

Judgment T-033/22

LAW TO THE LEGAL PERSONALITY AND IDENTITY OF GENDER DIVERSA—Creation of a third sex marker to integrate non-binary identity into the citizen identification system

(...) the entities involved disregarded the rights claimed by refusing to modify the sex component, for the second time, in the civil registry and on the identity card of a person with a non-binary gender identity, due to the failure to comply with the 10-year term since the first change and because the request exceeds the scope provided for that modification ("M" or "F").

ACTION FOR PROTECTION TO REQUEST PROTECTION OF THE IDENTITY OF GENDER-Origin

PRINCIPLE OF EQUALITY-Pluralism and multiculturalism in the Colombian State

RIGHT TO EQUALITY-Scope with regard to traditionally discriminated or marginalized groups

GENDER IDENTITY-Special protection

(...) the Colombian State, recognizing the historical burden of undervaluation to which people with diverse gender identities are subjected, has a duty to promote equal opportunities for this social sector. It is also obliged to refrain from creating scenarios that result in the disregard of their rights, as these rights have reinforced protection under the Constitution.

RIGHT RIGHT RIGHT THE GENDER IDENTITY—Scope and content/



RIGHT RIGHT A THE
GENDER IDENTITY—Scope of protection

RIGHT TO LEGAL PERSONALITY AND IDENTITY
DE GENDER DIVERSA-

Recognition in identification documents

The lack of correspondence between these documents (civil birth certificate, identity card, and citizenship card) and self-perception hinders the exercise of gender identity, as it prevents its recognition in society and institutions. It hinders the projection of one's gender in society and fosters scenarios of discrimination and exclusion in the public and private spheres in which the person interacts.

RIGHT TO LEGAL PERSONALITY AND DIVERSE
GENDER IDENTITY-Regulatory framework

for the modification and correction of identification documents

DIVERSE GENDER IDENTITY AND MODIFICATION OF
THE SEX COMPONENT IN
DOCUMENTS DOCUMENTS OF

-Constitutional jurisprudence

The paradigm shift in understanding the sex component of citizen identification has evolved from a biological conception of sex (female-male). Under this conception, the item "sex," when referring to male or female, reflected an anatomical reality and specific physical characteristics. However, the evolution of jurisprudence meant that the information recorded in this field should be understood as a personal decision, which coincides with the definition of

IDENTITY OF GENDER NOT BINARY-

Concept



Non-binary gender identity is understood as that which, not being conceived within the framework of the dichotomous categories of male or female, departs from the majority sex-gender system, which is binary by cultural tradition. Non-binary people are not represented, in their experiences, by any of the gender categories existing in that system.

RIGHT TO LEGAL PERSONALITY AND DIVERSE GENDER IDENTITY-Judgment

Strict proportionality test to include a new sex category (non-binary) in identity documents

(...), the "non-binary" marker does serve to protect the rights of the plaintiff, as a person with a gender identity that is neither female nor male. (...) the direct reference to the meaning of people's identity makes their being visible and highlights, directly and unequivocally, the way in which it contrasts with the binary logic that underlies the other sex categories, "M" or "F." In doing so, the legal system recognizes them.

EXHORTATION-National Government, National Civil Registry, Congress of the Republic

Reference: File
T-8.292.437.

Action for protection filed
by Dani García Pulgarín
against the
National Civil Registry
and the Ninth
Notary Public of Medellín.



Origin: Superior Court of
the Judicial District of
Medellín.

Presiding Judge: GLORIA
STELLA ORTIZ DELGADO.

Bogotá, D.C., February 4, 2022.

In exercise of its constitutional and legal powers, the Sixth Review Chamber of the Constitutional Court, composed of Judge José Fernando Reyes Cuartas and Judges Cristina Pardo Schlesinger and Gloria Stella Ortiz Delgado, who presides, has issued the following

JUDGMENT

In the review of the second instance ruling of May 24, 2021, issued by the Superior Court of the Judicial District of Medellín, which partially revoked the ruling of April 12, 2021, issued by the Eighteenth Civil Court of the Circuit of Medellín, which denied the appeal.

The matter was referred to this Corporation by the second instance judge, pursuant to the provisions of paragraph 2 of Article 86 of the Constitution and paragraph 2 of Article 32 of Decree 2591 of 1991.



In accordance with the provisions of Articles 86 and 33 of Decree 2591 of 1991, by **order of August 30, 2021**, Selection Chamber Number Eight of the Constitutional Court selected this case for review and assigned it to the office of the Presiding Judge.

Preliminary clarification

According to the writ of protection and the various documents in the case file, at the time the second instance ruling was handed down, the name of the person filing this writ of protection was Daniela García Pulgarín. During the proceedings and on the occasion of the *ad quem* decision (which will be referred to in the corresponding section), the plaintiff chose to change it to bring it into line with her gender identity. As a result, her civil birth certificate was amended. Thus, at the time of this decision, the name of the person who filed this action is Dani García Pulgarín. Consequently, the Sixth Review Chamber of the Constitutional Court will identify her as Dani, in consideration of her personal choice and gender experience.

I. BACKGROUND

Dani García Pulgarín filed a writ of protection against the National Civil Registry and the Ninth Notary Public of Medellín. He indicated that both authorities allegedly compromised their rights to human dignity, legal personality, free development of personality, and freedom of conscience, because they denied him the change of his name for the second time



time and did not change the sex component in their identity documents to a category other than male or female.

A. Facts and claims

1. The person proposing the writ of protection stated that they are 40 years old and, since the age of 20, has been undergoing a gender transition process. They stated that, at birth, they were classified as male, but, in the course of their life, they moved away from the idea and appearance that society has assigned to the male sex. Currently, they are recognized

[1] as a "*transvestite*" with feminine characteristics, but as a woman.

2. The plaintiff stated that she rejected the idea of being treated as a man, so in 2010 she changed her name. She explained that her goal was to identify herself in accordance with her appearance at that time, as it coincided with the social notion of femininity. Subsequently, she stated that on July 3, 2015, she corrected the "*sex*" component in her civil birth registry and on her identity document. For that reason, according to her ID card, she is a person of the "*female*" sex.

In line with the above, and given that the numerical quota in Colombia was set according to the sex assigned at birth, the plaintiff stated that she also changed it so that it would match her new status. She wanted to ensure that she would not be associated with the male gender in any way. This was because the lack of consistency between the numerical quota and the sex item allegedly led to multiple and constant taunts against them, which affected their dignity. Therefore, for the plaintiff, this change created the feeling that, for the first time in a long time, they were part of Colombian society and that society treated them with respect.



3. However, she stated that, over time, the changes in her identity document led to several situations in which her rights were disregarded. This was because her current appearance does not fully coincide with the social image of female characteristics.

3.1. Regarding her **right to health**, she stated that she went to her health insurance provider to request tests and treatment for her prostate, as she still has it. However, she indicated that she received a negative response that puts her life, integrity, and health at risk. This is because the entity told her that female persons are not susceptible to conditions associated with that organ, which is predominantly male. For this reason, they cannot receive medical services related to it.

The pharmaceutical service has proceeded in a similar manner. Although his treating physician prescribes a specific and increased dose of female hormones, he is only given half the dose. This is because, according to his citizenship card, he is a female. For this reason, he said that he must undergo additional procedures that delay his treatment.

3.2. Regarding their **right to work**, they stated that they are excluded from several selection processes. This is because, even though her identity document states that she is female, her current appearance does not correspond to the image that society expects, neither of a man nor of a woman. She has even been told that, due to company policies [2], it is only possible to hire "*normal men*".

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The person bringing this action stated that, as a political science professional, they worked with vulnerable LGTBI populations in Bellavista Prison. However, they said that they stopped working there because the security guards treated them in an inhumane and degrading manner. For this reason, and after failing to find protection for their rights, they chose to refrain from making the visits associated with their work.

3.3. Similarly, he stated that members of the National Police allegedly subjected him to humiliation and ridicule when they asked for his identity document. He claimed that they even insinuated that it was false. In addition, he indicated that he had suffered discrimination in the Medellín Metro.

4. She reported that, in her case, hormone treatment was not completely effective. Male traits persist in her body, combined with female characteristics. She said that this leads to ridicule and exclusion. It also hinders social and romantic relationships, because those she comes into contact with tend to ridicule her.

They stated that they have not undergone complete sex reassignment surgery, but have undergone several surgical procedures. In this regard, they specified that all the transformations they made to their body, at the time, were intended to achieve social acceptance and inclusion in one of the two socially accepted categories of sex, which are binary in nature. In the past, she sought to fit into the male or female gender through various procedures, some of which she gave up on shortly thereafter. Thus, she ruled out surgery to complete her transformation. The truth is that, according to the guardianship, currently, neither the male nor the female gender corresponds to her being, and she does not identify with either of them.

5. Due to the confluence of these situations, which



compromised their rights, on December 30, 2019, the person filing this action submitted a petition to the National Civil Registry. Specifically, they requested that the entity remove the "sex" component from their identity document, or alternatively replace the letters "F" or "M" with the letter "X" or the word "undetermined." His personal view on the matter is that *"it is of absolutely no interest to anyone to know what I have between my legs, especially since that information has been used against me and has served to subject me to all kinds of cruel, inhuman, and degrading treatment."* Finally, he indicated that such information is irrelevant.

[4]

The entity denied the request. It argued that, on the one hand, changes to the citizenship card depend directly on the information contained in the civil birth registry and, on the other hand, that the scope of the modification of data associated with sex is only "M" or "F." Anyone interested in modifying this item can only choose one of these two categories.

6. Dani García Pulgarín considered that the Registry's response infringes on their rights, in particular, the possibility of living in the way they want and intend to. In addition, they indicated that it compromises the very functionality of their identity document, which, by only allowing two gender options that do not reflect their identity, does not identify them.

7. In response to the Registrar's statement, on March 12, 2021, the plaintiff requested that the Ninth Notary Public of Medellín change their name again to a neutral one (Dani). This was done on the understanding that their female name has led to discrimination, but they do not conceive of themselves as male. They insisted that they do not fit into society's idea of what a man is, either in terms of appearance or in terms of the behaviors associated with their role in society. In addition, they requested a sex change so that a neutral name could be registered, but not to return to the male sex.



register as neutral, but not to return to the male sex.

8. The Ninth Notary Public of Medellín denied the request. First, it argued that a second name change can only be carried out by a judge. Second, with regard to the change of the "sex" component, it informed him that a second change is permitted, but only after ten years have elapsed since the first change. Thus, in the case of the person bringing this action, he could only do so until 2025. The Notary specified that, in accordance with one of the academic interventions received by the Constitutional Court in the proceedings that gave rise to Ruling T-447 of 2019 and related to it, births with a neutral sex are ruled out in Colombia.

9. For the plaintiff, although the response from the Ninth Notary Public of Medellín is not an absolute refusal, it places him in a situation of social disadvantage and exclusion for several more years. He stated that, even if he waited until 2025, the truth is that he would remain in the same situation. This is because, in a binary sex classification system, they would have to choose one of the two sexes with which they do not identify and which have led to treatment contrary to their dignity. They indicated that this situation has affected them to the point of having to attend regular psychological and even psychiatric consultations.

He considered that the impossibility of identifying with a neutral or non-binary gender denies the possibility of being to those who are outside that paradigm and makes their body unviable and inadmissible. In addition, he highlighted that there are currently precedents for changing one's name a second time in favor of personal autonomy and in favor of the historically discriminated LGBTI group.



10. Consequently, on March 24, 2021, Dani García Pulgarín sought the protection of the guardianship judge. To achieve this, he requested that the Ninth Notary of Medellín and [6 a] the Registrar's Office [a7] not apply articles 2.2.6.12.4.3. and 2.2.6.12.4.6. of Decree 1227 of 2015. Thus, they requested that the defendants change their name and sex on their identity documents (civil birth certificate and citizenship card) for the second time. The latter was done so that they would not be identified as male or female, but rather as a person with a non-binary gender identity. To that extent, they seek to have the "sex" component omitted from such documents, or to have it registered as "X," "neutral," or "undetermined."

B. Proceedings of the writ of protection

By order of March 24, 2021, the 18th Civil Court of the Medellín Circuit admitted the writ of protection and forwarded the complaint to the defendants.

Response of the defendant authorities

The **National Civil Registry** argued that sex, as a component of identity documents, is recorded based on biological concepts. This is in line with the definition given by the Constitutional Court itself, particularly in Ruling T-450A of 2013. According to the defendant entity, this ruling specified that while "sex ~~is~~ ^{is} physical, biological, and anatomical characteristics," gender refers to "the social roles, status, behaviors, and attributes appropriate [or s] to each person, whether male or female"

He stated that the "designation of the sex component understood as 'M' for male or 'F' for female has ~~is~~ ^{is} in Decree Law 1260 of 2012, Article 52 [], which establishes as a requirement for registration [c i] to indicate either female or male sex" . For the entity, the guardian seeks



deviate from those rules and "impose" a parallel concept of sex, the adoption of which does not depend on the entity. The entity maintained that it merely "records the information from the live birth medical certificate, which defines (...) the sex of a person (...) [as] 'M' male or 'F' female." To that extent, although the person bringing this action considers that their rights are being violated by limiting the options for choosing sex to the two recognized by the current legal system, "the truth is that this is a purely biological designation, as already established by the Constitutional Court, which excludes social gender designations, such as those that are intended to be included in this action" .

He argued that, with regard to gender, the legal system only allows for the possibility of identifying someone outside the categories "M" or "F." This is the case for intersex people who, at the time of birth, present genital ambiguity or for whom it is temporarily impossible to determine their sex. In these particular cases, the box for that component is not filled in until the person chooses the category with which they identify.

Finally, the Registry stated that it responded to Dani García Pulgarín's request by email on March 26, 2021. In that document, the entity presented a concept issued by the Coordination of the Legal Group of the National Directorate of the Civil Registry, which states that "the first correction [of the sex component] has already been exhausted and you must wait 10 years to process a new one (...) which could only be from female to male (or vice versa), because the designation of the sex component in the civil birth registry is an essential requirement that must be noted in the registration." That communication expressly stated that "the request is not applicable." change the component gender by one option not binary" .



In view of all the above, the National Civil Registry considers that no fundamental rights were affected in this matter.

For its part, the **Ninth Notary Public of Medellín** maintained that, in fact, Dani García Pulgarín has been undergoing the process of gender transformation and change for several years. It indicated that the change of sex or name has not been denied. On the contrary, the changes that the person has chosen to make have been carried out. However, it stated that it is essential that the person concerned comply with the rules governing such changes. In view of these rules, the Notary Public cannot grant the plaintiff's requests, as the legal provisions require that the new name change be ordered by a judge and that the sex change be made after 10 years.

Regarding the difficulties described in the writ of protection in relation to barriers to accessing health services, he stated that the solution is not to change identity documents, but rather, in accordance with the principle of equality, the health system must provide treatment in accordance with medical records. Additionally, the claim regarding the change of name to a neutral one does not take into account that for an individual *"their sex does not change according to their name, (...) it is totally personal and vice versa, there are no names [157] because] each person gives it the tone they want."* The challenges in this regard for the person taking action are the result of society's conception of physical appearance and do not stem from the actions of the notary; *"as time goes by, society will [18] accept people's physical changes much more"* .



Finally, he specified that in Colombia it is not possible to conceive of the existence of a person with a neutral sex. In this regard, he argued that "*there is no ruling or interpretation (...) by the court (sic) where [19] the creation of a gender other than the binary is accepted*". This is because "*if a person was not BORN with that ~~high~~ condition a [20], they will always have a sexual orientation*." Even the person bringing this action in the statement of claim "*calls himself an effeminate transvestite, so [the entity questions the reason why] (...) it focuses in such a way on the ways in which it ~~can~~ would identify the sex or gender (sic) of a person*" [21].

C. Decisions subject to review

First instance ruling

On April 12, 2021, the 18th Civil Court of the Medellín Circuit **denied the injunction**. It found that the plaintiff's requests must be made within the regulatory framework governing name and sex changes. From that perspective, the *court* noted that the authorities proceeded with the first name and sex change requested by the plaintiff. The second was denied because it did not follow the rules established by law in this regard. In this sense, the conduct of the defendants cannot infringe upon the rights claimed, and this results in the denial of the protection requested.

With regard to the plaintiff, the judge noted that "*despite being a person entitled to special protection, that prerogative per se no lo habilita para obviar los*



requirements set forth in the law, consisting of the fact that the request for change must be made after ten (10) [years] have elapsed [d₁ e₂ s₂ d₁] from the date on which that legal act took place." He added that "the 'neutral or indeterminate' orientation does not exist within our legal system" and there is no jurisprudential criterion to support it.

With regard to the complaints against the EPS, the judge argued that this is a matter unrelated to sexual identity, but rather to health, and therefore outside the scope of the writ of protection.

Challenge

Dissatisfied with the first instance decision, the plaintiff challenged it. In doing so, he emphasized that he does not identify as either male or female. He stated that, in disregard of this, the *lower court* used a regulatory framework that is discriminatory and prevents him from freely developing his personality. In their opinion, the judicial official should have disregarded it because it was contrary to constitutional mandates in their specific case. They also questioned the ruling's criterion regarding the non-existence of neutral or indeterminate sexual conditions.

Second instance ruling

On May 24, 2021, the Superior Court of the Judicial District of Medellín **partially overturned the first instance decision**. It upheld the rights in relation to the name change but maintained the refusal regarding the sex change.

In reaching this determination, it analyzed the status of LGBTI persons as subjects of special protection and highlighted the scope of their right to experience and self-determination of identity. In this context, it found that non-binary gender is a classification



invisible, which transcends the male-female dichotomy and, in doing so, creates situations of vulnerability for those who experience it. The *ad quem* concluded that the components of name and sex, as mechanisms of identification and elements of legal personality, are not static factors of a person's identity. It highlighted that experiences in other countries and constitutional jurisprudence point to the need to harmonize identity documents and individuals' identity preferences. However, in Colombia, there is no legislative or jurisprudential development that supports non-binary identities, beyond cases of intersexuality in minors.

Regarding the **second name change**, the Court emphasized that, in accordance with Ruling C-114 of 2017, this is admissible "*when the violation (...) [is] the absence of identification with the form of ~~sex~~ [25] from a gender identity perspective.*" On that understanding, it revoked the refusal and, instead, granted the amparo. Consequently, it ordered the Ninth Notary Public of Medellín to make the corresponding change in the Civil Registry of Birth .

On the contrary, with regard to the **second sex change**, it upheld the first instance ruling and denied protection. The Court emphasized that citizenship does not depend on sex. It stated that "*intersex and non-binary persons question the categorization of the civil registry within the binary scheme, as they are persons who possess characteristics attributed to both the female and male sexes, which implies (...) a threat to the status quo in terms of heteronormativity*" and that, although their recognition through identity documents would allow for harmonization between the identification document and the right to self-determination of non-binary persons, *it would not be possible to recognize their identity as a result of the change of sex. the status quo in terms of heteronormativity*" and, although their recognition through identity documents would allow for harmonization between identification documents and the right to self-determination of non-binary persons, the Colombian registration system is based on a binary conception of sex. For the Court,



Colombian Constitutional Court.

D. Proceedings in Review

The Presiding Judge issued the **Order of October 26, 2021**, with the purpose of gathering further evidence to resolve the case under review

The request for evidence was addressed to the parties, certain public entities related to the matter under analysis, certain civil society organizations, and academia. The office sent a specific questionnaire on the matters of interest for deciding the case to each person officially notified or invited to participate in this matter.

The responses received will be discussed below. First, the statements of the parties to this matter will be summarized, that is, those of the plaintiff, the Ninth Notary Public of Medellín, and the National Civil Registry. Second, the arguments of other public entities related to the matters under debate will be presented. And finally, the opinions submitted by public and private institutions, as well as civil society organizations specializing in the matter, will be referred to.

Response of the parties to the request for evidence

The presiding judge requested **Dani García Pulgarín** to complete a specific questionnaire regarding the current situation and the focus of his interest in the present writ of protection. This was based on the multiple allegations of discrimination presented in his complaint . This was answered

in 2021 . email dated November 15,

The plaintiff reported that his civil registry



The birth certificate is being handled by the Ninth Notary Public of Medellín. This comes after the Sole Notary Public of the municipality of La Tebaida refused, years ago, to make the changes to gender and numerical quota that were requested for the first time. At that time, the Ninth Notary Public of Medellín explained that he could request the transfer of the registration, which he did. In this regard, he pointed out that the latter institution has been one of the most willing to make changes in favor of consolidating his rights as part of the LGBTI population.

