation is preferential to the male sex, which is why I have chosen a life plan adjusted to the female gender, under which I have proceeded to develop and enhance my qualities since I always felt dissatisfied with my belonging to the male gender, undergoing psychological tests, coming to understand the meaning of my situation and therefore accepting my identity, which has led to the need to change my sex and undergo hormonal treatments for this purpose for a long time until now, I also carry out my public and private activities according to my feminine identity, adopting the names of Paola Soledad, but unfortunately in society there are archetypal subjective criteria around people with different sexual preferences and orientation, which turns my daily activities into constant discrimination that They really complicate the exercise of my life, which I want to continue materializing since I have the desire to continue with my studies which I have had to postpone due to the existing intolerance and discrimination.

Paola Soledad points out that her birth certificate must be reformed regarding her sex

and her names since “there is an undoubted sexual identity that is reflected in her actions.” Demands the right to be identified as a person belonging to the female gender so that she is not subject to discrimination in any area and adds: “after that I will proceed to undergo a surgical intervention that completes my identity, for which reason she requests that I execute an affirmative action.” to remedy the violation of this specific case and establish the rule or rules necessary for my rights to be fully justiciable.”

The response of the representative of the Civil Registry was formulated in a strictly formal setting, pointing out that he is not the competent official to proceed with the rectification of the sex, if any, of a manifest error regarding the antecedents of the record.

It is not only a name change from Juan Paolo to Paola Soledad, but the change requested is also a change of sex... what the Civil Registry, Identification and Identification Law allows me is to change the sex of the registered person in case of error manifest that can be derived from simple reading or from the background of the inscription. Even if essential data were received from it, the respective reform can be requested from the Director General of the Civil Registry; Due to all of the above, Mr. Judge, I am deprived of the legal powers to carry out the change of sex and names that the actor has been requesting; by virtue of the fact that I would be abrogating functions that the law has not granted me.

Paola Soledad had accompanied her claim with a psychological report that stated that “she has always felt dissatisfied with her body, feeling like she belongs to the female sex, and that she has received hormonal endocrinological medical treatment to develop feminine characteristics and psychological treatments,” concluding that “ the patient presents transsexualism... supportive and family psychotherapy is recommended. Likewise, she had attached a certificate issued

by an endocrinologist at the social security hospital that certified: “That the patient has a diagnosis of transsexuality.”

The classification of transsexuality as a disorder transforms those people who do not identify with the sex that socially “corresponds” to them into suspects and has profound consequences on their lives, since in some places this diagnosis opens the door to hormonal treatment or sexual reassignment surgery. In others, it may be a requirement to change name or mention sex on identity documents. The consideration of transsexuality as a disorder establishes the mark of the “deviation” that must be treated (Martínez-Guzmán and Montenegro Martínez, 2011).

The judge decided to grant the request to change the name, but not the sex. The judge points out that “the actor carried out a totally volitional and conscious act when deciding to change his name, which does not imply a change of sex, as the plaintiff has been claiming.”

As far as it is related to the name change requested by the plaintiff, this change has the purpose of establishing the identity of a person in his social relations and before the State, it is a distinctive sign before others, with which he is identified and they recognize, from what I consider, that it is legally viable for a man to identify himself with a usually feminine name, or vice versa, with the purpose of the person establishing, for the sake of law, the free development of his personality, his identity, according to her way of being, her thoughts and her conviction towards life, for these reasons there is no sufficient reason, in legal terms, for the Head of the Civil Registry to deny a legitimate power to express her intimate conviction towards life, for her temperament, which definitely makes him different from the others, in the case at hand, the actor has been developing at a social level and carrying out commercial acts under the name of Paola Soledad, for approximately

four years, which has been confirming his desire to be identified under a female name that allows her to carry out her actions both in public and private life.

To deny the request for sex change, the judge expresses his conception that sex change not only alters current legislation, but also natural law. From his speech emerges a clear questioning of Paola Soledad’s decision to undergo hormonal and surgical procedures, because they violate “psychological, medical, legal, bioethical, and even political principles.” The arguments constructed by the judge reveal his idea that the possibility of obtaining a sex change could affect the rights of “third parties,” although it is not indicated which ones. However, considering that this is a public official who is obliged to decide based on the norms of the Constitution, at least formally, at the end of his speech, he concludes that it is the law that prevents him from accepting such a request. He indicates that the omission of the law constitutes discrimination that is not in his hands to reverse. Deep down, her decision is aimed at maintaining an order of sexuality anchored in binarism.

Although “the actor” – always in the masculine form – had “proved that his gender identity is feminine and is undergoing hormonal endocrinological medical treatment to develop feminine characters and psychological treatments, which lead to subsequent surgery,” In the opinion of the judge, “the fact of the plaintiff’s sex is immutable.” This cannot depend on “subjective considerations due to psychological imbalances that the actor may have caused regarding his sexual preference.”