She s t a t e d that, following the second instance ruling, she agreed to the name change she sought in the present writ of protection. Thus, as of June 18, 2021, her name hrom Daniela to Dani, as she currently identifies herself. However, this change was only recorded in her civil birth registry. She is awaiting the ruling of this Corporation to request a new citizenship card. This is to reduce the costs of the process of modifying her identity documents.

On the other hand, she pointed out that, by recording in her writ of protection the obstacles she has encountered in multiple areas of daily life, she intended to explain the need to modify the sex component of her identity document. On this point, she emphasized that her claim "*does not focus on these scenarios of violation of my rights, since what I seek through the situations or cases I present there is to raise the idea and propose arguments about why (sic) I consider [36] that our system is a closed system.*" She used the situations referred to in order to highlight how the lack of recognition of her identity and the existence of a binary system of sex classification affect her.

In this regard, she clarified that when she referred to barriers to accessing health services, she was referring to an EPS with which y a n o t i e n e vínculo. Actualmente, e s o t r a l a



provider responsible for his health services. There are also problems with this provider, to the extent that, to date, *"I have not had the opportunity to undergo a diagnostic examination of my prostate."* However, he has addressed the violations of his right to health through other legal actions. He stated that he currently self-medicates, as he chose to forego medical care to avoid questioning and the constant violation of his rights. Although he recognizes that this puts his life at risk, he argued that, like many transgender people, he does so to avoid going to a health system that does not recognize his rights and treats him indignantly.

Regarding what happened at the Bellavista Prison and Penitentiary Center, she clarified that she did not file a writ of protection. She filed *"a lawsuit and/or complaint against that entity (making it clear that I do not know how to differentiate (...) [one thing] from another), (...) through the Medellín Municipal Ombudsman's Office"* in response to the humiliating treatment she received from INPEC staff. Similarly, she specified that she has not been restricted from entering the Medellín Metro when she wishes to use the transport system. Regarding the latter entity, she pointed out that the exclusion she experienced consisted of the lack of opportunity to be hired because of her gender identity.

When asked about the current conduct of the members of the National Police mentioned in the writ of protection, she emphasized that she exposed them to illustrate the need to modify the "sex" component of her identity document. The plaintiff stressed that these are current and constant violations, but there are difficulties in proving them, and her writ of protection does not seek direct protection in relation to them.

In relation to the questions contained in the Order of October 26, 2021, he indicated that he found it *"uncomfortable (...) that the Court should ask about those situations of"*



discrimination (...) because no, I don't want to know anything more about what already happened (sic), I just want you to understand that there are many realities that non-binary people live with on a daily basis and that a cis person will never understand the full extent of a given situation, because they don't live it, it's not part of their reality. In this way, she insisted that she resorted to historical issues of discrimination against the non-binary population as her own, solely for the purpose of "letting the Court know that discrimination against transvestites has been a constant." She insists that the above ignores the text above. His objective with the aforementioned writ of protection is "to be able to carry a document that does not allow anyone to establish a relationship between my body—specifically my sex—and my identity—how I recognize myself—and much ~~more~~ make fun of it and ridicule me" . Based on the foregoing, he argued that he only presented these circumstances "in order to demonstrate why I consider this system to be a closed system and that the purpose of the change in my document is precisely that, that the system open up the possibilities of offering care to people, to its citizens, and not only to masculine men and feminine women, ~~people~~, I, who am neither one nor the other, where do I fit in?" .

Finally, she stated that she considers it offensive that the judge of second instance dismissed her request for legal protection regarding her sex change "supposedly because he wanted to avoid putting more social barriers in my way. This was insulting, since I have ALWAYS had them. This is not a ~~big~~ new, don't think you're doing me a 'favor'" . He emphasized that he will deal with any violations that may arise at the appropriate time.

The Ninth Notary of Medellín, in an email dated November 11, 2021, responded to a questionnaire about the current situation and its jurisdiction over the civil registry of



birth of the person who filed this action. In its response, the entity specified that the plaintiff changed his name for the second time on June 18, 2021. This change only affected his civil birth registry.

The notary's office stated that it is the authority in charge of civil birth registration and that, although the document was initially administered by the Notary's Office of La Tebaida, it was replaced. The original document is inactive and the current one is in Medellín, under its responsibility.

Finally, the entity stated that to complete any civil birth registration, it refers to the live birth certificate, the baptismal certificate, or even witnesses. However, it emphasized that the first, the live birth certificate, is crucial because *"it is from this document [47] that the birth registration data is drawn"*.

For its part, the **National Civil Registry** was ordered to answer a series of questions related to: (i) the current status of the citizenship card of the person who filed this action, (ii) the functionality of the sex component as identification data, (iii) the evolution of the citizenship card and the "sex" marker on it, and (iv) the institutional challenges by recent judicial decisions unrelated to this matter regarding the opening of a third sex category on the card.

By means of an electronic communication dated November 23, 2021, the Registry specified that, according to its database, the identity document of the person filing this action for protection has undergone modifications on several occasions. The history is as follows:

| Date | Reason for modification |
|------|-------------------------|
|------|-------------------------|



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| | |
| February 22, 1981 | Civil registry entry of birth, in the name of A***r García Pulgarín, male. |
| 04-15-1999 | Application for a citizenship card for the first time. Identity document assigned by the Special Registry Office of Medellín to A***r García Pulgarín, with the numerical quota 71.***.**1 and the sex component "male". Note: Document currently "canceled due to reassignment or change of sex." |
| 04-01-2010 | Given the change of name from A***r García Pulgarín to Daniela García Pulgarín, by public deed of the La Tebaida Notary, the civil registry serial number of birth. |
| 03-02-2010 | Request for rectification of the citizenship card, regarding the name. This was carried out by the Special Registry Office of Medellín. |
| 07-15-2015 | Due to the change of sex from male to female, carried out by means of a public deed at the La Tebaida Notary's Office, was replaced by serial number in the civil registry of birth. |
| September 20, 2015 | Cancellation of citizenship cards due to reassignment or change of sex, as the unique personal identification numbers (NUIP) that began with the digit 7 were assigned to males. |
| 10-07-2015 | Application for a citizenship card with the number 1.***.**1 in the name of Daniela García Pulgarín. Note: Document valid to date. |
| 01-13-2017 | A new civil birth certificate was registered with the new NUIP, in the name of Daniela García Pulgarín. |



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| <p>Note: Document is valid.</p> |
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Regarding the relevance of the "sex" component in the identity document, the Registry stated that, like the other elements included in the citizenship card, "it allows (...) the exercise of ~~the~~ ^[5 2 c h] and obligations within the legal sphere" and ^{the formulation} of public policies. Specifically, this component "obeys the characteristics of ~~()~~ ^[5 3 c o r legal] and the formulation of ~~the~~ ^{Specifically, this component} "obeys the characteristics of ~~()~~ ^[5 c] or legal," and the formulation of ~~the~~ ^{Specifically, this component} "obeys the characteristics of ~~()~~ ^[5 i o 3 c] or ~~the~~ ^{Specifically, this component} "obeys the characteristics of ~~()~~ ^[5 3 c o r legal] and the formulation of ~~the~~ ^{Specifically, this component} "obeys the characteristics of ~~()~~ ^[5 3 c] or legal," and the formulation of ~~the~~ ^[5 3 c] o jurídico" and the formulation of public policies. Specifically, this component "obeys the biological characteristics of an individual at the time of birth" and in Colombia can be established as female or male. Thus, this marker "allows a social group to be identified according to biological characteristics from birth; from this, a social policy can be created as a response formula in accordance ^{with} ~~con~~ the needs of public and private services." Correlatively, it enables the subject to claim the rights that correspond to them, in accordance with their sex. In addressing the issue, the entity was emphatic that Ruling T-504 of 1994 specified that "sex" is an objective component of civil status, defined by physical nature, which does not depend on subjective assessments.

Thus, together with other biographical, photographic, and biometric data, "sex" ^{per m} ~~it~~ ^[5 6] establishes that it is one person and not another. The Registry clarified that "in the context of gender differences that are projected onto the body itself, this aspect is currently subject to the individual's own construction in society, unlike the ~~identification~~ ^[5 7] that is based on biological characteristics" that are incorporated into the identity document. In view of this, for the institution, "the inclusion of the



in identification documents does not determine the identity of the holder, but only recognizes them through characteristics specific to an individual that distinguish them from others and [58 q] serve as an element that individualizes them" .

Using this data, both public and private entities identify individuals. This is relevant in Colombia, where the "gender" component is reflected in various areas of human development. He specified that the information managed in his databases, including that derived from the "sex" component, is freely available for consultation by public and private entities. In addition, it enables "health care, pension rights, birth, death, judicial activity, migration, right to work, social statistics" and the provision of services in the private sector, which depend on the sex of the person. It is also a central element in the organization of elections "on the understanding that this data is an input for the formation of the electoral census, where it is necessary to understand the electoral potential and the formation of lists where it is necessary to know the participation of men and women in various scenarios, as a stimulus for democracy" .

On the other hand, with regard to the evolution of the citizenship card as an identity document, the Registrar's Office pointed out that it was only with Article 14 of Law 89 of 1948 that the State became interested in identifying its citizens. Previously, there was no identity document. Until then, there was a qualifying document for exercising the right to vote. It contained the ID card number, name, address, age, skin color, height, and physical characteristics such as hair type, forehead, mouth, lips, eyes, and nose, with an item dedicated to distinguishing features and "visible physical defects" .



According to the defendant's account, as a result of the issuance of the aforementioned regulation and based on the recommendations made by a Canadian mission, Decree 2628 of 1951 was issued, establishing for the first time a citizen identification system. To that extent, *"beginning in 1952, (...) the issuance of documents for civil identification purposes began, and the data on 'sex' was incorporated into the background material (ten-fingerprint card) for the issuance of the citizenship card, although at that time the document ¹⁴carried by the citizen did not record that component" [64]. The data contained therein were the name, date of birth, height, skin color, and ears—based on a photograph that had to show them—as well as other distinguishing features of the individual. It was a valid identification mechanism until December 31, 2009.*

Only with the change introduced in 1993 to the citizenship card was the "sex" component recorded on it. Other data were eliminated, such as skin color and distinguishing features of the subject. Like the previous one, this card was valid until December 31, 2009.

The yellow card with holograms, issued since 2000, retained the "sex" field, as does the digital citizenship card issued since December 1, 2020.

The entity specified that, currently in Colombia, not only the citizenship card serves as a citizen identification document. There are three documents that serve this purpose. First, there are three types of civil registry documents: birth, marriage, and death certificates. Second, there is the identity card for individuals over the age of seven. And finally, there is the citizenship card for individuals over the age of 18. The databases link the data recorded by each of these documents in a dynamic and constant exercise of updating the information.



[65]

According to the provisions of Articles 2) and 62) of Law 39 of 1961 and the Electoral Code (Decree Law 2241 of 1986), the issuance of a citizenship card must be preceded by a basic document proving personal identity, which is the civil registry. This is based on the understanding that those who can apply for a citizenship card must be Colombian nationals, a status that is proven by the civil birth registry. To that extent, *"in order to ensure the effectiveness of the citizenship card production process, the data associated with civil registries are validated online (...) in order to allow for the preparation of first-time citizenship card material, where, in addition, the civil birth registry is linked to the blue biometric identity card [6 tr 7 i ca] and, subsequently, with the citizenship card."* It is important that these documents correspond to each other in terms of their data, as one is the basis for the others and the information they contain must be the same [68 m] to ensure the full identity of the person . Furthermore, this is explained by the fact that these documents depend on the linear consistency of the data. In their absence, the system rejects the generation of the document. Additionally, *"those born after 1938 prove their marital status, their nationality, and attributes such as name and nationality, which are essential to ensure citizenship, uniquely a m through their civil birth certificate."* [69]

All of this is consistent with the logic of Resolution No. 0146 of 2000, which adopted the unique personal identification number, an alphanumeric code that identifies a person from birth to death. Thus, the data in both documents must be the same, in accordance with the current identification system.



With regard to the registration of intersex minors in the civil registry, in response to Ruling T-450A of 2013, the entity specified that it issued the version

5 of the Circular of Registration and
and Identification. This requires that the birth certificate
certificate refers to the minor as intersex, a person with ambiguous
genitalia, with sex to be determined, or equivalent expressions. When the
certificate states this, the physical characteristic is not recorded in the civil
birth registry. In such cases, the document indicates what the minor's legal
representative specifies in the sex field, and it is even possible to omit any
entry in it. However, it is impossible for an adult to access this type of
option. In any case, the box assigned to "sex" is completed when the
subject or their parents accept one of the binary classifications offered by
the current system. According to the above, this mechanism is temporary.

The Registry informed the Chamber that in a writ of protection unrelated to the case now under review, a citizen requested the inclusion of *the "gender T" component* in his civil birth registry. The protection was granted by the *ad quem* in April 2021, and the protective measure consisted of ordering Notary 26 of the Medellín Circle to correct the person's sex in the civil birth registry to match the "T" (trans) sex with which the person who filed the action identified. Some time later, the same person filed a writ of protection so that, this time, the same sex marker would appear on their citizenship card. The court of first instance granted the protection on September 17, 2021, and ordered the Registry Office



incorporate the letter "T" as a gender marker within six months. The entity challenged that decision, but it was upheld on October 27, 2021.

For the entity, decisions such as these represent several challenges. On the one hand, normatively, only male or female sex is provided for, so that such orders would deal with *what is not provided for in Colombian legislation.*" It emphasized that, in compliance with current regulations, the identity databases that make up the Electoral Census database (National Identification Archive, Civil Registry Information System, Electronic Identity Document Management, Electronic Civil Registry Management, MTR Transactional Database, ABIS database, and database set up for the biometric authentication process) are restricted to these categories. In addition, public and private entities have adapted their information systems to this classification. To that extent, any alteration in the data will affect the display of information and its interoperability. On the other hand, the RNEC specified that these failures generate budgetary challenges because the software needs to be redesigned. This is even more important in this period marked by austerity due to the COVID-19 pandemic and the proximity of this year's elections.

The Registry pointed out that it is not only a matter of variation in the classification corresponding to the gender component. It argued that this entails a structural change, which points to a social redesign and a rethinking of *"how identity is conceived in our country and how information interoperates with the different public databases"* in favor of public policy. However, the entity emphasized that, in the future, through the digital citizenship card, it hopes to make it possible to hide or anonymize data so that citizens can share the information they want to disclose.



Ultimately, the entity concluded that there is a regulatory gap in this matter that only the Congress of the Republic can resolve. It is the Congress that must define any changes to the sex classification system and other areas that will be affected by the expansion of the corresponding categories.

Statements from other public entities

The **Ministry of Justice and Law** was summoned to this proceeding as the public entity that issued the regulations that the plaintiff is requesting to be declared inapplicable. Specifically, these are Articles 2.2.6.12.4.3. and 2.2.6.12.4.6. of Decree 1227 of 2015. The questionnaire it was asked to complete dealt with the reasons behind the restrictions on changing one's name (only once) and sex (with a 10-year difference), and the current feasibility and impact of a system of assigning sex outside the scope (male and female) granted by that decree. All of this was in relation to the reasons that led the entity to issue the aforementioned regulations .

In an email dated November 12, 2021 , the entity stated that the temporary restrictions included in Decree 1227 of 2015 for name and sex changes are intended to ensure legal certainty and stable identification of individuals. These have a positive impact on citizens' relations with society and the State .

The Ministry emphasized that *stability in the names* of individuals in the legal system allows for the fulfillment of the State's purposes. Although this information is not the only factor on which identification depends, it is primarily through it that, for example, "*judicial and administrative proceedings; the prosecution and punishment of crime; the enforcement of contractual or exchange obligations;*



the reconstruction of the (sic) registration and control of real estate and personal property; identification in registers such as the commercial register; the administration of the circulation and management of personal data; the administration of the tax system; and the development of intelligence and counterintelligence activities carried out by the State."

On the contrary, an identification system in which name changes are not subject to any restrictions can give rise to fraudulent actions and lead to constant institutional mobilization to respond to such changes. This situation could paralyze public services. It would even entail costs in the development of mechanisms for constantly updating databases.

However, the entity specified that the limits on name changes that the plaintiff requests to be waived are not absolute. Although the first correction can be processed before a notary or municipal civil judges, other name changes can be made through the voluntary jurisdiction process. It is also possible to achieve them through a notarial procedure, provided that there is a clear and sufficient constitutional justification for doing so. It specified that the Court has validated notarial name changes in circumstances in which, following a process of sexual and gender identity change, these do not coincide with the name.

With regard to **sex reassignment**, the entity emphasized that the process involves extensive procedures requiring "*interdisciplinary working groups; [since] (...) the therapeutic process consists of three fundamental pillars: initial psychological diagnostic evaluation and psychotherapy, endocrinological evaluation and hormone therapy, and sex reassignment surgery; therefore, the established ten-year limit allows for the completion of this treatment and, likewise, not generate excessive costs for the entities necessary to said modification*". These variations, en



The application of Articles 91 and 95 of Decree Law 1260 of 1970, prior to the issuance of Decree 1227 of 2015, was considered to be of a judicial nature and not notarial. However, Ruling T-063 of 2015 specified, in the words of the entity, that "*when the sex component of marital status does not correspond to reality, it constitutes an error that can be corrected through notarial means [a₇ l, 8]* which is more agile, dignified, and protective of rights than judicial means" .

However, the Ministry stated that the rule that the plaintiff hopes will be disappplied "*does not go beyond regulating aspects necessary to make the process of correcting the sex component of marital status operational in relation to the notarial procedure.*" The rules were not designed to "*define whether the sex component should reflect the sexual identity of individuals. This Decree only aims to make the notarial procedure operational for the purpose of correcting the sex component of the registry*" . It added that this is a rule designed not only to reduce the obstacles faced by the transgender community, but also for the general population, and covers cisgender people.

He warned that, as a result of unrestricted sex change, "*new litigation could arise regarding sex identification, particularly in relation to pension recognition, where gender can imply [r₈ e₁ l]* the granting of the right to a higher or lower age" .

The **Ministry of Health and Social Protection** was asked for information on the guidelines for [8 a_{2d}()] judging sex on live birth certificates. In an email dated November 12, 2021, the institution stated that "*it has not issued guidelines or guidance aimed at [e₈ s₄] establishing guidelines for sex assignment at birth*" . However, based on scientific and disciplinary knowledge, it concluded that, once birth occurs, the health professional



"performs a clinical examination and, based on the findings, routinely assigns sex based on the morphological appearance of the external [apparent] genitalia. In general, the morphological appearance almost always coincides with the presence [i₈ a₅] of gonads characteristic of each sex" .

He emphasized that "sex is a purely biological assignment and, as such, always forms the basis of sexual identity." In line with this, the "National Policy on Sexuality, Sexual Rights, and Reproductive Rights (2013) defines sex as 'the biological characteristics that make up people's bodies, and that characterize men as having a penis and testicles and women as having a vagina and ovaries. There is also the category of intersex, formerly known as hermaphroditism. Intersex people have biological characteristics of both sexes, which manifest themselves in the body in a more or less defined way.'" However, sexual variations [a₈ le₆ s] have given rise to different categories of sex .

Currently, according to the Ministry, the issuance of a live birth certificate allows for the possibility of registering a person as indeterminate in terms of sex, in accordance with the jurisprudence of the Constitutional Court and [Joint Circular 048](#) of October 20, 2015, issued by the Ministry of Health and Social Protection and the National Administrative Department of Statistics (DANE).

For its part, the **Ministry of Education** was asked for information about a press release [that](#) suggested that the entity had adopted measures for the issuance of diplomas based on non-binary criteria. In response, the ministry reported that it had not yet issued any regulations for that purpose. Regarding the news article, it argued that upon verification, it found an inaccuracy,



as the regulation mentioned in it was not issued by the Ministry of Education, but by the Academic Council of the Departmental Institute of Fine Arts in exercise of the university autonomy granted to that institution.

Finally, the **Superintendency of Notaries and Registries** specified that it exercises inspection, surveillance, and control over the notarial public service, without being a hierarchical superior. However, it clarified that the National Civil Registry is responsible for monitoring the civil registry of persons, as well as directing and organizing it for the purpose of identifying persons, in accordance with Articles 2 and 3 of Decree 1010 of 2020. Nevertheless, for guidance purposes, the Superintendency delegated to the Notary Public has issued guidelines regarding the civil registry, in line with the RNEC's guidelines. This agency issued Administrative Instructions No. 12 of 2018, No. 01 of 2020, and Circular 711 of 2021, which disseminated Version 6 of the Single Civil Registry Circular issued by the Registry.

Stat *ements by public entities, academic institutions, and organizations specializing in sexual and gender diversity*

The Order of October 26, 2021 also summoned public entities whose mission is closely related to gender diversity. It asked them about the current challenges faced by transgender people and their perspective on binary identification schemes. Additionally, it invited organizations and academic departments specializing in the issue before the Court on this occasion to participate in this process. Finally, it invited some individuals who have publicly advocated a non-binary conception of the category of "sex" .

Several members of academia and social organizations



working to defend sexual and gender diversity, in response to the call in the Order of October 26, 2021, presented some alternatives for non-binary markers in Colombia. They also reported on experiences in other states that have adopted a third category of sex or gender. Given the extent of the information related to both aspects and its reiteration by different participants, the Chamber will now present a summary of the interventions and will explain in greater detail, in this specific case, the matters relating to that issue. This is in the event that the Chamber finds this action for protection to be admissible.

The Sexual Diversity and Gender Identity Department of the Medellín City Council highlighted that transgender people face denial of their identity, which is socially focused on sexual anatomy. From this perspective, identification documents serve as confirmation of a biological fact, and transgender people are named and treated according to the information contained therein. Based on the information contained therein, transgender people are ^{often} treated as "*false women or false men*" and, on occasion, as "*a woman disguised as a man' or 'a man disguised as a woman.*" Under these conceptions, they are subject to "*forms of exclusion associated with the incongruity between their gender identity and the information recorded in their identity document*" .

As an example and based on its institutional work, the Management mentioned several areas of ignorance of trans identities, in which they are excluded based on the official records shown on identification documents:

- *Educational settings.* In these settings, institutions refuse to name and treat transgender people based on their self-perceived identity. Often, the use



bathroom use and uniform requirements are imposed according to the information contained in identification documents.

- *Healthcare system.* In various healthcare centers, trans people are addressed by the name on their documents. This leads to mockery and derogatory treatment, causing them to refrain from accessing medical services. Additionally, the prescription of services is limited based on the registered sex, disregarding the transition processes that trans people choose. For example, the sexual rights of transmasculine people who menstruate are not recognized.
- *Exercising the right to vote.* Transgender people are accused of impersonating the individuals named on their identity documents and, as a result, are prevented from voting.
- *Military status.* Trans men are required to regularize their military status. This creates a barrier to employment and exposes them, as they are often forced to explain their transition process in public.

Based on its mission, the organization pointed out that the discrepancy between the information on the identification document and gender identity causes distress, anxiety, and stress due to the lack of recognition of the trans experience. This exposes trans people to "judgment, questioning, and constant inquiries" that, in practice, lead them to "avoid certain spaces" in order to avoid situations in which they are forced to explain an intimate aspect of their being. This option is intensified when it comes to explaining a non-binary identity concept.

In relation to this type of situation, the institutional framework should consolidate a scheme for



non-binary identification. In doing so, it seeks to avoid the need for individuals to disclose the specifics of their transition to society and the authorities. For the Management, it is possible to consolidate this based on the category "*transgender*," as this is the population affected by the restriction to the male-female classification. Additionally, but along the same lines, it faces the challenge of defining the financing mechanisms for the variation in the sex component, given that the situation of exclusion of transgender people makes it difficult for them to cover the costs of such modifications. However, a third sex category raises questions such as "*at what age does a person with sex T retire? Should they resolve their military status or not? Does the condition stipulated in Article 242 of the CST apply to them or not?*" It also challenges the health system, with its current parameters of action, to respond to the specific needs of each person, without considering only whether they are a man or a woman.

For this institution, the most significant challenge for the State is to readjust information systems towards a broader conception of sex and to impact the rights and services that use it as an allocation criterion .

The Bogotá District Secretariat for Women pointed out that one of the elements of civil status is sex. This is defined in a framework in which it is conceived as a characteristic linked to gender. The sex-gender system denotes a set of social agreements based on human biological sexuality, supported by the division between men and women. It has two constituent elements: (i) the correspondence between biological sex and personal identity, which generates power relations between those who comply with it (cisgender) and those who challenge it (transgender people); and (ii) heterosexuality as the norm. Under this system, from birth, sex-gender correspondence is imposed as an expectation, which hinders the personal and social development of those who do not conform to it



it. Parameters of normality are imposed that generate social gaps and exclusion against forms of identity that are different and distant from the male-female duality. In this context, *"the term non-binary is used for those who decide to construct themselves outside the hegemonic male or female patterns. It is a political commitment that precisely vindicates this freedom_[9 d 8 e] expression and self-identification with regard to gender"*

The entity emphasized that *"there is a gap in the Colombian legal system regarding non-binary identities, which can lead to the disregard of the rights of people with diverse identities."* The invisibility to which they are subjected in the records of state institutions creates scenarios that encourage violence and discrimination against them. And despite the fact that since Ruling SU-337 of 1999, the Constitutional Court has insisted on the need to make regulatory adjustments to ensure the rights of those with diverse gender identities, the legal loophole persists.

For the Secretariat, case law has been clear that identity is a fundamental right that must be guaranteed through the recognition of legal personality, as its externalization and as the mechanism for the identification of persons by the State. On this understanding, sex can be changed at the will of the person, without medical tests or expert opinions. The expression of their will is sufficient in the absence of correspondence between the registered sex and the identity they have developed. Furthermore, it has emphasized that it is not possible to prevent the exercise of legal personality by those who, anatomically, do not meet binary parameters, in the case of intersex persons. The foregoing is based on the understanding that sex does not determine the status of citizen or human being. However, there is no jurisprudential development on non-binary identities and, unlike intersex persons



, it cannot be expected that there will subsequently be a binary definition of the identity of the person concerned.

In view of this and based on its institutional work, the entity understands that the main challenge faced by transgender persons who identify as non-binary is the lack of state recognition. This results in a serious violation of their fundamental rights. They are forced to identify with a gender that does not correspond to the identity they have constructed based on their experiences. Additionally, in view of their identity, *they "face at the social stigmatization and discrimination, that develops a chain of barriers [to 1 c0 c0 e] in the social, cultural, and economic spheres"* . This is still

when, at present, it is clear that *"the binary construction [1 d0 e1 l] of sex and gender departs from social reality"* .

In this specific case, for the Secretariat, despite jurisprudential developments that point to a clear distinction between sex and gender as biological and cultural factors, respectively, it is essential to appeal to both concepts as social constructs. The entity highlighted that this is suggested by current jurisprudence, insofar as it provides that the sex recorded on identification documents must coincide with the identity experienced by the person. Thus, the Court has arrived at a broader understanding of the notion of sex, in the interest of respect for diversity. In accordance with this, through District CONPES No. 14, Bogotá proposes that both categories are a social construct and that even the distinctions between men and women based on biological criteria are not clear, given the wide range of genetic and phenotypic variations.

Thus, for the entity, *"it is essential to recognize that there are people with diverse gender identities who do not wish to be pigeonholed into the binary categories of female and male that have been used."*



Traditionally, par to define the 'sex' of individuals in the civil registry" .
 The foregoing, in accordance with the duty to respect and guarantee their rights, especially el to identity as the "domain of what one wants to be" . This situation is only possible through state recognition of legal personality. Therefore, although identity goes beyond identification in a registry, the two must correspond with each other.

Finally, based on this issue, the Secretariat proposes to analyze how essential it is for sex to appear on identification documents, given that the relevant category is gender. In this regard, it specified that, at present, sex divides us into women, men, and intersex persons, but not as it has been represented in identification documents as male or female.

For its part, **Caribe Afirmativo** emphasized that for the United Nations, sexual and gender diversity refers to the ability of individuals to "assume, express, and live their sexuality, as well as their identity and sexual orientation" , which implies the recognition that "all bodies, all sensations, and all desires have the right to exist and manifest themselves, to live their fulfillment as human beings, without in c l e n c i n g anyone, under the respect for their otherness" . To understand this, it is necessary to highlight the way in which the concepts of sex and gender have been approached based on a "dichotomy between nature and culture to establish that sex is a biological characteristic, due to genitality, and is a category that is not open to dispute, but only to determination through observation (...). Gender is traditionally understood as the socially constructed roles assigned to sex that determine what is understood as masculine or feminine" . While the former is conceived as a static category, the latter is characterized by its adaptability. This organization emphasized that it is necessary to rethink these



definitions, as their persistence reinforces the idea of the existence of two sexes and two genders. It emphasized that, contrary to widespread belief, both concepts refer to social constructs about the body and subjectivity.

The organization noted that the binary system, which is rigid and based on a biological relationship between sex and gender, leads to a multitude of challenges and barriers for non-binary people. Such a system endorses the construction of certain identities and ignores others that do not fit into its logic, which generates scenarios of structural violence. It is based on the sex assigned at birth, and although there are efforts to seek modification without requiring surgical intervention or medical authorization, it necessarily implies a choice of one of the two binary gender markers. In this context, non-binary people are compelled to adapt to the sex imposed at birth, or to the opposite sex, as well as to the social expectations associated with it, despite not identifying with either. The organization even highlighted that "when their self-identification and physical appearance do not correspond to the sex legally established in their identity documents, transgender people often face greater challenges and barriers in the system, such as the requirement for surgical interventions to complete registration procedures" .

In the interests of plurality, the challenge is to recognize non-binary identities, such as those "diverse ways of being a woman or a man, including for those trans women ^{who} retain the genitals of their sex assigned at birth" . Failure to do so hinders the exercise of rights, creates differences in treatment and opportunities to the detriment of the principle of equality, and hinders the recognition of legal personality. Ignorance on the part of public and private entities renders people invisible, marginalizes them, and deprives them of full citizenship in their daily lives. In this regard, he specified that "[t]he greatest form



of invisibility and disregard for the rights of transgender people stems from their gender identity, the way in which institutions insist on referring to them by their sex assigned at birth. Similarly, in the health system, the oppression to which they are subjected is increasingly evident in the biological reductionism applied to the person in terms of the care they receive, which is laden with a pre judgment of their gender identity and/or expression."

The organization clarified the differences between intersexuality and trans experiences. For her, intersexuality refers to circumstances in which bioanatomy does not conform to the standards that define female or male physicality, in the presence of atypical bodies. These individuals are subjected to structural violence associated with the imposition of a binary sex system based on genitalia identified at birth. Meanwhile, when referring to transgender people, we are referring to individuals whose gender experience is not what society and its cisheteronormative system has assigned to the sex they were assigned at birth. In this sense, "*when we talk about intersex people, we are referring to sex, sexual identity, a biological and anatomical condition, and on the other hand, when we talk about persons, we are referring to gender identity or expression*"

In relation to the case that the Court is analyzing on this occasion,

Caribe Afirmativo held that "*the elimination of gender categorization is not relevant in terms of guarantees, but it does require a significant change in its application, beginning with the urgent dismantling of binary thinking.*" . In his opinion, the potential of non-binary sex assignment implies the recognition of a wide range emerging and non-hegemonic gender identities by the State. The recognition of diversity depends on this. Thus, for the organization, "*the*



Non-binary assignment (using the acronym NB) is the best way to protect their rights, as an autonomous form of recognition. However, the inclusion of this acronym must subsequently lead to it being given content as a new legal reality, distinct and independent from that of men and women. This applies, for example, to pensions. He emphasized that, in the identification system, the ideal would be to start with an indeterminate sexual status in the early years of an individual's life and, as they construct their own identity, update this field.

The **Foundation Grupo de Acción y Apoyo a Personas Trans (GAAT)** stated in its intervention that sex and gender identity are two different concepts. It also highlighted the need to distinguish between identity documents (*Civil Registry, Identity Card, Password, Passport, Tax ID Number, (...) driver's license, educational qualifications, cards, certificates such as the electoral card, virtual and physical bank cards (virtual and physical), among many others*) and the citizenship card.

He spoke out to highlight how the LGTBI population has historically been discriminated against by a system of social order that establishes the limits of normality in society through the imposition of heteronormativity. He emphasized that this dictates a binary gender system that invalidates life experiences and behaviors that deviate from social expectations and stigmatizes them. As a result, *"any body that does not conform to the norm is considered sick, strange"*. Under this system, all people are expected to be cis, or in other words, to identify with the gender assigned to them at birth, and on that basis, *"it determines, admits, and massifies universalizing representations of gender subjectivities"*. This is based on the mistaken idea that femininity and masculinity are *"pure identities"* that can be imposed on human beings.



He emphasized that gender identity is each person's internal or individual experience. It may or may not correspond to the sex assigned at birth. Thus, it is defined as a free and autonomous construction of the individual and is not necessarily related to their genitalia. The protection of this identity is linked to the right to human dignity, as found by the IACHR. However, trans realities involve a transition between socially constructed genders, so they do not usually represent fixed identities, as transitions are not closed and often reflect a permanent transition. Nor is it clear when a trans experience begins, nor is it possible to identify a fixed and abstract course for it, as each gender experience is different.

In this context, non-binary identities are those that *"do not identify solely or completely as women or men; that is, they transcend or are not included within the female-male binary [so that] (...) they bring together, among other identity categories, people who identify with a single fixed gender position other than woman or man, people who partially identify as such, people who flow between genders for periods of time, people who do not identify with any gender, people who disagree with the very idea of gender"*. For the intervener, the formal recognition of these non-binary gender identities is an obligation of the Colombian State.

In this regard, he drew attention to the fact that the state apparatus has the potential to transform the underlying sociocultural context. It is one of the means for legitimization and recognition of identities that are strange to heteronormativity, through the promotion of their access to different social and institutional spheres. Under this understanding, the Foundation considers that the Colombian has an *"ongoing duty to protect"* non-binary gender identities.



The GAAT Foundation recalled that people with diverse gender identities are specially protected by international law and that States must provide them with safe and dignified environments in which to develop. It emphasized that both the UN and the Inter-American Court and Commission on Human Rights have highlighted the need for identification documents to reflect self-perceived gender identity, as this is part of legal personality. They have recommended the adaptation of all data that does not reflect this, such as name, photograph, and sex, and in this process, they have emphasized the need to consult with the LGBTI population on the variations associated with them. In line with this, it highlighted that the jurisprudence of the European Court of Human Rights considers it a disproportionate interference by States to prevent changes to the gender assigned at birth and has described it as the imposition of an identity that does not correspond to the reality of the individual, in disregard of their private life.

For the Foundation, in Colombia, the Constitutional Court has recognized gender identity as a fundamental right. It has held that this is achieved through correspondence with personal identification documents, especially in the possibility of correcting the sex and name recorded in them. It has also highlighted the importance of the identity name. In line with this, the Colombian State is currently making some specific progress in recognizing non-binary life experiences:

The Mayor's Office of Bogotá, through



Directive No. 005 of June 1, 2021, has stipulated that in local government offices, the trans population will be identified by their identity name in contracts, institutional correspondence, and official documents, such as ID cards. Similarly, it consults trans experiences in the 2021-2032 Action Plan of Bogotá's LGTBI Public Policy and in the District Strategy for Menstrual Care for women, trans men, and non-binary people with menstruating experiences (the latter in accordance with the provisions of Ruling T-398-2019 and Order 001 of 2020).

- The National Electoral Council (CNE), through Resolution No. 3480 of 2020, ruled that when exercising their right to vote, transgender people can choose the line (for men or women) in which they will wait their turn to vote. This is regardless of the information contained in their identity document.

- Recently, Johnajohn Campo Betancourt was awarded a **master's** degree in Fine Arts by the Antonio María Conservatory of Music in Cali.

- Finally, Resolution No. 0971 of April 28, 2021, establishes that when availing themselves of the Temporary Protection Statute for Venezuelan Migrants, *"transgender Venezuelan migrants (...) may register in the Single Registry of Venezuelan Migrants (RUMV) and obtain a Temporary Protection Permit (PPT) with their gender and identity name[, and] (...) may request a change of gender and name on their P[er]m[its] for Temporary Protection (PPT), once"*

However, it also recognized that name and sex changes underwent a significant evolution with the issuance of Decree 1227 of 2015. However, in the



Currently, this law has shortcomings in its implementation. Some are institutional and others are sociocultural, associated with social stigmatization. Despite regulatory advances, situations in which prejudice prevails continue to exist for transgender people. Discrimination in these situations leads the transgender population to exclude themselves and avoid certain social settings in which their self-perceived identity is not recognized. The foundation pointed out several of these situations in the following terms:

- *Healthcare system.* The sex recorded on identification documents conditions access to medical services. This leads to the segregation of the transgender population, who usually choose to carry out their medical treatment and interventions on their bodies autonomously and clandestinely. An attempt was made to resolve this situation in 2018 through the "*Health Guidelines for Humanizing Care for Transgender People*," but these were no longer promoted by the Ministry of Health. In addition, it is common for transgender people to experience violence from administrative and medical staff in this area.
- *Workplaces.* Transgender people have been marginalized in formal workplaces. In these settings, their identity documents are questioned because the sex listed on them does not correspond to their identity. This situation has a direct impact on the socioeconomic conditions of people with non-binary identities.
- *Police violence.* The mismatch between identification documents and gender identity leads to harassment and persecution in public spaces where police authorities require identification cards. This exposes these individuals' privacy and rights when they come into contact with members of the security forces. This exposure is exacerbated by



administrative measures such as "*peak and gender*."

In this specific scenario, "*when a citizen does not meet the desired expectation between physical appearance and documentation, they are punished by the state institution and their gender identity is 'verified' through inappropriate touching, #es a and forced nudity (sexual violence)*" under an erratic conception that assumes that "M" or "F" correspond to a specific body and genitalia.

The organization argued that the lack of recognition of gender identity in identification documents hinders access to services and imposes material restrictions on the exercise of rights. As long as this persists, the non-binary community will be subjected to invisibility. According to the IACHR, in most states, there are no mechanisms for rectifying registration, and as a result, their right to gender identity is violated, with direct harmful effects on their daily lives.

Their inclusion, based on the modification of identification documents, can contribute significantly to their inclusion in official records and to the formulation of pluralistic public policies aimed at reducing the social inequalities that currently operate to their detriment. Thus, the inclusion of other options in the sex marker leads to the reformulation of information systems and administrative decision-making. It imposes on them the obligation to account for the existence of people with non-binary identities. However, the Foundation emphasized that the recognition of a non-binary identity implies the transformation of identification technologies in Colombia and the regulation of people's rights and daily lives.

In that sense, stated that the modification of the



personal identification document to include a non-binary category in the "sex" marker will have positive effects on transgender people. It recognizes their right to self-determination and makes them visible in the state apparatus. The above, as a tool for the comprehensive protection of their rights. However, respect for gender identity requires recognizing practices of institutional violence and refraining from "*setting our identities in stone on identification documents.*" To that extent, for her, an alternative or third option in the sex component of the citizenship card should consist of its voluntary elimination by people with non-binary identities.

At the conclusion of its intervention, the GAAT Foundation made several requests to the Review Chamber. In this specific case, it asked (i) not to prioritize an administrative problem over the right to gender identity; (ii) to create a space for dialogue with organizations and activists in Colombia and the region to address the alternative of a sex marker; and (iii) to leave the door open to a gender identity law in view of the existing regulatory vacuum. More structurally, it highlighted the need to: (a) counteract the barriers to access to the provisions of Decree 1227 of 2015, particularly with regard to the need for free notarial services; (b) recognizing the problems caused by discrimination scenarios for mental health and paving the way for reparations for institutional violence suffered by people with non-binary identities; and finally, (c) eliminating sex marking on identity cards to change the sex component to gender marker or gender identity.

In addition, the intervener requested that the Ministry of Health and Social Protection be urged to implement the recommendations regarding the right to health of transgender persons, formalize medical boards to accompany them, and implement



participation committees for this population in the system. She also requested that the Ministry of the Interior be urged to create a national public policy to guarantee their rights.

The **Program for Action for Equality and Social Inclusion (PAIIS)**, attached to the Legal Clinic of the Law School of the University of Los Andes, argued that "[n]on-binary, genderqueer, binary gender, gender-fluid, or gender-dissident persons are a vulnerable population (...) because their gender identity and expression (...) does not manifest itself within the heteronormative canons of man or woman (...) they do not identify with [e] [g] the gender assigned at birth, nor with the opposite gender". According to the criteria of the CID [12, 8] they are not considered cis or transgender persons. They arise because the United Nations currently recognizes that the right to self-determination of gender identity is central to the realization of human dignity. To that extent, states must ensure access to legal recognition of gender identity.

Currently, several states have moved toward offering the option of a diverse gender identity on identification documents. For PAIIS, this reflects progress (through judicial and legislative channels) in recognizing gender identity on identification documents for the non-binary population, through categories that transcend the male-female duality. This "is a tool (...) [for] the fulfillment of the obligations (...) of States in terms of protecting and guaranteeing the rights to non-discrimination, equality before the law, privacy, identity, freedom of expression (sic), and the right to self-determination of gender identity." Based on this conviction, the Program recommended protecting the rights of the plaintiff through "a gender-neutral ~~main~~ identity documents". The foregoing, based on the



joint action by the Registrar's Office, the Superintendency of Notaries and Registries, and civil society organizations. It also asked the Constitutional Court to recognize gender neutrality in identity documents and to require actions that improve the daily lives of non-binary people, because they do not depend on official documents and do not find a definitive solution in them.