Paola Soledad – says the judge – cannot intend to “alter her legal status because it is a unilateral decision and for her own benefit.” I wonder if it is not for personal benefit, in whose interest is the fact of sex established?: in favor of a biological, social and legal

convention that recognizes only two bodies (Vásquez, 2015). The judge maintains that:

[...] Since the human being as a general rule is born with the male or female sex, and only exceptionally does a biological phenomenon of hermaphrodite beings occur, which allows choosing between the two sexes because nature has endowed them with this duality, it is not possible, for those who are born with a defined sex, as in the case at hand, can change it at their free will, as intended in this lawsuit, because genetically human beings are carriers, some of female gametes and others of male gametes, which determines that physiologically you can be a man or a woman.

Now, before the law, the existence of the two sexes, that is, male and female, is based on the biogenetic determination of sex, which is determined with the twenty-three pairs of chromosomes, since genetic information exists in each cell. of the human body, in the case at hand, from the reports presented by the actor, there is no biogenetic assessment of sex, consequently the indistinct or indiscriminate use of both sexes in a single person is illogical...

The judge observes that, “what is really proven by the actor – always in male form – is a change in physical appearance known as transsexuality; however, there is no evidence that the appellant has completed this treatment, nor that he has undergone a surgical intervention”. Paola Soledad had requested surgical treatment, but had been denied: “You are a man, you don’t need women’s hormones.” “That? Is he crazy?” “You do not have a document that identifies you as a woman.”

But I am sure that the judge’s decision would not have been different if Paola Soledad had “completed that treatment”, because said intervention “for some – among whom the judge is clearly – violates psychological, medical, legal, bioethical principles, and even politicians”. Accepting the request for a sex

change would imply, in the judge’s opinion, “altering public order.”

In the specific case, “the actor, by not undergoing the surgical technique of sexual rehabilitation, still retains his male anatomy.” Therefore, there is no room for “rectification of his birth certificate, as the plaintiff claims in this trial.” And he adds: “to obtain the new legal status that is sought, it is necessary to obtain not a rectification of the item but a total annotation or marginalization of it.” And he reiterates that this possibility is not established in the legal system.”

For the judge, “the rules of natural law oblige people to use the name and sex that legally corresponds to them in all their public and private acts,” but since it requires surrounding his decision with a halo of constitutionality, he declares that the lack of legal regulation regarding sex change constitutes “a discriminatory act that forces those who have decided their sexual preference and way of life to remain tied to a past that does not respond to their reality.” He washes his hands and refers the problem to the legislature to solve, while continuing to appeal to a biomedical approach:

Now, to eliminate these discriminatory acts against people who tend towards transsexualism, it is necessary to consider as State policy the creation of legal provisions aimed at recognizing the rights of transsexuals to a sex change of an endocrinological, plastic-surgical and aesthetic nature, the procedure and the prohibition of their discrimination, as well as procedures that allow their viability among them, such as the name change for people of different sex: a) A psychiatric and psychotherapeutic diagnosis of transsexuality granted by two doctors supported by a Center health, public or private, b) Determination of a period of consultation, monitoring, support, and information about the consequences of a sex change, c) Daily control of hormone behaviors, which means living daily with the new identity sexual relations for periods

exceeding one year, issued by the Ministry of Public Health, d) The resolution that allows the change of names issued by the Civil Registry authorities will not be subject to reversal.

Polo Usaola and Olivares Sarco (2011) have warned about the inconveniences that these types of requirements have to access the change of the registration related to the sex of a person in the Civil Registry. In the words of Paola Soledad: "...the partial failure for me was really a half-joy, that is, I was sad and happy at the same time."

As a result of the decision, Paola Soledad begins to update her data in the institutions. Thanks to this, in 2010 she began hormonal and psychological treatment at the IESS. "Before that I was self-medicating, I was self-medicating." In this same year she undergoes a "sexual reassignment" intervention. "Later, a little more empowered with my rights, perhaps a little calmer, I began to develop, I applied to enter university... Then in 2011 I started studying..."

In 2011, Paola Soledad once again activated the administration of justice to demand that the Civil Registry reform the birth certificate in reference to the male sex, so that it is recorded as female, this time, through civil means. The civil judge orders that an extract of the request be published in one of the newspapers published in the city – because this type of decisions can "affect third parties" – and orders that summary information be received of witnesses. A witness declares that he has known Paola Soledad for a long time (18 years) and indicates that she appears at public and private events under the name Paola Soledad, because her appearance is that of a woman. However, his request was denied by virtue of the fact that "the Registration Law, which determines and enshrines documentary effects exclusively; and, not gender identity."