The **Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture of the University of the Andes** presented a joint technical concept that they sent to

this Corporation by email on November 24

from 2021 . They pointed out that the Court

The Constitution has protected diverse gender identities, on the understanding that this is a means of realizing the free development of personality through which a person constructs themselves, "*owns themselves, governs themselves, is master of their own [132] and of the environment with which they establish their life plan*" . However, both in legislation and in case law, there is a gap regarding non-binary identities and the rights derived from them.

[133]

Other states have made progress in recognizing

non-binary gender identities to legislative, administrative, or judicial measures that aim to include different markers ("Other," "Diverse," "*Undesignated-binary*" and "X") to

identify them . Similarly, the recognition of non-binary identities has permeated the international scene through the Yogyakarta Principles and the Advisory Opinion of the Inter-American Court of Human Rights in 2017. The former recommend eliminating sex and gender as requirements for recognizing legal personality, as they consider that it cannot depend on the disclosure of such information; and while this is included in personal documents , recommend markers non



The second recognizes the existence of non-binary identities and recalls the obligation of States to promote the correspondence of official records and documents with the identity of their citizens.

Regarding the relationship between trans and intersexuality, the speakers pointed out that intersexuality (referred to in religious or medical circles as "*hermaphroditism*," thereby pathologizing it) and trans life experiences have been subject to discrimination based on stigmas related to the breakdown of dichotomous orders of sexuality and gender. Intersex and trans people share similar situations of rights violations because they are considered abnormal and are excluded as a result. Even in contexts such as South Africa, ¹³⁶ non-binary identities are covered by the concept of "*stabane*," which refers to a lack of correspondence with binary gender or sexuality schemes.

The concept highlighted that, in Colombia, the LGTBI+ population is subjected to undignified treatment when members of the National Police and health service providers identify what they consider to be inconsistencies in their documents. Thus, the recognition of the identity of transgender, non-binary, and intersex people is essential. Therefore, openness to a third sex marker may imply some protection. However, it may also give rise to new scenarios and forms of discrimination.

In this specific matter, there are two alternatives for the concept. In line with the Yogyakarta Principles, the concept advocates for the progressive elimination of this data and the need to disclose it, so that its collection depends on the will of the individual. And, if this is not possible, it emphasizes that a third sex category must be included. In addition, it argues for the importance of replacing the field "sex" with "gender" in



identity documents.

However, the concept insists that, although a third gender marker would undoubtedly constitute progress, it is insufficient to fully address the impact on the rights of people with a non-binary identity. To that extent, they suggest that *"any decision taken should be accompanied by an explicit request to public institutions to design and implement measures to eradicate discrimination related to gender identity, gender expression, or sexual orientation, whether manifested by the ~~public~~ [137] assumed by institutions or public servants"*. Similarly, that the modifications not only be made to citizenship cards, but also to passports, insofar as both *"are documents that are habitually presented to authorities and, therefore, as evidence shows, are the ones that most expose people to discrimination."*

In any case, the interveners stated that the reconsideration of gender in the identity documents identity implies a first step towards *"reviewing [138] state policy on population registers."*

For its part, the **Universidad del Rosario** presented its concept based on the distinction between sex (biological in nature and related to reproduction and physical and physiological traits) and gender (socially attributed characteristics). Within this conceptual framework, it argued that people with a non-binary identity are characterized by not fitting into a static gender position or by considering themselves *"agender,"* as they do not identify as either women or men.

He emphasized that, both globally and in the inter-American sphere, supranational organizations have agreed on the need for states to expand



sex markers in favor of those who identify or present as non-binary, as a historically marginalized and abused population. The University emphasized that these changes, although they may seem minor, represent the externalization of their gender identity on their identification documents for people with non-binary identities and *"allow them to live according to how they really feel, how they identify themselves and how they want to be perceived by others"*.

EAFIT University stated that the concept of gender has been dualistic. It is debated between masculine and feminine, as a consequence of a biological notion of sex. Non-binary identities are defined by the rejection of the exclusive assumption of gender as „male/man/masculine or female/woman/feminine". As such, it is in their nature not to fit in and to claim identities that transcend such limits. This type of identity includes those who have a fluid identity, oscillating between masculine and feminine. Their slogans point to a profound cultural transformation of society.

This institution specified that transsexuality and intersexuality are different concepts. The former refers to gender identity. The latter refers to variations in a person's physicality and refers to cases in which the standard female or male body is not met due to phenotypic, genetic, or chromosomal factors, internal morphological factors, gonadal factors, external morphological factors, or genital factors. It denotes a very broad set of possible physical characteristics, not limited to hermaphroditism, such as the juxtaposition of female and male parts in the same body. Thus, while transsexuality is cultural, social, and psychological, intersexuality has an eminently biological component. Therefore, although trans people *"may present a state of intersexuality at some point during their transition, under a purely semantic concept, that is, according to the RAE (sic) 'the quality by which an individual displays, to varying degrees,*



sexual characteristics of both sexes,' said indeterminacy or conjunction does not stem from a biological cause, but from an individual's decision to transition and alter their body through [s¹⁴²d] surgical, hormonal, and cosmetic procedures." . In this sense, for the University, the two realities are not comparable.

With regard to the citizenship card, the University stated that it was not originally intended for citizen identification purposes. It was restricted to electoral purposes and thus first appeared under the name "voter ID" as a mechanism to prevent impersonation and electoral fraud. It was not until 1934 that it became mandatory for all citizens over the age of 21. Thus, this document did not include the gender component, as women's right to vote was an achievement that came about in 1954. Apparently, the gender component was included in the citizenship card until the period between 1990 and 1993. In view of this, *"the 'sex' component was not necessary until just over 30 years ago, so there is really no justification, even today, for maintaining it, considering that other documents, such as the civil birth certificate or medical records, which indicate sex at birth, can be used for identification purposes. This would mean not engaging in a binary classification of the population, which [e¹⁴³d(j)] is discriminatory and contrary to the Constitution"* .

In relation to experiences of openness towards other gender classifications, he emphasized that these respond to other cultural traditions. For example, he noted how in India the new markers are limited to the identity framework offered by the different castes or ethnic groups that exist there.

Additionally, the University mentioned one of the cases that its legal office handled .



It highlighted that a non-binary person sought to have the sex component in their identity documents registered with a "T" for "Trans" and "*Terce[r] Ig[ue]n[er]o*" (third gender). After filing the corresponding writ of protection, the appeal was granted by the second instance, the Administrative Court of Antioquia, in the sense of correcting said component in the civil birth registry. With this updated document, the person concerned went to the National Civil Registry, which refused to make the change on their identity card. As a result, they filed a second writ of protection, in which their rights were protected and the RNEC was ordered to correct their document within a maximum period of six months. In the second instance, the decision was upheld in October 2021.

For its part, the **Free University** pointed out that non-binary sexual identities are those that do not identify as men or women; "*they do not identify under any gender.*" To understand this, it specified that it is essential to address the differences between *sex* and *gender*. The former is biological and is assigned at birth, based on anatomical and genetic characteristics. The latter refers to "*the parameters and roles that society has defined to determine how men and women should behave, act, dress, and express themselves*". Both concepts operate in the body and are externalized through gender identity and expression. Consequently, the institution emphasized that transgender people modify their bodies, while transsexual people do not need to do so. Similarly, intersex (hermaphrodite) people have bodily variations, but these do not define their gender or identity. In this regard, it clarified that it is important to note that among transgender people, there are those who identify as women and men.

For the intervener, the Colombian State has the constitutional obligation a third



gender category on identification documents. It emphasized that this category "may be designated as 'X', 'inter', 'other', or 'diverse'. In addition, a 'none' option should be included for people who do not wish to fit into any gender category." This would allow individuals to express their identity on an equal footing. However, the university pointed out that this poses challenges for the exercise of other rights in the areas of pensions, military service, deprivation of liberty based on classification between men and women, and the use of uniforms in educational establishments, which are usually organized according to sex.

In accordance with the above, it argued that the rights claimed in the tutela action under review must be protected. To that extent, it considers that the creation of a third gender category in identity documents is necessary. Consequently, the institution indicated the need for the Court to "order the Congress of the Republic to issue a statutory law to regulate the fundamental right to legal personality and the free development of legal personality to include a third category of *género* to recognize diverse gender identity"

Finally, regarding the history of the citizenship card, the University specified that it was not until 1993 that the sex of the person was recorded and the options F (female) and M (male) were included, a heteronormative classification that is still in force on the hologram and digital cards. Its inclusion in the document has not guaranteed the identity of people who do not fit into this binary system.

Finally, the presiding judge invited **Johnajohn Campo Betancourt** to participate in this proceeding. This is the person who, after requesting non-binary recognition in their professional title, succeeded in having it referred to as "maestre". Based on their life experience, they considered that the official inclusion



of a non-binary sex designation contributes to the formulation of differential public policies to respond to the needs of transgender people in an intersectional manner. He stated that it allows non-binary realities to be articulated and thus enables their social and institutional recognition. On the contrary, *"a document conceived in binary terms is problematic because it persists in rendering invisible our identity constructions, the realities of trans bodies, our life experiences, ^[151]trans, gender constructions, and modes of expression."*

In his response, he emphasized the need to distinguish between "sex" and "*gender*," as this is the mechanism for developing a differential approach that includes trans life experiences. However, he argued that its incorporation does not depend solely on a regulatory effort, but must be accompanied by educational actions in this regard.

All documents received during the review of this case were made available to the parties for the purpose of rebuttal, in accordance with the first paragraph of ^[152]Article 64 of the Rules of Procedure of the Constitutional Court . None of them made any statements in relation to them.

II. CONSIDERATIONS

Jurisdiction

1. By virtue of the provisions contained in Articles 86 and 241.9 of the Constitution and Articles 31 to 36 of Decree 2591 of 1991, this Chamber has jurisdiction to decide the present matter.

Subject matter under review

2. The person who filed the writ of protection claimed to be



[153]
transgender _____ and did not identify with either of the binary genders, male or female. They clarified that their current physical appearance does not correspond to the social construct that has been built around these genders and that their body exhibits characteristics of both categories. In order to reflect their identity on personal identification documents, they changed their name, numerical quota, and sex on their civil birth certificate and ID card. Despite this, the binary conception with which the latter document is designed makes it impossible for those variations to reflect their individual identity. Therefore, they have had to choose one of two sex markers ("M" or "F") when neither of them matches their experience and the identity they have constructed for themselves. In this way, they emphasized that in their specific case, their identification document "does not fulfill fulfilling [1534] purpose, identify and single out individuals" .

He recounted how, throughout his life, in various everyday situations, he has experienced treatment contrary to his dignity by authorities and individuals. He considers that this is the result of the mismatch between his identity, his gender expression, and the information recorded on his identity card in the "name" and "sex" fields. Although she mentioned several specific scenarios in which she has been excluded on the basis of her gender, during the review she clarified that: (i) she brought them to the attention of the judge as contextual elements, (ii) she has used other defense mechanisms in relation to them, and (iii) in any case, she is not interested in initiating a debate and obtaining specific constitutional protection in relation to them. She even emphasized that these are hurtful situations that she does not want to recall and asked the Court to focus on the specific reason that led her to seek constitutional jurisdiction.

In this regard, the plaintiff emphasized that his request for



The appeal focuses exclusively on the possibility of: (a) changing her name for the second time, to incorporate a neutral name in her civil registry and on her citizenship card; and (b) changing the sex component for the second time (i) without waiting ten years to do so (of which she has five years left to achieve), as provided for in Decree 1227 of 2015; and (ii) this time to transcend the binary categories, male or female, admitted by the same decree. In this way, in her identity documents, she can omit the reference to sex or change it to "x," "*neutral*," or "*undetermined*." She insisted that her request seeks to protect her right to officially identify herself with a neutral name and a different gender marker. Thus, their claim focuses on the protection of their rights to human dignity, legal personality, free development of personality, and freedom of conscience, for which they requested the non-application of Articles 2.2.6.12.4.3. and 2.2.6.12.4.6. of Decree 1227 of 2015, as they are unconstitutional in his case.

3. The trial judge denied the appeal, considering that the defendants, both the Ninth Notary Public of Medellín and the National Civil Registry, acted and resolved the requests of the interested party in accordance with Colombian law. For its part, the court of second instance upheld the rights claimed in relation to the name change. In this regard, the judge ordered that the name be changed only in the civil registry of birth of the party seeking protection. However, it upheld the *lower court's* decision to deny the sex change. This is because it is a matter whose variation could compromise other fundamental rights in the future (in terms of pensions, for example). In this regard, it emphasized that the inclusion of a sex marker other than "M" and "F" depends entirely on the Congress of the Republic.

4. During the review, public entities and all



intervening parties point out that there is currently a gap in protection in the legal system. They also specified that non-binary sexual identities have not been recognized to date and that, for them, the current identification mechanisms, based on the binary system of sex and gender classification, represent multiple daily challenges. In their view, the main obstacle is that these mechanisms do not take into account the construction of their identity as people who do not recognize themselves within the female or male genders.

5. However, it should be noted that the writ of protection must be filed by the holder of the fundamental rights in question and cannot be initiated ex officio. Thus, the Sixth Review Chamber emphasizes that Dani García Pulgarín, independently, limited the matter to be analyzed to the right to legal personality, human dignity, free development of personality, and freedom of conscience, in pursuit of the adequacy of his identity documents and the partial non-application of Decree 1227 of 2015. As previously noted, the plaintiff specified that the amparo does not cover such scenarios and that the only thing he seeks is the correction of his identification documents so that they are consistent with his gender identity.

The plaintiff deliberately excluded from the present debate anything related to the right to health, work, and human dignity in contact with the security forces. They specified that their mention of these issues in this matter does not imply a claim to their rights in relation to those situations, but rather serves as historical (individual and collective) support for their sole and exclusive claim. Thus, he requested that those scenarios of disregard for his rights be considered only as contextual information. He even stated that he does not wish to discuss those situations or expect protective measures, and that their mere mention makes him uncomfortable. Therefore, in order to safeguard his



freedom to act, none of the authorities related to such aspects were involved in this matter, and such matters will be omitted from this ruling.

6. Given this situation, the Court must first determine whether the present action for protection is admissible.

Formal analysis of admissibility

7. In the Chamber's opinion, the request for constitutional protection under consideration in this case meets the formal requirements for admissibility. To explain this, it will first refer to issues related to active and passive standing. It will then analyze immediacy and subsidiarity.

Active standing

8. According to Article 86 of the Constitution and Article 10 of Decree 2591 of 1991, and the jurisprudence of this Corporation, all persons who consider that their fundamental rights are threatened or violated by the action or omission of an authority or, in certain cases, of private individuals, are entitled to request constitutional protection. Thus, only the holders of the rights at stake have standing to claim the protection of the judge of tutela, either directly or indirectly. They do so directly by bringing the action on their own behalf and indirectly when they do so through (i) a legal representative (e.g., minors), (ii) the Public Prosecutor's Office, (iii) an unofficial agent, or (iv) a legal representative.

9. In the case under review, the person who brought the present action is the holder of the fundamental rights that are sought to be vindicated. On her own behalf, she filed this request for protection and sought the intervention of the constitutional judge, perceiving a possible scenario of infringement of her *fundamental rights*. Therefore, she is entitled to bring the action.



Passive standing

10. Passive standing refers to the legal capacity of the person against whom the action is directed to respond, if necessary, ^[55] for the violation of the rights claimed , or to restore their exercise. This concept answers the question of who can be sued. According to Article 86 of the Constitution, it is possible to bring actions for protection ^{against [56]} actions and omissions: (i) by public authorities and (ii) by private individuals, ⁱⁿ specific events, as indicated in Article 42 of Decree 2591 of 1991, among which is the exercise of public functions.

11. In the case under review, the entities against which this writ of protection is directed, namely the National Civil Registry (RNEC) and the Ninth Notary Public of Medellín, have different legal statuses. On the one hand, the Registry is a public entity which, pursuant to Article 120 r higher, forms part of the electoral organization and is responsible for identifying citizens.

On the other hand, the Ninth Notary Public of Medellín, represented by the notary, is a private institution. The Court has clarified that notaries are „private individuals ^{who} have been assigned the performance of a public function" (). In this regard, it has specified that the organization assigned "tasks related to public faith" ^{and assigns them} as a public service under Article

131 superior. In the exercise of their duties, "they are vested with the character of authorities (...) [since] they occupy the position of state authority and therefore enjoy the prerogatives



of public authority," and are subject to the duty to act impartially. Thus, case law has understood that, in accordance with Article 42 of Decree 2591 of 1991, notaries are "private establishments that perform public functions^[s.16 y.4] with respect to which the action of tutela is applicable" . This is especially true when, despite being private entities, notaries "play a decisive role in protecting the civil status of individuals (...) [and] any omission, whether deliberate or not, undoubtedly has a disruptive effect on the^[r.5 e.] knowledge of the personality of individuals" .

12. To that extent, both entities, one public and the other private but performing public functions, are accused by the plaintiff of compromising their rights by refusing to: (i) change their name for the second time and (ii) modify the sex component of their civil registry and citizenship card to include a non-binary marker, other than "male" or "female." Therefore, the Chamber considers that the requirement of passive standing is satisfied with respect to both defendant entities.

Immediacy

13. Another requirement imposed by the nature of the writ of protection is immediacy. It must be filed with the purpose of providing timely and effective protection of the legal rights that the interested party considers to be compromised. There must be a serious and imminent threat to those rights that warrants urgent protection by the judge hearing the writ of protection.

For this reason, the legal system provided for a summary and preferential process for the processing of the writ of protection, which would allow the objectives formulated by the primary constituent to be met. Correspondingly, it imposed on the plaintiff the duty to apply to the judge for protection within a reasonable period of time, which, although not set as a time limit



expiration, must be estimated in accordance with the factual assumptions supporting the request for constitutional protection. The timely exercise of the action often reveals the petitioner's urgency in seeking the protection he or she is claiming.

14. In this specific case, the plaintiff has turned to the constitutional judge because of the defendants' refusal to modify, for the second time, his civil birth certificate and citizenship card, in relation to his name and sex.

They sought these modifications, first, before the National Civil Registry of the State Civil Registry, on 30 of December [1d6e6] 2019. This entity, on date not , argued that the changes to the identity card

Citizenship is subject to the information contained in each citizen's civil birth registry, so any changes sought must first be sought in that document. However, the entity pointed out that the scope of the sex correction could not go beyond the markers "M" (male) or "F" (female). Through this clarification, it informed the scope of the variation, but did not deny the intended change on that basis.

If the response was communicated in 2020, as is presumed (since there is no evidence to suggest that the response exceeded the legal deadline for issuance), it would have been dated in the last days of January of that year. From that moment until the filing of the action, approximately one year would have elapsed. However, for the Chamber, that is not the moment from which the time taken by the active party to file the appeal in relation to the Registry should be counted. This is because the entity's response did not constitute a refusal of the request for a name change. It merely informed the interested party of its lack of jurisdiction to rule on the matter and warned them of the restrictions provided for by the regulations in relation to their request. Thus, la negativa al cambio no surgió de esa



Subsidiary nature

15. *The* Court reiterates that the use of tutela as a mechanism for defending fundamental rights threatened or violated by an authority or a private individual is exceptional. Decree 2591 of 1991 expressly establishes that tutela is only applicable when "*the affected party has no other means of judicial defense.*" Thus, the admissibility of the action is conditioned by the principle of subsidiarity, on the understanding that it cannot supersede ordinary or extraordinary remedies of defense . The foregoing, unless these are not suitable for protecting the fundamental rights alleged (in which case the protection will be definitive) or there is irreparable harm to be contained (which implies that protection by means of guardianship is temporary). Hence, in general terms, "*it is affirmed [16] tutela is not an additional or complementary means*" means of defense.

Failure to observe this principle is grounds for dismissal of the amparo, in accordance with article in 6.1 of Decree 2591 of 1991 . Thus, the consequence of the existence of another suitable and effective means of judicial defense is that the constitutional judge cannot enter into discerning the merits of the matter raised.

16. The jurisprudence of this Corporation has specified that, in order to achieve the modification of components of the civil registry, the legal system provides for the process of voluntary jurisdiction. In accordance with the General Code of Procedure, "*the correction, substitution, or addition of civil status entries or names, or the annotation of pseudonyms in records or*



registration fol. 105 thereof is processed by that procedure, the jurisdiction of which was awarded to the municipal civil judge .

17. That extent, it is clear that the voluntary jurisdiction process is reviewed for the modification of the name and sex of individuals in the civil registry. However, in the case of those who have established diverse gender identities, case law has understood that this mechanism is neither suitable nor effective for their protection [176] .

In this case, the existing judicial means is not suitable because, even if the person concerned were to approach the civil courts to obtain a change of sex, apart from the temporal and material limitations contained in Decree 1227 of 2015, as the courts focus on the legal and not strictly constitutional debate on the matter, they would not be able to promote the debate raised on this occasion.

Furthermore, it is not an effective means of discussion. The reason is that when the cause of the modification of these items is the lack of correspondence between the self-perceived identity and the information contained in the identification documents , subjecting the person to the perpetuation of that situation, while the ordinary judicial cause is being defined, is disproportionate a nd constitutes an exclusionary burden that specifically works against them. This is because, by definition, it is unusual for the cisgender population to be subject to inconsistencies between their official records and their gender identity. This is a situation that applies only to the trans population, including those with a non-binary identity, and constitutes a serious infringement of the *fundamental rights* of individuals who are subject to special constitutional protection, such as people with diverse gender identities .



18. In this case, the plaintiff argues that both their name and the information about their sex recorded in their personal identity documents do not reflect their gender identity and conflict with it. They explained how they have opted for changes to their body, their civil birth registration, and their identity card in order to conform to one of the two genders currently recognized in the citizen identification system, male and female. However, given their personal history and experiences, they have established a non-binary identity, for which there is currently no marker that allows them to harmonize it with their identification documents.

Requiring the person bringing this action to exhaust voluntary jurisdiction is disproportionate, as it exposes them to the possibility that, while this mechanism is being defined, the situations of discrimination and social exclusion against them based on their gender will persist and manifest themselves daily in every aspect of their life. It implies limitations on their ability to develop their identity in accordance with their freedom. It leads them to maintain the conditions of invisibility in which they have had to function until now, due to the gender prejudices that weigh on them. All of this, in principle, could constitute a serious infringement of their rights and the very possibility of being themselves on a daily basis, and in every area of their existence.

In line with the above, although there is a means of legal defense, it is neither suitable nor effective for the protection of the rights of the person who requested the injunction. Therefore, the requirement of subsidiarity is met.



19. In view of all the above and given that the requirements for admissibility have been met, the Chamber will now consider the merits of the case under review. To do so, it will set out the legal issue to be resolved on this occasion and, on that basis, determine the structure of this ruling.

Statement of the legal issue and structure of the decision

20. On this occasion, the Sixth Review Chamber will determine whether the National Civil Registry and the Ninth Notary Public of Medellín violated the plaintiff's fundamental rights to human dignity, legal personality, free development of personality, and freedom of conscience. To determine this, it will resolve the following legal issues:

- First, it will determine whether the decision not to change the plaintiff's name a second time in the civil birth registry and on the identity card, on the grounds that Article 94 of Decree Law 1260 of 1970 provides for this only once, infringes upon the rights claimed.

- Second, it will specify whether the entities sued disregarded the rights claimed by refusing to modify the sex component for the second time in the civil registry and on the identity card of a person with a non-binary gender identity, due to the failure to comply with the 10-year term since the first change and the fact that the request exceeds the scope provided for that modification ("M" or "F").



Finally, it will determine whether the exception of unconstitutionality is applicable in this case.

21. In order to reach a decision on this matter, the Chamber will address the following issues: (i) the principle of equality and pluralism in the current constitutional order; (ii) gender identity, its construction and expression, and its relationship to personal identification documents; (iii) the rectification or correction of registry information. Based on this, (iv) it will refer to non-binary gender identities, as well as experiences in comparative law regarding their recognition. Finally, it will resolve the specific matter at hand.

[180]

The principle of equality and pluralism

22. The processes of universalizing human rights, [181] inspired by an "abstract human subject," have been complemented philosophically and historically by the recognition and appreciation of plurality. This [182] is constituted through respect for heterogeneity and difference. Given that in the [183] or state [184] open multiplicity of beings, identities, capacities, [185] visions, [186] traditions and perceptions of the world, in the process of specifying rights, it has been considered that there are situations [187] and qualities [188] that is necessary take into [189]. The above, in favor of the material and effective extension material and effective extension of rights to all human beings.

A pluralistic state, such as the one adopted by the Constituent Assembly in Colombia in 1991, is characterized by the harmonious coexistence of difference. It identifies the need for constitutional guarantees to be generalized and applied in favor of all members of society, but at the same time recognizes that, in order to achieve this, it is necessary to take into account particular circumstances, in especial, las de los grupos históricamente más



vulnerable. It understands that the universality of constitutional guarantees is achieved through differential treatment, without which the realization of higher principles would be deficient and have a limited impact.

All differences must be harmonized to the point where institutions can embrace, protect, and bring them together. This is so that they can empower themselves and actively participate in the process of democratic construction of society and the State and, in turn, that the State has the possibility of strengthening itself through respectful and fruitful interaction between various perspectives on reality. To achieve this, it is necessary to understand the principle of equality, not from a merely formal point of view, but from a material one, and to overcome the idea that it is sufficient to treat all people identically. This is because the rule among human beings is heterogeneity. It is necessary to transcend a conception that articulates the universal value of rights and their legal effectiveness in each specific case, in order to descend "from the ideal to the real plane, [because] it is one thing to have the history of human rights (...) and their justification with persuasive arguments, and another to ensure their effective protection," in accordance with their particularities.

Thus, plurality transcends the idea of the simple existence of multiple visions and perceptions of the world in the same space-time. It calls for the need to achieve harmony between them and for all of them to be able to exist. It also calls for them to be permeated by institutionality and to participate effectively in its configuration and reconfiguration and in the development of state goals and values.

23. From this point of view, equality ensures, in particular, "the protection of groups that have traditionally been discriminated against or marginalized." This implies a double mandate for the state: one of

abstention—negative—

according to the which it must avoid ~~grant~~ or allow discrimination, direct or indirect, against



such subjects, and another of **intervention—positive**—according to which it must design public policy mechanisms aimed at overcoming or mitigating the effects of material inequality faced by these groups in relation to the rest of society.

24. Among those groups that have historically been discriminated against are those who experience diverse gender identities. The Court has recognized that they are exposed to stigmas and preconceptions originating in social rules and imaginaries about what is assumed to be normal in life. They are valued according to the social expectation that gender constructs coincide with people's anatomy and with the sex assigned by society to individual at the time of birth.

The very being of people with diverse gender identities challenges this conception in practice. However, they are valued according to it and, after being subjected to social interpretation of their bodies and experiences, they end up being perceived and perceiving themselves as violators of normality. From this way, social tend to look down on them within society, with consequences that are projected across all areas of their lives.

25. In Colombia, the Court has highlighted how, due to social beliefs, these individuals experience "multiple obstacles to the affirmation of their identity and the exercise of their rights". This situation creates limitations within the community. Additionally, it has emphasized that "there is no doubt about the structural nature of discrimination (...), due to the contextual preponderance of sexist patterns and standards of normalization that tend to make them invisible". Thus, case law recognizes them in the current constitutional order as subjects



. The above is intended to counteract the daily and specific effects of the discrimination they face. Under this category, they seek to assert their existence and participation in society and in the State.

Additionally, both international law^[203] and the Inter-American Human Rights System^[202] as well as

Article 13 of the Constitution categorically prohibit any discriminatory treatment based on a person's sex or gender.

26. It follows that the Colombian State, recognizing the historical burden of undervaluation to which people with diverse gender identities are subjected, has a duty to promote equal opportunities for this social sector. It is also obliged to refrain from creating situations that result in the disregard of their rights, as these rights are reinforced by the Constitution. For the Court, "*the areas of protection of the fundamental rights to equality, human dignity, free development of personality, and education are the effective guarantee and absolute respect for [p 2 l 0 a 5] diverse sexual orientation and gender identity*" and these have been^[206] solidated as criteria suspected of discrimination .

Gender identity, its construction, and externalization. Official identification documents as a mechanism for its affirmation

27. Identity is the definition of oneself. It is the definition of what one is within the framework of a social group . It is constructed over the course of a human life and, according to personal experiences, is reconfigured. This notion of self is transcendental, in that it situates the subject in society, in familia and in all the spheres in which they operate . It assigns them a role in these spheres, through



which the person interacts with others and recognizes how to do so. From this perspective, in contrast, the absence of identity means a reduction in the possibilities for human beings to participate in

[209]
social dynamics .

One of the scenarios in which this self-referential conception of the person is constructed is gender. In this way, human beings construct an idea of themselves in relation to their experience of the rules, concepts, and perceptions of gender in society, and from this they position themselves, perceive themselves, and interact.

28. According to the jurisprudence of this Corporation, gender identity and self-perception are thus a fundamental right. It entails the individual's ability to define themselves based on their experiences and perceptions of gender. Similarly, it imposes on society and the State the duty to respond [e₂ r₁₁] to that self-referential conception of the person and to treat them in a manner consistent with and respectful of their view of themselves.

In light of this, the Chamber reiterates that gender identity, within the framework of the 1991 Constitution, must be understood as an autonomous construct and a product of the individual's free will. It is essential to understand it as the result of human volition and not of human nature. In the past, on the contrary, gender was conceived as a result of sex, as was sexual orientation, in a scheme that even before birth abstractly determined one's destiny. Based on this, a body (female or male) was assigned a sexual orientation (heterosexual) and a gender (female or male) . Currently, gender is not assigned, it is

[214]
lived and builds .

In this sense, it is necessary to avoid confusing gender with sex or sexual orientation , with which



they are often confused. This is because gender identity is independent of the biological body, as well as emotional and sexual preferences. When these notions overlap, there is a great risk of mistakenly assuming a person's gender, for example, to make it exclusively a biological fact. This would compromise their right to present and express themselves as they wish, regardless of their genitalia. Thus, gender identity is not determined by the assignment of sex at birth. It is independent of it.

29. Conceived in this way, gender identity has two phases of consolidation. The first is internal and is exhausted in the subject. This is the moment of construction of the particularities of their being, in which the choice of gender goes through "*a prior, intimate, and personal process of defining the essential traits of the personality that will constitute the support of [218] life project that the individual intends to develop*". The foregoing, in exercise of the free development of that identity. On this point, gender identity converges with the exercise of the rights to free development of personality and human dignity.

In this regard, the Chamber notes that the free development of personality, enshrined in Article 16 of the Constitution, operates in this scenario as a general clause of freedom or a "*freedom general of action*" [219]. By virtue of this, people have the faculty to determine the particularities that define their own being, by themselves and according to their conceptions, thought patterns, and desires. It is the subjects who construct their life plan and, within it, their gender identity autonomously and without interference.

Previously, [2a]22] point in that govern their own ly and have the power to define their own being and the way in which it is to be perceived in society. Thus, by specifying their gender identity They also exercise human dignity in its dimension of personal autonomy and in the power to live as _____



the way they want.

30. The second phase associated with gender identity, in contrast to the previous one, is external to the person. It is related to the projection of their already forged self onto society. Once a person has defined their particular characteristics, they are also entitled to establish the way in which, based on those characteristics, they want to express themselves to the world and be treated in it. In this regard, gender identity coincides with the right to legal personality.

It ~~is~~ be noted that the right to legal personality [artículo 24] is enshrined in Article 14 of the Constitution , as a guarantee for all persons within the national territory. The Court has specified that it consists of "the *respect that the State and society must show for the distinctive characteristics of each person's character,*" that is, their uniqueness and defining characteristics. Thus defined, the right to legal personality converges with the right to have and express a gender identity . In fact, **Ruling T-099 of 2015** specified that "*gender identity (...) [is one of those] aspects inherent to individuals that are part of their innermost being, but they must have the possibility of being fully externalized, recognized, and respected, even to the point of generating or excluding certain legal consequences. [They have the possibility] (...) to fully express their sexuality, which cannot be made invisible or subject to reproach, especially by the State, which has a qualified duty of protection. (...) Such obligations are binding on all State authorities, and failure to comply with them may result in disciplinary or criminal consequences, as the case may be.*"

On this point and with regard to the recognition of identity, the Chamber emphasizes that, in accordance with the definition of identity as self-awareness, which positions the



subject in the social sphere and predisposes them to participate in it, "the lack of recognition constitutes a form of institutionalized subordination and, consequently, a serious violation of justice. Whenever it occurs and whatever its form, a claim for recognition is relevant (...) [which] aspires (...) to enable the subordinate party to participate fully in social life [2020] and interact with others on an equal footing" . Hence, recognition of identity by society and the state is a condition for achieving the "status of individual members of a group as full participants in social interaction. Lack of recognition, therefore, does not mean contempt and distortion of group identity, but social subordination, insofar as it is an inability to participate as an equal in social life" .

Within this same conceptual framework, for the United Nations Independent Expert, Victor Madrigal-Borloz, legal recognition of gender identity, as an internal and autonomous decision of the human being, "is key to protecting transgender and gender-diverse people from unacceptable situations of extrajudicial execution, enforced disappearance, torture and ill-treatment, beatings and heartbreaking emotional pain inflicted upon them, and from their systematic exclusion from education, employment, housing, healthcare, and all other sectors of social and community life. Therefore, this recognition [2020] is not optional, but a human rights imperative."

31. In support of this right, on the one hand, to determine oneself and, on the other, once one's being has been consolidated and one has been given an identity, to be recognized in society and by the State, one of the mechanisms provided for by the legal system that contributes to this process is identification documents, through which the person presents themselves and participates in legal transactions.



32. For the Court, civil birth registration, identity cards, and citizenship cards, as mechanisms for citizen identification, guarantee legal personality at different stages of life. The issuance of the latter two documents reflects the information contained in the first. The civil birth certificate contains data that distinguishes *individuals* and "*allows the State and society to identify persons for various legitimate purposes*, and, on the other hand, constitutes ^[232] *the identification of individuals to society.*"

Hence, the correspondence between the data recorded in these documents and the particularities of the person, that is, their identity, in this case gender, is indispensable for their development in society, for their self-recognition in it, and for their participation in the

society and the State, from its uniqueness ^[232].

33. Among the information contained in those identity documents, name and sex are particularly sensitive for people with diverse gender identities. Through these, they can reconfigure their identity to define their life project and express it

^[233] as a manifestation of their dignity. Through them, it is possible to individualize people.

The lack of correspondence between these and self-perception hinders the exercise of gender identity, as it prevents its recognition in society and institutions. It hinders the projection of one's own gender in society and leads to scenarios of discrimination and exclusion in the public and private spheres in which the person interacts.

Rectification or correction of registry information

34. In view of the relationship between identification documents



with the possibility of fully consolidating gender identity, both supranational and national bodies have highlighted the importance of allowing individuals to rectify their civil registry records to bring them into line with their true selves.

35. The United Nations High Commissioner for Human Rights, Michelle Bachelet, has recommended that the processes for official recognition of diverse gender identities be improved, based solely on the autonomy of those requesting the adjustment of their identity documents. She seeks to ensure that this is not conditional on medical examinations or physical inspections of the individuals concerned. She also specified that the process for seeking to match identification documents with gender identity should be administrative and simple, not judicial. She also considers that it should be accessible to minors. Similarly, the Inter-American Court of Human Rights considers it necessary to ensure mechanisms for rectifying registries, as it has concluded that the recognition of gender identity in documents reflects the individual's relationship with society and the State.

36. In Colombia, the correction of such data is possible through two mechanisms. The first is before a notary, through a public deed, the particularities of which are regulated in Decrees 1260 of 1970, 999 of 1988, 1227 and 1664 of 2015. The second is the voluntary jurisdiction procedure provided for in Article 577 of Law 1564 of 2012 (General Code of Procedure), which is carried out before the municipal civil judge.

37. Initially, the notarial procedure was used only when seeking typographical corrections.

On the contrary, when the marital status was altered, recourse had to be had to the courts. Substantially, legal action had to be taken, in order to ensure the stability of citizens' identification data. Thus, in principle, adjustments to the



civil birth registry due to a mismatch between the information contained therein (name or sex) and gender identity were limited to judicial proceedings.

Over time, a line of jurisprudence was established that found that the requirement of a judicial process for people who have constructed a diverse gender identity was a disproportionate requirement and an obstacle to the exercise of their fundamental rights, which were affected, [237] while the ordinary judicial case was being defined .

38. In accordance with the relevant regulations, in particular Decree 1227 of 2015 (specifically in its article 94), with regard to the notarial modification [238] of the components of the civil registry, the *change of name* is to be carried out once before a notary. Subsequent amendments are the responsibility of the civil judge.

[240]

However, **Ruling C-114 of 2017** , which examined the constitutionality of the expression "*on a single occasion*" contained in Article 94 of Decree Law 1260 of 1970, based on extensive case law on the possibility of changing one's name through a notary more than once in cases of inconsistency between the civil registry and gender identity, added an exception to this rule. Following its issuance, the restriction on notarial change is not applicable "*in those cases where there is a clear and sufficient constitutional justification.*" That is, when the harmony between gender identity and name is at risk, since in that context the modification of the name is urgent and cannot be postponed. To that extent, when the new change is motivated by the desire to harmonize the name and self-perception based on gender, the person may go before a notary to make the change, more than once.



With regard to *sex change*, according to those regulations and especially articles 2.2.6.12.4.3. and 2.2.6.12.4.6. of Decree 1227 of 2015^[241], this can only be done twice before a notary public. There must be a ten-year interval between the first and second ~~instances~~ to ensure the stability of the citizen identification system. Furthermore, the reform is limited to the adoption of the opposite sex marker, so that those who register as male become female, and vice versa.

39. From this perspective, the Constitutional Court has established a line of jurisprudence regarding the modification of the components of name and sex. Below, the Chamber will present the indicated jurisprudential development.

However, due to the rule established by the Court in 2017 regarding second name changes for the protection of gender identity, the Chamber will refrain from referring to case law prior to the issuance of **Ruling C-114 of 2017** in this particular regard. This is because that decision reflects this line of reasoning and its sub-rules were included in it, and they formed the basis for the exception introduced into the rule by that decision, to which reference has already been made. Therefore, in what follows, we will focus on the rules regarding the modification of sex in identification documents.

[242]

39.1. Initially, **Ruling T-504 of 1994**

examined the case of a person registered at birth as male. After undergoing surgery to affirm the opposite sex, they requested a change of sex in the civil registry and on their identity card. This change was denied, as it had not been ordered by a judge. For the ruling, such a change required a judicial procedure to corroborate the physiological change, since at that time sex was conceived as an objective element of personal identification. As a result, the appeal was denied.



[243]

39.2. Sentence T-918 of 2012 assessed the situation of a person who was assigned male sex at birth. Through surgical procedures, they sought to correspond to the opposite sex and to "*match their physical sex with their neurological sex and thereby overcome a body that feels foreign to them.*" In addition to asking the judge for guardianship to complete her medical treatment for a complete transition to female, she requested a change of sex on her civil birth certificate. The Court granted the injunction and departed from the biological and objective notion of sex. It established the possibility of modifying it in the civil registry, like any other correction, but in a confidential manner, and emphasized that citizens can achieve this through guardianship when their identity is compromised.

[244]

39.3. Sentence T-231 de 2013 situation of two cisgender individuals who were denied the notarial correction of their sex in their civil birth records, in which they are registered as female, when they are male and always have been. This prevented them from obtaining their citizenship cards. The Court considered that only when there is a verifiable error in the information recorded in the registry is it possible to change the sex by means of a public deed, as in the case of the plaintiffs. It also specified that, on the contrary, when the intended change goes beyond the correction of an error in the completion of the document, it implies a change in the conditions of existence of the plaintiffs. In that event, the interested parties must resort to the voluntary jurisdiction process, and the modification cannot be made before a notary.



39.4. Ruling T-063 of 2015 analyzed the case of a person who underwent sex reassignment surgery. After that, they went before a notary to correct their name and sex. They achieved the name change, but not the sex change, as the notary understood that a court order was required in this regard.

On that occasion, the Court specified that for transgender persons, the modification of the civil registry should not be assumed to be a change with respect to a previous reality. Rather, it is the "*correction of an error derived from the lack of correspondence between the sex assigned by third parties (...) and the identity assigned by the individual themselves.*" In accordance with subsequent interpretations, in response to this decision, "*Decree 1227 of 2015 was issued, regulating the procedure for correcting the sex component in the Civil Registry.*"

[247]

39.5. Ruling T-099 of 2015 analyzed the case of a person who was assigned male sex at birth but developed a female identity, conceiving of themselves as a trans woman. Despite their identity, the national army required them to pay a fine for the untimely definition of their military status. The case involved the gender identity of the plaintiff, since, regardless of her self-perception, she was treated in a manner contrary to it.