The Chamber of the Provincial Court of Justice of Azuay ratifies the judge's decision, by

virtue of the fact that "this procedure proceeds when the authority has made an omission or error, that is, when the item has recorded data different from those that correspond to the supporting documents for registration, or the formalities provided for in that regulation have been omitted." For the Chamber, the formal recognition of the "sexual transformation" that would have occurred would be conditional on compliance with the constitutional ruling. It must be remembered that the constitutional judge had denied any possibility that Paola Soledad could go to the administration of justice without the legislature first modifying the law.

As Muñoz León (2015) observes, courts of law have not necessarily been characterized by producing independent and innovative interpretations; its failures have been sheltered in the comfort of conservative thought and practice. People who demand legal recognition of a name and sex different from those with which they were registered have had to travel long and winding paths (Bonifaz Alonso and Guevara Olvera, 2009). Even though there is legislation aimed at facilitating sex change through an administrative procedure, it is not fully accepted; Civil Registry offices continue to deny requests (Bonifaz Alonso and Guevara Olvera, 2009). Vásquez (2015) is more critical when considering that the fight for the recognition of gender identity has revolved around "legal assimilationism", attempting to adapt civil registration systems so that they are capable of providing trans people with documents. with a representation of sex "equal" to that of any other woman or man.

To this we must add that the constant identification–legal, biomedical and sociocultural–between "sex change", "transsexuality" and "gender dysphoria" contributes to the historical construction of transsexual people as a "differentiated



human species” (Cabral, 2003), with practical consequences in the lives of the subjects. Thus, the first ruling that “benefits” Jess Valentina and the one that accepts the name change of Paola Soledad order the Chief of Civil Registry to “create a record book for the change of names of transsexuals.” This way, “trans sexuality is normatively stereotyped.” (Cabral, 2003, s.p.).

It is clear that the name change represents progress for the exercise of other rights of Paola Soledad. But as Martínez-Guzmán and Montenegro Martínez (2011) point out, a large majority of trans people – among whom is our protagonist – are forced to survive in contexts where gender continues to be strictly regulated. Paola Soledad says that:

Since the name change I have not fully empowered myself, I have not made myself visible because of this fear, because of this fear of rejection, because I have lived, because it is hard to live in a situation in which the state does not guarantee one’s rights... However, my life project has been truncated, it has been stalled by discrimination, because for the State and society we do not exist...

The change of name helped me to access health, it opened the way for me to feel with more security and asking to be attended to... The name change has represented a small advance for me, but it is not comprehensive, it is not complete. For me there is a lot to do within the legal field and also in society so that they accept us as we are, that the only requirement that we must demand of ourselves is... to be human, nothing more...

A political perspective of sexuality understands that it is the subject – and not medicine, psychiatry or the law – who is responsible for defining their life project. The judge who decides the case of Jess Valentín understands this, by respecting her decision to move between genders, and by discussing through the sentence various aspects linked to “gender identity”, based on

the rights that appear in the Constitution of Ecuador of 2008 that are precisely the result of the social struggle. On the other side is an administration of justice that legitimizes the exclusion of the wrong bodies; that reminds Paola Soledad – within a conservative and biomedical approach to sexuality – that the error that defines her body represents an obstacle for her to be considered a person.

## IN CONCLUSION

From a biomedical perspective, the term “transsexual” identifies the person who has a discordance between the body and gender identity, due to which they try to live as a member of the “opposite” sex to the assigned one; often resorting to hormonal therapy or sexual reassignment surgery (Martínez-Guzmán and Montenegro Martínez, 2011). The legal change of name and sex often represents the end point of this transition.

The strong link that the biomedical approach establishes between transsexuality and genital reassignment surgery has been the subject of harsh questions, for attempting to shape bodies in accordance with the social prescriptions that delimit the masculine and the feminine in a certain historical-social context. The marked body/mind dualism on which the concept of transsexuality has been built is questioned. In this approach, gender identity is understood as immutable while sex is presented as malleable through hormonal or surgical methods. Thus, if the body does not correspond to that fixed gender identity, then it must be adjusted through surgery.

Research in our region shows the barriers that many people face to achieve a name and sex change, both in the administrative and judicial spheres. The claims submitted to the administration of justice are usually accompanied by documentation proving the hormonal treatments and surgical procedures performed. According to Muñoz León (2015),



as long as there is no legislation favorable to changing name, sex, or both, sex reassignment surgery becomes a jurisprudential requirement for the exercise of the right to choose one's identity. gender. Almeida and Vásquez (2010) state that, in Ecuador, these types of processes are characterized by arbitrariness. These authors point out that very few trans people dare to start these procedures and that, among

them, few continue successfully.

Currently, the role of "sex change" has lost centrality in the definition of the transsexual person. Transsexual people claim to be actors, capable of giving their opinion and deciding autonomously about their body and sexuality. From the perspective of the actors, the transsexual subject would be anyone who admits to being one (Suess Schwend, 2015).

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