On that occasion, the Chamber found a structural situation of disregard for the rights of the transgender population and urged the Ministry of the Interior to include proposals in a draft gender identity bill it planned to draft to remove the obstacles faced by transgender people in changing their identity or sex on identity documents. This would be based on a simple self-declaration, to the point where the "*incorporation of an indeterminate sex*



in official documents" for them.

[248]

39.6. **Ruling T-498 of 2017** resolved the case

of a 17-year-old transgender minor whose civil birth certificate had been registered as female. They informed their parents that their identity did not correspond to that, so they accompanied them through the transformation process, and at the time of filing the action, they recognized themselves as part of the male gender. He resided in the United States, where in order to apply for U.S. citizenship, he needed to correct his sex and name on his civil birth certificate and identity card before turning 18. Regarding the name change, he was informed that he could do so by means of a public deed, but the change regarding sex required a citizenship card. Thus, the Court analyzed *whether "the public authorities violate the fundamental rights to recognition of legal personality, free development of personality, sexual and gender identity, and human dignity of a 17-year-old transgender person, who has the support of his parents and has undergone the necessary treatments to transition from female to male, by refusing to change the sex component of their civil birth registry because they do not have a citizenship card to carry out the procedure required by Decree 1227 of 2015?"* and for forcing them to undergo a voluntary jurisdiction process. This Court concluded that this did indeed constitute a violation of fundamental rights and specified that the minor also had the right to modify the sex component.

Therefore, it granted the appeal and applied the exception of unconstitutionality with respect to the requirement of a citizenship card for the correction of the sex component in the civil registry. This was because it found *"compelling reasons to give priority to the will of the minor over the reasons for protecting the higher interest underlying the age requirement."*



that underlie the requirement of legal age." It also considered that such a requirement was disproportionate to the exercise of their gender identity. In addition, it ordered the change of name.

[249]

39.7. Ruling T-447 of 2019 examined the case of a 10-year-old minor who, although born with ambiguous genitalia, was registered at the time as female. As a result, he was raised with that gender identity. Some time later, genetic tests suggested that his chromosomes were male. Similarly, the child rejected being treated as female and asked to be treated as part of the male gender. Consequently, his mother requested a notarial modification of the child's name and sex. This was denied because it did not comply with the Administrative Instruction issued by the Superintendency of Notaries and Registries, according to which the minor whose registration is to be modified must be at least 17 years old, and the request must be accompanied by medical opinions. When the person is a minor, the change must be pursued before a judicial official. However, the Chamber concluded that it is appropriate to assess *"in each case whether the minor has the capacity to make the decision in the specific matter. Therefore, although age is an important reference point, the main issue is the determination of the minor's developmental capacity in relation to the decision to modify the sex component in the civil registry."*

On that occasion, the appeal was granted and the Court ordered the modification of both the name and the sex. The Chamber found a *"legislative omission in relation to an expedited notarial mechanism for modifying the sex component of the civil birth registry of minors"* and urged Congress and the national government to design tools for the recognition, development, and effective protection of gender identity for them.

40. Thus, case law has changed the ways



in which it has approached the gender identity of individuals. In this process, it has recognized that changing documents based on gender identity should be understood as a procedure that depends entirely on the autonomy of the individual and that, out of respect for this autonomy, the State and society must recognize it.

In line with this, the Chamber must clarify one final aspect. The paradigm shift in the way the sex component of citizen identification is understood has evolved from a biological conception of sex (female-male). Under this conception, the item "sex," when referring to male or female, reflected an anatomical reality and specific bodily characteristics. However, the evolution of case law meant that the information recorded in that field should be understood as a personal decision, which coincides with the definition of gender. Thus, currently, the ID card claims to refer to sex, but records the person's gender. Hence, in this decision, sex on the ID card is usually treated as a representation of gender.

Non-binary gender identities. Challenges and experiences of recognition

41. In this section, the Chamber will refer to non-binary identities. It will address them from the point of view of the autonomy of individuals to identify themselves according to gender, in accordance with constitutional jurisprudence. It will refer to their recognition by some supranational entities which, through their approach to the practical situation of gender in the world, have identified their existence.

In addition, with regard to comparative law, it will refer to judicial, administrative, and legislative decisions that have incorporated non-binary gender markers for their recognition. It will do so with the support of the statements of the various parties involved in this matter.



42. As has been made clear, the jurisprudence of this Corporation has noted that gender identity is consolidated on the basis of the personal and internal experiences of each human being, with respect to the various options available to them to consolidate their being in relation to it. According to the Yogyakarta Principles, this concept denotes an "*internal and individual experience of gender as each person feels it deeply*," which is consolidated independently of the sex assigned at birth. In line with this, they recognize the possibility that, in the course of life, a disparity may arise between the sex recorded on identification documents, defined according to genitalia, and the ~~personal~~ experience ^[21 5 0 e] of gender that develops over time.

In line with this, the Court has emphasized that the concept of sex has been used to define the nature of the human body, and, according to this category, there are three visible classifications: woman, man, or intersex person. In the past, it was believed that this classification generated, respectively, a female identity, a male identity, and, exceptionally, an indeterminate identity at birth, due to bodily ambiguity that made it difficult to assign sex.

Currently, this proposed relationship between sex and gender identity is rejected. The latter has gone from being a consequence of the biological organism to a personal choice, not subject to the body. From this perspective, it is conceived as the product of an exercise in self-perception. In view of this, gender identity is an individual construct, which depends on choices.



personal issues related to how they live their own sexuality, both on a personal level and in terms of how they project themselves to society, or how they express themselves externally.

43. Understood ^[a₂ s₅ i₂] gender identity cannot be conceived as static, either on an individual or social level, since through "social relations it subjects its categories, notions, and ^[2 c 53] is subject to constant confrontation and redefinition." To that extent, constructions of gender are mediated by social regimes and ^[254] a system of order governing the rules that regulate it. Thus, "*the sex/gender system of a society does not obey a given 'natural' order, but is a 'product of culture' and, therefore, is temporary and changing. There are different 'sexual cultures' that determine the ways of being a man and being a woman (...) [and] the systems sex/gender are representations cultural, ⁽²⁵⁵⁾ that respond to historical and social relationships*" .

44. In line with this, new paradigms are emerging in the process of analyzing gender identities that circulate in society. These are usually non-normative identities, that is, identities that are not accepted in the organization of gender relations. One of these is non-binary gender identity.

Non-binary gender identity is understood as one that, because it is not conceived within the framework of dichotomous categories, male or female, departs from the majority sex-gender system, which is binary by cultural tradition. Non-binary people are not represented, in their experiences, by any of the gender categories existing in that system.

Although there are positions regarding the similarity between intersex people and non-binary transgender people, it has been emphasized that the former are those who do not conform to social expectations about the bodies of men and women at birth. In relation to them, the Court



has issued numerous decisions to ensure their right to rectify records regarding their name and sex. Similarly, in relation to the recognition of their legal personality regardless of the ambiguity of their sex. This does not imply that intersex persons always identify with the female or male gender. It is possible for them to consolidate non-binary identities, but they will not do so because of their biological condition, but because of their personal experiences. Therefore, non-binary identities are not defined by corporeality either. Thus, as several of the speakers argued, they do not derive from a specific physicality. Consequently, a necessary relationship cannot be established between the condition of being intersex and that of being a person with a non-binary gender identity.

For the Court, this clarification is relevant in the present case. It implies that, since non-binary persons are not comparable to intersex persons, the case law established by the Constitutional Court on the latter is not fully applicable to the case. Although it constitutes progress in the protection of gender identities and offers general interpretative guidelines in this regard, which have even been used in this ruling as a precedent, it cannot be assumed as a precedent for this case. They do not respond to non-binary experiences and realities, and the protection usually granted counteracts the effects of the incongruity between identity and identification documents, but rather addresses the challenges posed by genital ambiguity for registries when recording a person's birth and the impacts this has on gender identity. They address different factual situations.

45. Non-binary experiences have been recognized at the supranational level. The Inter-American Court of Human Rights, in its Advisory Opinion 24 of 2017, established the conceptual framework relating to identity



gender, identified among transgender or trans experiences those that are non-binary (which in various cultures receive specific names such as *hijra*, *meti*, *lala*, *skesana*, *motsoalle*, *mithli*, *kuchu*, *kawein*, *queer*, *muxé*, *fa'afafine*, *fakaleiti*, *hamjensgara*, or *two-spirit*). This is based on the understanding that these do not correspond to the sex assigned at birth. By conceiving them as an independent gender identity, he insisted that they are covered by the protection of sexual diversity and the prohibition of discrimination on the basis of gender contained in the American Convention.

In the 202_[02,561] *Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights* by the Inter-American Commission on Human Rights, when referring to the diverse gender identities that exist on the continent, it referred to transgender identities. Based on the binary scheme, it alluded to the situation of trans femininities and trans masculinities, which are included in it, and devoted a separate section to non-binary identities. To describe these experiences, it referred to the need for rectification of records as a mechanism for their recognition, an aspect in which it found the greatest deficit of recognition.

This entity highlighted that non-binary identities encompass many subcategories. One is made up of people who, in a fixed and defined way, identify with a gender other than female or male. Another is made up of those who call themselves "agender," assuming that they do not have an identity compatible with any gender or "*disagree with (sic) the very idea of gender.*" Finally, there are fluid identities whose being is defined by their ascription to a

binary gender, although not permanently. ^[258]

^[259]
Under the same approach, in 2021 ^[259], Victor Madrigal-Borloz, Independent Expert on Protection Against



Violence and Discrimination Based on Sexual Orientation or Gender Identity of the United Nations, specified that one of the greatest challenges faced by people with non-binary identities in societies and legal systems based on a traditional binary conception of sex and gender is the lack of legal recognition. Within these social orders, they cannot find a marker that represents them. As a result, they find themselves in a situation of greater vulnerability than transgender people who are able to identify as female or male. Furthermore, in relation to the latter, progress has been made in the administrative rectification of the components of name and

[260]

sex in identification documents

Non-binary people do not have this guarantee. Thus, their identity cannot be recorded in their documents and is usually not recognized. Because of this, the Independent Expert, Victor Madrigal-Borloz, recommends the creation of new sex markers and their diversification, in order to respond to identities that have been forged outside the binary sex-gender system.

46. This challenge has been taken up by states that have created non-binary gender markers, with the aim of formally recognizing the experiences of people who do not identify as male or female. These have been established through judicial, legislative, or administrative channels. In this context, they represent a step forward in the recognition of such identities, despite the current challenges. Among the most emblematic judicial recognitions of non-binary identities are the following:

46.1. In Nepal, in 2007, the Supreme Court, in exercising abstract constitutional review, found that civil law was discriminatory toward people with



. It ordered the creation of a third gender in the registration systems for the non-binary population.

[262]

46.2. In India, in 2014, through judicial means, the gender identity of *hijras* and *eunuchs*, who were not conceived within the framework of the two genders endorsed until then. It was argued that the Constitution of that legal system prohibited discrimination on the basis of gender and that the lack of recognition of diverse gender identities constituted an act contrary to equality and freedom of expression. The latter, in that legal context, empowers individuals to express their identity. Under this conception, they were given the connotation of a third non-binary gender and affirmative measures were ordered in their favor.

47. Similarly, states have adopted administrative measures for the recognition of non-binary identities. For example, in Canada, starting in 2017, a non-binary marker was adopted for the national passport. This was the result of a similar process carried out in its provinces, which by then had a non-binary sex marker on some of their associates' identification documents. In 2018, through public policy, the marker was extended to birth records.

Recently, in Argentina, through Presidential Directive 476 of 2021, a non-binary marker was introduced for the purpose of recognizing the legal personality of the population with diverse gender identities who do not identify as female or male. [263]

48. In relation to existing experiences in comparative law on the adoption and creation of non-binary sex markers, the information collected



during the review is presented below:

| Recognition of non-binary identity ^[264] <u>diverse</u> in identification documents | | |
|--|-------------------|--|
| Country | Marker non-binary | Detail |
| Germany | <i>-Diverse</i> | <p>This marker was initially recognized for intersex people, but its scope was later extended to people with non-binary identities.</p> <p>According to the Free University of Berlin, Germany, in accordance with a concept from the German Ethics Council, initially allowed individuals not to mark any gender option on their identification documents. However, this measure was considered contrary to the right to sexual identity. The reason is that, by leaving a blank space, it conceives of the person as marginal data. As a result, a third category, different from the binary ones normally recognized.</p> |
| Argentina | <i>-X</i> | <p>Recognizes non-binary gender identities in registration and identification systems, outside the male and female binary. This is done through the category "X" on the national document.</p> <p>identity card and passport. Such</p> |



| Identity recognition of diverse persons in identification documents [264] | | |
|---|-------------------|--|
| Country | Marker non-binary | Detail |
| | | <p>Classification includes those who do not identify as male or female.</p> <p>Law 26743 of 2012 on Gender Identity establishes the right "a) to recognition of their gender identity, b) to the free development of their person in accordance with their gender identity, c) to be treated in accordance with their gender identity and, in particular, to be identified in this way in the documents that certify their identity with regard to their first name(s), image, and sex [265] as recorded therein." According to Caribe Afirmativo, it affirms self-perceived sexual identity and waives requirements such as total or partial genital reassignment or any other medical treatment. Thus, it specifies that "any person may request the rectification of their registered sex, and the change of their first name and image, when these do not coincide with their self-perceived identity [266] gender" .</p> <p>For PAIS and Caribe Afirmativo, there is controversy over the measure, since the movement</p> |



| Recognition of non-binary identity diverse in identification documents ^[264] _____ | | |
|---|-------------------|--|
| Country | Marker non-binary | Details |
| | | trans " <i>No Somos una X</i> " highlights that it has " <i>a fictional tone and is far removed from the reality of diversity, pigeonholing it as something else or something more (...) creating an isolated category</i> " for people who have rectified their situation without breaking the binary logic. Part of the population does not feel represented by the "x" and another part cannot access the change due to lack of time and financial resources. Furthermore, although the law allows people to have an identification document that reflects their gender identity, this in itself does not guarantee the exercise of their other rights and the structural changes necessary for this. |
| Australia | - X | This marker encompasses several realities (<i>Indeterminate/ Unspecified</i> ^([267])) and applies to passports at the national level. Some states have adopted this option for other types of documents. |
| Austria | - Other | Case NSW Registrar of Births, Deaths and Marriages v. Norrie |



| Recognition of identity non-binary in identification documents [264] | | |
|---|----------------------|--|
| Country | Marker non-binary | Details |
| | <i>Not specified</i> | <p>In 2014, a citizen born with male organs decided to undergo gender affirmation surgery. Once completed, she found that a problem of sexual ambiguity persisted, so she requested the "sex category." Her request was denied, and the case reached the Australian Supreme Court, which ruled in favor of including this category.</p> <p>Judgment G77/2018 of June 15, 2018, of the Austrian Constitutional Court. Based on this judgment, the sex component in civil registration and identity documents reflects self-determined gender identity. This is in response to a citizen's request for the marker "other" or "x." The decision was made in accordance with the ruling of the European Court of Human Rights in 2003 (Van Kück v. Germany), which stated that it is the individual themselves who must control the actions of</p> |



| Recognition of non-binary gender identity in identification documents | | |
|---|-------------------|---|
| Country | Marker non-binary | Detail |
| | | Sexual significance based on their desire and outlook on life. Thus, the Austrian court opened <i>up</i> the possibility of " <i>correcting impositions</i> " in order to achieve suitable representations of the gender of |
| Belgium | No information | Recognizes the right of people to have a non-binary identity non-binary identity. |
| Canada | X | Applies to passports since 2017 and documents administered by the federal government. Within the framework of the states, most accept this marker. Some allow individuals to refrain from choosing a gender category on their documents, and Saskatchewan, British Columbia, and Ontario allow the marker on birth certificates and driver's licenses. However, the Universidad del Rosario pointed out that the government has specified that, despite this, " <i>nothing assures citizens and residents that</i> |



| Identity recognition of diverse gender in identification documents [2024] | | |
|--|--|--|
| Country | Marker non-binary | Detail |
| | | <i>make such a change the possibility of being recognized as such in other States, or even have their entry [2018] into a foreign country accepted"</i> |
| Dinamarca | X | Applies to passports since 2014. Option vetoed for minors. |
| United States | X | Applies in passport and on documents administered by the federal government. |
| | Undesignated Non-binary | California, Colorado, Connecticut, Maine, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, and New York recognize these markers. In addition, for example, New York issued the Gender Recognition Act (GRA) in 2021, which allowed gender changes on identity documents without going through the courts. Based on this regulation, the requirement to publicize gender changes and the transition process in the media |



| Identity recognition <i>no diversa</i> in identification documents [2024] | | |
|--|-------------------|--|
| Country | Marker non-binary | Detail |
| | | <p>receipt of the right to the privacy. In addition, the condition under which the changed be be medically validated medically and of a physical inspection.</p> <p>According to Caribe Afirmativo, it was signed and approved the SB-179 on gender identity, which makes it possible opt for the markers "woman," and "non binary," applicable to records birth and licenses of driving. He highlighted that it constitutes a step forward, as it refuses to pigeonhole people into specific genders with a classification that includes realities such as la "agender, genderqueer, genderfluid, Two Spirit, bigender, pangender, gender non-binary, <i>c.o.n.f.o.r.m.o.r.v.a.r.i.a.n.t</i> form" [2024].</p> <p>According to the Free University, in 2017, there were there were the first birth certificate with the "intersex" in the sex field, on behalf of a</p> |



| Identity recognition of diverse genders in identification documents [264] | | |
|--|---|---|
| Country | Marker non-binary | Detail |
| | | person who identified with both genders, without being able to choose either of them. |
| Iceland | X | As of 2017. |
| India | According to EAFITT, the markers depend on the identity framework of the different existing castes. | <p><i>National Legal Services Authority v. Union of India</i> ruling. Supreme Court of Justice. Protected the right of the transgender population to decide how they identify themselves in institutional documents.</p> <p>Protective measures in favor of the LGTBIQ population focused on: (i) their legal recognition in official documents, (ii) preventing medical treatments or concepts from being required to change the sex component, making it subject to the will of the individual, (iii) preventing discrimination in the health system, and (iv) developing educational programs to eliminate stigma against people of diverse genders and sexualities.</p> |



| Recognition of non-binary gender identity in identification documents | | |
|--|------------------------------|---|
| Country | Marker non-binary | Detail |
| Malta | | From 2017. Option vetoed for minors. |
| Nepal | <i>-Other (O)</i> | <i>Pant v. Nepal</i> ruling (2007). Initially recognized the self-determination of the "gender component of sex" in future documents, i.e., those not yet issued. <i>Sunil Babu Pant et al. v. Nepal</i> ruling. Extended protection to existing documents. This is a milestone, as it is the first recognition of a non-binary marker in official documents. Thus, this country has three genders. Its inclusion in passports came later, following the ruling in the case of <i>Dilu Dibuja v. Ministry of Foreign Affairs</i> . |
| Netherlands | Does not reflect gender data | Change made as of 2020. Applies to all documents, except for the civil birth registry. |
| Pakistan | <i>-Third gender</i> | No further information on its scope and current applicability. |



49. Based on the information presented in the table above, it is possible to conclude that there is a trend toward the recognition of non-binary gender identities in various identification documents. This is in line with both the Yogyakarta Principles and Advisory Opinion 24 of 2017 of the IACHR, which recognize the existence of identities that are forged outside the female and male genders. However, they noted that concrete developments in this area have been limited in scope. Although several states have made progress in adopting non-binary categories, these affect some identification documents, while others, within the same state, retain the binary logic. This is explained by the federal system and the scope of each state's decisions and raises the issue of initial and incipient protection of the rights of those who define themselves as non-binary persons.

There are several marker options, and cases such as that of Germany show a constant evolution towards classifications that respect the dignity of people who depart from the binary sex-gender system. As in the case of Argentina, they reveal tensions in the search for greater levels of protection for identities that have historically been invisible to society and the State. This is a possibility that is still under construction, both socially and legally.

50. Taken together, these experiences demonstrate the emergence of new gender identities that oppose and challenge the traditional binary criteria used by registration systems, given the need for official recognition by states, with the aim that "*a person's sexual preferences*



does not constitute an obstacle to the realization of rights" ^[270] _____.

51. In the Colombian context, although the autonomous definition of being and the free configuration of gender identity have been protected, this has been conceived within the framework of the binary system. For this reason, there are only two markers for the official identification of persons, one female and one male.

Analysis of the specific case

52. In this specific case, the plaintiff identifies as a non-binary person. That is, based on their experience and lived reality, they do not identify with either of the female ("F") or male ("M") markers used to indicate gender in Colombian society. Thus, despite having exercised their right to rectify their civil registry, their identity is still not reflected in it, nor in their citizenship card.

In seeking to harmonize their records, the entities sued denied the name change for a second time, as well as the second sex change. With regard to the latter, the denial was based on the fact that the request was submitted before the ten years required for this purpose had elapsed, and outside the sex markers provided for in Decree 1227 of 2015.

53. The Chamber will now rule on the specific case. In particular, and based on the above jurisprudential study, it will verify the violation of the rights to equality, human dignity, legal personality, and free development of personality. First, it will define this in relation to the second name change requested by the plaintiff. Second, it will refer to everything associated with the sex change sought. In addressing this last aspect, if it finds that the rights of the plaintiff have been violated, it will determine (i) whether the constitutionality exception is applicable, (ii) whether



the request to remove the sex information from the identity document is feasible, and if not,
(iii) specify the marker that will be used as a protective measure in this matter.

Regarding the second name change

54. Both the Ninth Notary Public of Medellín and the National Civil Registry argued that a second name change must be pursued through the courts. They argued that, based on the provisions of Article 94 of Decree Law 1260 of 1970, as amended by Decree 999 of 1988, this can only be done through a notary public once.

55. However, as noted above, **Ruling C-114 of 2017**, in line with a broad line of jurisprudence developed in the context of constitutional protection, emphasized that although this restriction is consistent with the Constitution insofar as it seeks to ensure the fulfillment of the State's purposes, when the harmony between gender identity and name is at risk, the modification of the name is urgent and cannot be postponed. Thus, for the Full Chamber of this Corporation, in such cases, *"notaries must authorize the public deed and the National Civil Registry has the obligation to make the corresponding adjustments."* Otherwise, the rights to equality, privacy, and legal personality would be affected. To that extent, it added that exception to the regulation in question.

56. For this reason, the Sixth Review Chamber of the Constitutional Court concludes that, as found by the judge of second instance, the defendants disregarded this exception. They applied the aforementioned article without considering that the constitutional ruling that declared it enforceable exempted from its application those persons seeking recognition of their gender identity through a name change. This is precisely the case of the plaintiff,



who seeks the inclusion of a neutral name so that she is not identified as part of the female or male genders.

To that extent, the defendants applied a rule that, because of that exception, was not applicable to the plaintiff's case. In doing so, they violated his *fundamental legal* interests. They also exposed him to scenarios of discrimination and obstruction of the exercise of his legal personality.

Because of this, this ruling will confirm the decision on this aspect. However, the Chamber notes that the protective measure issued by the *ad quem* only covered the change in the civil birth registry of the person concerned, so that, without prejudice to the previous confirmation, it will order on this occasion that the National Civil Registry incorporate the change of name in Dani García Pulgarín's citizenship card. This is on the understanding that, for an adult, the identity card is the document usually used when interacting with society and the State, and not the civil birth certificate. Only in this way will the protection requested by this person be realized and have practical effects on their daily life.

Regarding the change of sex

57. Now, with regard to the plaintiff's sex change, in accordance with Decree 1227 of 2015, both the entities sued and the trial judges emphasized that the identification system only allows for two sex markers. Citizens have the option of choosing one of them.

First, at birth, one is assigned, or in the case of people with anatomical ambiguities, or intersex people, the field is left undetermined or blank to be filled in once the person chooses their gender and defines it as male or female. Such indeterminacy is always temporary and, as highlighted by the National Civil Registry, adults do not have the option of using this option if they wish to change their gender.



gender and defines it as male or female. Such indeterminacy is always temporary and, as highlighted by the National Civil Registry, adults do not have the possibility of using this option if their body did not present any genital atypicality at the time of birth registration.

However, after the incorporation of the sex assigned at birth, individuals have the power to modify their sex marker to match their identity, should they need to make a formal transition to the other gender. In this sense, corrections to the sex component will always oscillate between male and female. According to the arguments presented, the reason is of a regulatory nature. This is provided for in Decree 1227 of 2015, which specifies the scope of the registry amendment. This provision establishes two limitations for changing sex a second time: (i) a temporal limitation, as it can only be done 10 years after the first change; and (ii) a material limitation, which establishes the need to choose either the male or female gender.

58. The Chamber finds that, despite the fact that constitutional jurisprudence indicates that persons with diverse gender orientations are subject to special constitutional protection and have the right to adapt their identification documents to reflect the identity that distinguishes them, so that they are treated socially in the way they recognize themselves, the entities sued refused to change the sex a second time in the case of the plaintiff and to adjust it to their being.

Although case law had never before specifically addressed non-binary gender identities, it did establish a constitutional interpretation on: (i) the nature of gender identity, defined autonomously by each person; (ii) the need for identity documents to reflect gender as a means of identification; and (iii) the serious impact of



the rights implied by the lack of consistency between identity and the information recorded in the sex field on identity documents.

Although both institutions acted in accordance with current legislation on the matter, they did not notice the unconstitutionality of the restriction in this specific case and, consequently, did not apply the exception of unconstitutionality. Within the framework of their public function, these entities were responsible for not applying the legal regulations, in the interests of constitutional supremacy. By failing to do so, both entities disregarded the rights to legal personality, human dignity, free development of personality, and equality to which they are entitled. By refraining from representing non-binary identity in the documents of the active party, both the National Civil Registry and the Ninth Notary Public of Medellín overlooked the serious effects that the lack of institutional recognition of a person's identity has on that person and the limitations that this imposes on the exercise of their constitutional guarantees. These conclusions have been reached through the direct application of the Constitution.

[271]

59. In this regard, it should be recalled that Article 4 recognizes the normative nature of the Constitution, in view of *"the pyramidal, hierarchical, or stratified structure of the rules within the legal system (...) so that lower rules must conform to higher ones and, ultimately, all must conform to the rule de[e]r[272]n[272]ormas or Constitution, which is the norm normarum."* As an expression of this mandate, the Colombian legal system enshrines the exception of unconstitutionality.

This is a mechanism for defending the Constitution, which can be invoked by *"any public authority and even (...) a private individual who has (...) to apply a rule*



legal to a [273] specific case where it finds that it is contrary" to higher mandates. This means that, in accordance with the principle of legality, "all public servants, including, of course, judges and individuals who exercise public functions, may be guilty of the offense of malfeasance by action, due to the issuance of a ruling, resolution, opinion, or concept that is manifestly contrary to constitutional precepts." . Consequently, and in accordance with the obligation to follow the various sources of law, "there arises [not only the power, but] the obligation for judges to apply the exception of unconstitutionality at the time of adjudication [275] the law" .

In this situation, the rule whose application in a specific case is questioned, despite becoming unconstitutional in relation to that case, does not disappear from the legal system and retains its validity. Thus, the assessment of the incompatibility between the rule to be disapplied and the Constitution must be conceived and based on the elements of the case itself , without exceeding it. _____

60. This instrument for preserving constitutional supremacy has a limit. Once the Court has ruled on the constitutionality of a legal provision, "the enforcer of the law cannot refrain from applying the rule on the grounds of unconstitutionality with respect to a regulatory area that is covered by that declaration of constitutionality." The principle of consistent interpretation prevails, according to which, when dealing with an exception, the court must interpret the law in a manner consistent with the exception covered by that declaration of constitutionality." The principle of consistent interpretation prevails, according to which, when it comes to the exception of unconstitutionality, a judicial decision cannot contradict the authentic interpretation made by this Court.

61. In this specific case, the exception of unconstitutionality will only be used for



the sex change of the person filing this action for protection. It will be applied with respect to the first paragraphs of Articles 2.2.6.12.4.3. and 2.2.6.12.4.6 of Decree 1227 of 2015. The Court has not made a general assessment of their conformity with the Constitution.

The first states that: "*The correction of the sex component in the Civil Birth Registry may consist of the registration of the male (M) or female (F) sex.*" Thus, it refers to the scope of the modification, exclusively to choose one of the binary markers.

The second specifies that: "*A person who has adjusted the sex component in the Civil Registry of Birth may not request a correction within ten (10) years following the issuance of the Public Deed by the Notary.*" In these terms, it establishes the correction of the sex component with a difference of 10 years between the first and second changes.

For the Chamber, in the terms described above, the rule that limits sex markers to those binaries disregards the plaintiff's experience and gender experience that is constituted outside of them. It thus hinders the plaintiff's right to legal personality, human dignity, and free development of personality. It also exposes them to multiple scenarios of discrimination against them due to the lack of correspondence between their self-perception and an imposed gender option. Understanding the present matter in this way, it is clear to the Court that in this specific case, both the defendants and the trial judges had a duty to disapply the transcribed rules. The violation of the rights of the plaintiff arises and is perpetuated because of the omission in this regard. Therefore, the Chamber will not apply it in this specific case, in order to record in the civil birth registry, as well as on the identity card of the person who filed this action, a non-binary gender marker, which is excluded by the



provision in question.

Similarly, the requirement to wait five more years for the second sex change in the civil birth registry of the plaintiff is disproportionate. In the Chamber's view, the impact of postponing the sex change on the daily life of the person concerned would perpetuate factors of exclusion and self-exclusion in the exercise of their rights and access to services, maintaining a situation of discrimination that has a cross-cutting impact on their entire life. It even compromises the possibility of realizing and projecting their own being socially. In view of this, this restriction will also be disregarded as contrary to the Constitution in the specific case of Dani García Pulgarín.

62. In addition to the above, it is possible to conclude that the act of disregarding rights can be explained by the historical preconception that gender is reduced to binary classifications, male and female, and is exhausted in them. Thus, the weight of this notion in society led entities to refuse change. This was not because they perceived a gender identity excluded by the binary system and refrained from enforcing the right to consistency between self-perception and official documents, but because, according to their own arguments, they do not assume that the mere existence of gender identities that do not fit into the only two markers they recognize is possible or viable. Considering this, they assumed that the plaintiff's request was not valid and denied it.

The two trial judges proceeded in the same manner, drawing attention to the fact that it is not possible to verify a gender identity outside of female and male. To this extent, it is clear that the binary perspective is inherent in social relations and current worldviews, so that it has spread and become normalized as a way of assessing the possibilities and impossibilities of being in



relation to gender, which constitutes clear gender discrimination, prohibited by the Constitution.

63. The plaintiff highlighted the fact that her document does not reflect her identity and that she assumes that this means the State is unaware of her existence. In addition, in the present constitutional proceeding and based on a majority view of gender, the trial judges confirmed that their identity had not yet been endorsed and, in that sense, was not viable in the legal system. In doing so, they revictimized the interested party, insofar as they institutionally endorsed their exclusion and refusal to recognize them.

64. Under this understanding, the ultimate cause of the violation of the rights of the person who requested the amparo is the generalized and inherent idea of the existence of male and female identities, with no other option for identification. This is proven in this case insofar as since 1993, when sex was included on the identity card, and after nearly 28 years, this is the first time that this logic has been challenged through a writ of amparo. Thus, it is a widespread and accepted conception of gender identities.

That binary approach to gender, which is currently used by the State, its institutions, society, and citizens themselves, and which is reflected in the current identification system, is contrary to the Constitution in this specific case. The plaintiff has consolidated their own identity in a counter-majoritarian way, without conforming to that idea, without seeking to be identified within the framework of their limited possibilities, and this has exposed them to situations of discrimination.

In relation to them, there is discriminatory treatment that is contrary to the principle of equality. The person under guardianship cannot and will not be able, under the binary logic of sex, to represent their identity in the data on their documents.



identity. This differs from: (i) cisgender people, whose sex at birth corresponds to their identity; (ii) transgender people, who do not identify with their sex at birth but who can change their identification to harmonize it and be registered as the opposite sex, always choosing one of the current options, male or female, and (iii) intersex people, whose gender definition awaits the construction of their identity. This constitutes differential treatment that is only supported by preconceptions linked to the binary system of understanding gender relations.

The difference in treatment has adverse consequences for individuals, such as the guardian, who are forced to correspond, through their identification documents, to one of those two mutually exclusive categories. As stated in the writ of guardianship, without prejudice to the exploration of their own identity in the process of its construction, this exposes them to bodily interventions (surgical or hormonal) and to the search for harmony with an identity that is imposed on them and fictitious, not lived and not experienced autonomously, freely, and with dignity. The absence of gender markers that they can choose from leads them to search for their identity outside themselves, and the State, by not considering them, establishes an external identity framework. Therefore, they are forced to choose one of the sexes as a condition for obtaining an identity document and being able to interact in society, even if only partially.

65. In view of the foregoing, the Chamber will grant the protection of the fundamental rights claimed in this case. This case draws attention to the existence of gender identities beyond the convictions that are widespread in society and institutionalized in the current identification system. The case of the person bringing this action highlights the lack of protection for some non-binary persons. This is



is evident in their case in the lack of recognition of their legal personality and identity, and in the absence of registration mechanisms to integrate non-binary identities into the citizen identification system. To restore their rights, therefore, the Chamber will grant the plaintiff's request to order the competent authorities to modify the sex information on their identity documents. The Notary Public will be given a period of eight days following notification of this decision to change the sex on the plaintiff's civil birth certificate. For its part, the National Civil Registry will be given a period of one month, because the adjustments to the sex and name on the interested party's identity card involve a complex process due to: (i) the prior modification of the birth record; (ii) the transformation of its databases; and (iii) the guarantee of the interoperability of the information.

On the deletion of data on sex and gender identity

66. Both the plaintiff and some of the interveners pointed out the need to dispense with information relating to sex and gender identity on the identity card. However, they considered it necessary for this information to be recorded privately in the civil birth registry.

The person promoting this action considers that their genitalia are not the concern of any of the authorities or individuals who use their citizenship card to identify them. In defense of this position, the Bogotá District Secretariat for Women considered that, in light of the matter under discussion, it is pertinent to analyze the role of sex in identification documents. This is because the relevant category currently reflected in identity documents is gender. Camilo Losada, who issued an opinion presented as an annex



by the GAAT Foundation, highlights the need to rethink the necessity of displaying sex categories on identity documents, in terms of their institutional uses, especially when it is a changing piece of information that depends on self-perception.

Along the same lines, the GAAT Foundation sees the elimination of the sex component, on a voluntary and individual basis, as an alternative or third option for people with non-binary identities. From its perspective, the elimination of the sex component is the mechanism for rethinking institutionalized binary thinking and for the state and society to open up to different subjectivities and corporealities. In its view, removing it prevents scenarios of discrimination, which have been forged on the basis of surveillance of human genitalia. It argued that forcing a person to declare their gender identity can exacerbate violence against them. To reaffirm its position, the Foundation emphasized that, with the advent of new identification technologies, sex is no longer an indispensable factor in identifying individuals. Finally, it argued that neither sex nor gender should be a criterion for treatment.

Also, for Ámbar Sánchez and Carla Castillo, who presented a concept that the GAAT Foundation attached to its intervention, it is necessary to dispense with sex data in identity documents, as its inclusion has led to situations of discrimination.

The Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture at the University of the Andes, in accordance with the Yogyakarta Principles, point out the need to eliminate sex and gender as requirements for recognizing legal personality, which cannot depend on the disclosure of such information. To argue their position, their concept drew attention to the fact that gender identity has been classified as a



criterion suspected of discrimination and emphasized that its inclusion in an identification document exposes people to social exclusion. To that extent, it raises the need to completely eliminate the category or diminish its relevance. The latter would be achieved by removing gender from certain documents and prohibiting public and private entities from collecting information on it when there is no legitimate purpose.

They argued that this measure is supported by *queer* theory and various forms of feminism, according to which "*gender is conceived as a subjective dimension that is plural, ambiguous, and dynamic. Consequently, it is argued that classifying people or forcing them to classify themselves according to a single gender indefinitely constitutes a violent and arbitrary action, which imposes a heavy burden on individuals [2019] by restricting their autonomy and free development.*" In addition, there are currently social movements that seek to have gender recognized as sensitive personal data, so that it is protected and its disclosure is restricted through *habeas data* protection, even though state organizations may consider it in order to establish policies in favor of equality.

On this particular issue, the participants pointed out that, although by 2018 no state had completely eliminated this category from identification documents, the Netherlands, Australia (State of Victoria), Canada, and Costa Rica have made progress toward its elimination .

67. This measure has certain limitations, as pointed out by other experts in the field.

As also argued by the Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture at the University of the Andes, one of the main objections to this option is that currently, the formulation of public policies



and the definition of rights and obligations takes into account the gender of individuals. In other words, gender has legal consequences in Colombia that go beyond the recognition of identity. An example of this is the definition of the conditions for access to old-age pensions.

Additionally, they reported that this proposal has been questioned insofar as the idea that gender is not relevant in society warrants a broad social debate on social structure and organization. In this regard, they draw attention to the fact that the category of gender, while it has been used to exclude, has also been used for the social and judicial vindication of rights, as well as for the creation of affirmative actions to counteract the historical violence it has provoked. Therefore, its suppression may affect processes:

(i) social and (ii) individual processes of recognition, expression, and visibility of gender identities, since *"some trans and intersex people, including non-binary people, (...) may feel relief and pride when seeing [28] identity reflected in markers of gender"*.

Likewise, for Caribe Afirmativo, *"the elimination of gender categorization is not relevant in terms of guarantees, but it does require a significant change in its application, [28 in 2] coinciding with the urgent break with binary thinking"*. Along the same lines, EAFIT University argued that eliminating the sex component from identity documents would have adverse consequences, as it is useful for recognizing and compensating for the historical marginalization of certain groups of people.

68. To define the relevance of this alternative on the social inclusion of people with non-binary identities, through the removal of sex from identity documents, the Chamber will resort to the integrated judgment of proportionality. Based on this, it will study the inclusion of this component in the civil registry and in the



citizenship card.

68.1. The integrated test of reasonableness and proportionality is a methodological tool for assessing the constitutionality of measures contemplated in the legal system and verifying that they are admissible and consistent with the higher order. It consists of three stages and, in turn, has three possible intensities.

The stages are: (i) analysis of the purpose pursued by the measure and whether it involves unequal treatment; (ii) determination of whether the purpose of the measure is valid in light of the Constitution; and (iii) the relation between the purpose and the means provided to achieve it.

However, in relation to the intensity of the judgment:

- It will be **light or weak** when the legislator enjoys broad freedom of regulatory configuration to establish the measure.
- It will be **strict or strong** when the legislator does not have that broad margin of configuration, such as in cases where fundamental rights are affected. It applies when the Constituent Assembly imposed specific mandates of equality. Thus, it is the appropriate level when the measure: (a) employs a classification suspected of discrimination; (b) affects persons in vulnerable conditions; (c) in principle, seriously impacts a fundamental right; or (d) creates a privilege.
- At an **intermediate** level of scrutiny, it must be determined whether the challenged rule pursues a constitutionally important purpose and whether the measure to achieve it embodied in that rule is effectively conducive to obtaining it. It must also be determined whether the measure is not manifestly disproportionate.

68.2. The Chamber finds that with regard to the matter



of the reference, it is a matter of specifying whether the incorporation of the sex component for persons who identify as non-binary is disproportionate. In this context, a strict test will be applied, given that the measure would operate in relation to a group that has been recognized as historically discriminated against and seeks to define an issue based on one of the criteria of suspected discrimination indicated in Article 13 of the Constitution.

At this level, the test seeks to determine whether the measure: (i) pursues a constitutionally imperative, urgent, or unpostponable purpose; and (ii) whether the means used are conducive and necessary to achieve it. Finally, [284] para the proportionality of the measure in the strict sense .

68.3. The purpose of the measure. The identification of citizens through the sex component (which, in reality, as argued, reflects the gender of the person on the ID card) pursues imperative purposes: to identify individuals and characterize the population for public policy purposes. Thus, identifying the different genders in society allows for the adoption of differential measures that compensate for the historical inequality between them. Therefore, it pursues constitutionally compelling and urgent purposes associated with the effective realization of the principle of equality.

68.4. The appropriateness and necessity of the measure. Undoubtedly, gender fluidity is also an aspect that identifies a person and, for that reason, its full recognition contributes to strengthening their social identity. It is also clear that in order to structure differential measures to affirm the most vulnerable groups based on gender, so that these measures can be implemented in the private and public spheres in which the person operates, incorporating the sex component into the identification system and personal documents is a necessary measure. The structuring of affirmative actions and their implementation in institutions and society depends on their identification and recognition.



and their implementation in institutions and society depends on their identification and recognition. Furthermore, it is a necessary measure for the intended purpose, insofar as it determines whether the State and society apply those compensatory measures.

68.5. The proportionality of the measure, strictly speaking. This step in the trial seeks to determine whether the measure brings greater benefits than harm in terms of fundamental rights. For the plaintiff, disclosing information relating to sex (understood as genitalia) could violate their privacy and expose them to discrimination. In this regard, the Chamber reiterates that the sex component of identification documents, although indicated by its name, does not reveal the person's physicality, but rather their gender identity in accordance with case law. Therefore, it does not reveal the person's physical privacy. From this perspective, the measure is strictly proportional, in that it makes visible data relevant to the containment of gender inequality, without seriously undermining the person's right to privacy. To that extent, it is decisive in establishing differential public policies that allow for the reduction of scenarios that undermine people's dignity, in accordance with their uniqueness. Similarly, it constitutes information that is enforceable by public authorities for the purposes of respect and compliance.

Thus, the inclusion of the sex component in identification documents is proportionate and, in view of this specific issue, should be supported from a constitutional point of view.

69. That being the case, the Chamber will not opt for this alternative for the protection of the rights claimed on this occasion, neither with regard to the removal of the component in general, nor with regard to the individual and voluntary possibility of dispensing with this information on the identity card.



Indeed, as revealed by the interventions received in this proceeding, gender is a criterion for determining rights and obligations, which are sometimes differential. It has enabled the creation of affirmative mechanisms in relation to the female gender, which have had an impact on containing some historical factors of discrimination against women, although some persist. Thus, the general elimination of the sex component, relating to gender, would remove the differential measures provided for in its favor to date.

On the other hand, the proposal that the elimination of the component should only apply to people with non-binary gender identities, so that they can leave the corresponding item blank, is problematic. It leads to the misconception that their identity constructions, because they do not fit into the binary system, cannot be recognized. From this perspective, even if the conclusion is that the State does not currently provide a gender marker that represents them, no administrative measures would be taken to overcome this institutional shortcoming. Instead, individuals who wish to be recognized in their gender identity would be asked to omit it from their documents, which is a contradiction. For the Chamber, in the case of people with non-binary identities, this option would deny the construction of their identity, and therefore does not restore the exercise of the rights to free development of personality and legal personality in this matter.

Definition of the alternative in relation to the sex marker

70. Having ruled out the possibility of granting protection in the sense of removing the sex information from the plaintiff's identification documents, the Chamber will decide which marker it will use as a protective measure in this matter.



71. It should be noted that, when requesting the judge to modify the sex component in their identification documents, the plaintiff provided three additional alternatives for their protection. They considered that their fundamental rights would be restored if the sex data were recorded as "x," "neutral," or "undetermined." Thus, in their opinion, the identity document would reflect their non-binary gender identity.

72. Both the plaintiff and the parties who intervened in this matter in response to the Order of October 26, 2021, presented their positions on different non-binary marker alternatives. Next, in order to determine which one the Chamber will use to protect the rights of the plaintiff, it will summarize the arguments that support and question the protective nature of each of those options. After that, it will decide whether or not to adopt it and will present the considerations of the case for each of them.

First option. Definition of the third option after a consultation process

73. Both PAIIS and the GAAT Foundation believe that the choice of a non-binary gender marker should be preceded by by spaces of consultation between the Registry Office, the Superintendency of Notary and Registry, civil society organizations, and activists from the country and the region. They requested the opening of a dialogue to find an alternative that would include all non-binary identities. *Ed. Rojas*, an intervener whose position was presented as an annex by the GAAT Foundation, also argues that the choice of a new marker should be the result of a collective effort, in order to consider different forms of identity.

Similarly, Andrew Aguacia, a participant whose position was presented as an appendix by the GAAT Foundation, argued that the debate over the sex marker to be incorporated should come from the non-binary community, and that their social movement is beginning to position itself within the Colombian LGTBI community. This is because everything related to their identity depends on their experiences.



incorporate should come from the non-binary community, their social movement is beginning to position itself within the Colombian LGTBI community. This is because everything related to their identity depends on their experiences.

74. In this regard, it should be noted that, within the framework of this constitutional process, the Chamber convened academia, several organizations specializing in the subject, as well as some individuals with non-binary experiences. The purpose was to find, based on their positions and perceptions on the matter, an inclusive alternative to the non-binary gender marker that guarantees the rights invoked.

The identification of this marker is urgent for the realization of the fundamental rights of the person bringing this action. Day after day, as revealed in his writ of protection, he faces various situations that affect his interests and dignity due to the mismatch between his gender identity and his identification documents. For this reason, the Court cannot postpone its restoration. It is disproportionate to subject Dani García Pulgarín to waiting for the agreed determination of that category when his protection is urgent. For this reason, the Chamber will opt to determine the sex marker as a protective measure in this matter. It will seek to identify an alternative that, in response to the concerns of the parties involved, covers as many identities as possible.

However, in any case, the Chamber specifies that the competent authorities may convene groups of experts on the subject and interested persons to seek agreed alternatives and, in this way, seek answers, even different from those offered here, for all persons in similar situations.

Second option. "Transgender" marker



75. For the Office of Sexual Diversity and Gender Identity of the Mayor's Office of Medellín, a third gender marker on identity documents for protection purposes could be "*transgender*." This is because it is the transgender population that is affected by the restriction to the male-female classification.

Asotransnor, whose position was endorsed by the GAAT Foundation and which participated in this matter from the perspective of transgender people identified as female or male, is concerned "*that a ruling by the Constitutional Court could affect the binary recognition of transgender people, which is the basis on which they develop their life plans and avail themselves of Colombian laws on pensions, work, marriage, among others.*"

76. The Court does not agree with the proposal to include this designation in the sex component to identify people with non-binary experiences. According to the statements made by those who participated in this constitutional proceeding, the fact that someone identifies as transgender does not necessarily mean that they depart from binary gender identities. A transgender person, in contrast to a cisgender person, is someone whose constructed identity does not correspond to the sex assigned at birth. On the other hand, it may well coincide with the binary sex opposite to that recorded in their documents. In this case, the person is transgender but does not have a non-binary gender identity, instead identifying as "*M*" or "*F*."

So, while all non-binary people are transgender by definition, not all transgender people



are non-binary. Thus, the "transgender" marker does not represent identities that are claimed outside the binary categories of sex-gender, such as that of the plaintiff. It does not reflect identities that go beyond the binary system and would create confusion among transgender people, who would have two possible options, while for non-binary identities, the marker would not be representative of their reality. To that extent, this proposal will not be adopted at this time.

Third option. "Undetermined" marker

77. This option was claimed by the plaintiff, who did not substantiate their choice. In relation to this, the Chamber emphasizes that this proposal, although it was one of the alternatives proposed by the plaintiff, does not correspond to the situation described in their writ of protection. In it, the plaintiff describes how, over time and through multiple attempts to adapt to one of the two binary sexes, they have consolidated their gender identity without it coinciding with either the "M" or "F" options, and without intending to do so. In view of this, their gender identity is determined but cannot be reflected through the current markers.

The adoption of "undetermined," for the Court, in the Colombian context, would imply assuming that the gender identity of non-binary persons is neither defined nor identifiable. This is equivalent to conceiving that there is still no gender identity and that, as in the case of intersex persons, it is expected to be defined in binary terms at some point. This is the category that is usually used in cases of intersexuality, in which the definition of gender identity is postponed. However, the conviction with which the plaintiff expresses who they are, in terms of gender, is overwhelming. They have consolidated a conception of themselves outside of binary markers and it is not in their



interest to coincide with them. To that extent, such a marker does not resolve the problem that the Court is analyzing and, on the contrary, is contrary to the reality of the gender experience that is being claimed in this case. For this reason, this proposal will not be accepted.

It should be noted that although this proposal is part of the claims in the writ of protection, case law has emphasized that it is the judge who determines the scope of protection and that the plaintiff's requests are merely indicative of the situation under discussion, but do not bind the judge in determining the remedies to be adopted.

Fourth option. "Neutral" marker

78. The plaintiff considered that one of the alternatives for protection was the inclusion of this marker in their identity documents. For PAISS, it is necessary to protect the rights of the plaintiff through „*a gender-neutral identity documents*” .

79. In the Chamber's view, the "neutral" marker presents a difficulty. This coincides with the difficulty identified with the previous descriptor ("undetermined"). Even though non-binary persons construct an identity that departs not only from the categories "M" and "F," but also from the binary system of sex and gender itself, they would present their being as something alternative, which is not within the binary system itself. The RAE defines the word "neutral" as "*lacking distinctive or expressive features*" or as "*indifferent,*" attributes that non-binary identities do not have. Thus, the Court will not opt for this marker as a mechanism to protect the plaintiff's non-binary identity.

Fifth option. Marker "x"

80. Both the plaintiff and several of the experts involved in the case see the



"x" marker as a possibility for the effective protection of the fundamental rights claimed. This applies not only to the person concerned in this case, but to anyone with a non-binary gender identity. This section will refer to several of the concepts that served as the basis for the GAAT Foundation's concept and which it contributed as annexes to the same.

81. For the Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture at the University of the Andes, this is the marker chosen by most states that have recognized non-binary gender identities. Even the International Civil Aviation Organization has used it. Consequently, this designation enables inter-state articulation and coordination and facilitates the cross-border movement of citizens.

For Analú Laferal, whose concept was presented by the GAAT Foundation, the letter "X" has great power. It allows for institutional conversation, with effects on information systems and the rights of non-binary people. By not referring to a gender, it brings together a wide diversity of them and could recognize the needs of a large part of them. Similarly, the presentations by Santi Palomino and Carla Castillo of the GAAT Foundation also pointed out that this is a step forward in the social and state recognition of non-binary people, and the first formal identification tool available to them in several states.

82. Regarding the inclusion of "X" as a third gender category, Caribe Afirmativo argued that one of the main objections is that this letter *"may result in more than recognition, but rather a violation of rights in relation to gender identity,"* given that it does not represent a specific gender identity. Similarly, EAFIT University stated that it does not have



protective vocation of trans realities. It is a classification that is difficult for other people to understand and says nothing about gender identity. He pointed out that "*contradictorily, the 'X' delimits the concept but to an indeterminacy. On the contrary, individuals who usually identify with these categories (trans, agender, or non-binary) have a clear concept or perception of their gender identity, which is why a more appropriate protection in these cases would be to incorporate the letters 'T' for trans, 'NB' for non-binary people [s28n60] or 'A' for non-gendered persons.* Pigeonholing different identities into a letter that suggests indeterminacy ignores the struggle for their recognition.

Even though the Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture at the University of the Andes support this proposal, they recognize that it is a limited marker that homogenizes and hides the diversity of people with non-binary gender identities. These have not yet been determined and deciphered in terms of the categories they cover. Furthermore, it has been criticized for having a segregationist orientation when assigned to an intersex minor.

For Analú Laferal, who participated with her concept in the configuration of the concept presented by the GAAT Foundation, the letter "X" and its adoption in Argentina had the difficulty of having been determined without consulting those with non-binary gender identities. To that extent, it is an option that is perceived as imposed, which has generated discomfort and a perception of lack of representation, condensed in the complaint "*we are not all X.*"

According to Isabella Cortés, also a participant in the GAAT Foundation, non-binary people are not an "x" and "*historically we have been making an x for the state (sic),*" or as social elements not



identified. Such a classification constitutes a violent act, as it denigrates reality and dehumanizes it. Furthermore, it is not functional, insofar as it ignores the struggle for recognition of identities. Similarly, Alanis Bello Ramírez, also a participant through the GAAT Foundation, states that the letter "X" has a negative symbolic connotation, representing something residual that is deemed irrelevant.

Three concepts received, also through the GAAT Foundation, coincide with this position. Thus, according to Camilo Losada's arguments, although the Argentine case is emblematic, the "X" generates discussion insofar as non-binary identities do not feel recognized by it. In the same vein, Francesca Mcquoid assumes that for those who agree with the "X" (and insists that the non-binary population has usually been classified as such), it is a significant achievement, given the absence of previous recognition, but *"we deserve to be recognized in all our differences."* In her opinion, what is not named does not exist, and the "X" fails to mention them, meaning that the problem of their recognition in society persists. Hence, it is of utmost importance to name identities in order to give them a place. Along the same lines, Valeria Durango argues that the letter "X" *"has no clear meaning in terms of identity."*

Posá Suto, who participated in the debate through the same Foundation, said that the "X" raises questions such as *"Don't you know who you are? Haven't you defined yourself?"*, which once again leads non-binary people to situations where they are required to explain aspects of their private lives. It should be remembered that the letter "X," even in mathematical language, denotes the unknown, an unknown quantity, a point on which Valeria Durango agrees. They will be forced to explain why they use that letter. In that sense, it denies otherness in an absolute way. This contradicts the essence of non-binary people, who deserve representation in accordance with their reality.



In accordance with the arguments put forward by Andrew Aguacia, who presented the case to the GAAT Foundation, the adoption of the *letter "X"* is problematic insofar as it has not been a form of identification that has emerged from non-binary movements. On this point, the concept presented by the GAAT Foundation and endorsed by Santi Palomino states that the letter "E" should preferably be chosen, as non-binary people often use it, as a cultural convention, to replace the letters that denote gender in words. Andrew Aguacia added that the letter "X" raises questions for those who approach the document. It would be unreadable to society and unrepresentative of the realities it seeks to encompass.

83. The Chamber agrees in identifying the progress made through this marker as an initial step toward the formal recognition of non-binary identities. It also recognizes its potential to facilitate, in practice, the exercise of the rights of those who have constructed them, as it is widespread in several countries.

However, it agrees with the criticism of the use of the letter "X" as a gender marker, insofar as it does not represent the scope of non-binary identities. It does not refer to them and, to that extent, does not have the potential to evoke them and, through this, to make them visible in their true dimensions. In our context, the use of a category that does not symbolize or refer to non-binary identities fails to overcome the historical invisibility to which they have been subjected. As such, it does not have the potential to protect the rights of the plaintiff, as it does not take into account their



own being. To that extent, the Chamber rejects this marker as a protective measure in this specific case.

Sixth option. Category open to different identification letters

84. EAFIT University proposes that the sex component become an item open to the incorporation of different letters. As many as can be adjusted to the multiple existing and emerging gender identities outside the framework of male and female. Under this proposal, the individual could incorporate any letter or acronym into it. In line with this, the concept of María Victoria Palacios Romaña, attached by the GAAT Foundation, states that people with diverse identities should be able to identify themselves on their citizenship card under the letter that best fits their gender experience.

For Camilo Losada, the Argentine case has led to the consideration of the sex component in identity documents as an open field for recording gender identity, whatever it may be and without restricting markers. For him, this is not the time to create new categories that tie down identity, but rather to leave an open field for recording gender identity, on the understanding that it cannot be a criterion for access to institutional services.

The Chamber is aware that gender identities are varied and that, in this sense, the choice of a marker could eventually fail to cover some social sectors that are not visible in this specific case. However, in relation to this, it should be noted that, in the current scenario, in which gender is a criterion for structuring public policy and allocating resources, the proliferation of classifications around it may make it difficult to identify each of them and for public entities to plan the exercise of their functions. In view of this, although the aim is to provide for a category that covers as many



possible experiences, the focus on protection and recognition is centered on non-binary people, so the possible fragmentation of data to identify this group of people may lead to invisibility, lack of protection, and an absence of public policies designed to benefit them. For this reason, the Chamber rejects this alternative.

Seventh option. "Non-binary" marker

85. Caribe Afirmativo pointed out that *"non-binary assignment (using the acronym NB) on identity documents is (...) the most suitable and appropriate means of achieving recognition, at least from an initial perspective, from the rights of these people"*.

He believes that this is the best way to protect their rights, as a independent autonomous of recognition of gender experiences. For Ángel Neira, the adoption of a third gender marker under the acronym "NB" would appeal for a clear, specific, and inclusive classification with which the population that does not consider itself male or female would identify.

According to Francesca Mcquoid, this alternative respects the gender diversity of people with non-binary identities, insofar as it directly refers to their being and has the potential to represent them. Under her conception, it is only through this designation that the State mentions them and thus recognizes their existence and grants them a place in society, which they have been deprived of until now. Similarly, for Posá Suto, it is an option that respects non-binary gender identities because, unlike the letter "X," it does not suggest the negation of the other. On the contrary, it names non-binary people exactly as they are, directly and without allowing for interpretations that do not correspond to their particularities. Similarly, Santi Palomino argues that "NB" protects the identity of non-binary people.



86. For this Court, the "*non*-binary" marker does indeed protect the rights of the plaintiff, as a person with a gender identity that is neither female nor male. Like those who defended this alternative, it considers that the direct reference to the meaning of people's identity makes their being visible and highlights, directly and unequivocally, the way in which it contrasts with the binary logic that underlies the other categories of sex, "*M*" or "*F*." In doing so, the legal system recognizes them. For this reason, the protective measure to be issued will consist of the defendants incorporating this marker in the sex component of both the civil birth registry and the citizenship card of the party seeking protection.

Scope and challenges of including a third sex marker on identity documents and orders to be issued

87. Having defined the above, the Chamber will now consider the challenges of including a third sex marker on identity documents. In its opinion, there are two. The first relates to the repercussions of including the new marker in the Registry's databases for the plaintiff. The second is the need to fill a legal gap regarding the protection of non-binary identities.

88. The Court draws attention to the fact that protecting the rights of the plaintiff will result in the incorporation of a new, non-binary sex marker on their identification documents. In this regard, it will issue **specific orders** that are limited to correcting the sex component, both on



their civil birth registration and on their identity card, as announced in legal basis 65 of this ruling.

89. In consideration of the principle of equality, as well as the need for information to be interoperable, as highlighted by the Registry, the decision also implies the issuance of **general orders**. There will be two types. One refers to the inclusion of the new sex marker in the identification structure managed by the Registry, to ensure its circulation and interoperability. The other relates to the effects of the new sex category on the assertion of rights and services that use gender as an assignment criterion.

These measures seek to ensure that this marker has the same operation and circulation as the binary markers in the information systems and identification scheme led by the National Civil Registry. In this way, the protection of the rights covered by this ruling, both in its subjective and objective dimensions, would be merely formal if it were conceived solely from the point of view of the variation of the data on one's identity card and civil birth certificate. This would be an isolated modification that would limit legal traffic, as it would not circulate in the citizen identification system.

89.1. *Regarding the first type of general orders.* It is clear to the Chamber that this ruling, by applying the exception of unconstitutionality, creates a new category of sex-gender that is distinct and autonomous from the existing ones. In this specific case, the non-application of the rule that restricts the scope of sex change to the choice between female and male gender is not sufficient. In order to ensure the protection of the rights of the person who brought the action, the Court considers it necessary to provide for a new category that responds to their identity construction. To that extent, the non-application



of the limit provided for in the rule to only those two options does not, in itself, protect the interests of the plaintiff.

This is because people with non-binary gender identities, such as the plaintiff, have seen their right to legal personality undermined by the lack of an official classification that reflects their self-perception. Under the current legal system, it is only possible to specify gender in binary terms, with a choice between female and male markers. To that extent, it is clear that it does not contemplate non-binary realities and does not recognize them. As stated above, the recognition of gender identity by the State allows individuals to realize their being in society and is a condition for their participation in it. Correspondingly, the lack of recognition implies a material limitation on the exercise of fundamental rights, contrary to the Constitution.

The truth is that the creation of a new gender category for the person who filed this writ of protection implies the transformation of the databases administered by the National Civil Registry, whose information is interoperable in favor of persons under public and private law. Opening it up to a single member of the citizenry alters its composition and, in practice, has effects beyond the specific case, as pointed out by that same entity. Thus, the application of the exception of unconstitutionality in this matter generates a new gender marker that cannot be restricted to the specific case, but rather transcends it by affecting the databases that support the current identification system. Ultimately, this decision, through the exception of unconstitutionality, creates a new classification of sex in that system.

Therefore, having verified the violation of rights, from



the objective dimension [288], that is, as

"mandates for action and duties of protection for the

[289]
State" , is imposed on the National Registry of

Civil Status the incorporation of this sex marker into its information systems, as well as the circulation of this new alternative for sex change. Consequently, this decision will urge that entity to do so and, for institutional transformation in this regard, as the body in charge of guiding and directing matters relating to the identification of citizens, by constitutional provision.

However, the statements made by that entity emphasized that it was acting in compliance with the regulations governing sex correction, contained in Decree 1227 of 2015 issued by the National Government. Article 2.2.6.12.4.3 thereof establishes the scope of the modification and stipulates that it consists of choosing between the male or female marker. To that extent, the State's obligation is not limited to the Registry Office. Accordingly, the Chamber will also urge the National Government, that is, the Presidency of the Republic and the Ministry of Justice and Law, to make the necessary regulatory changes to introduce the new sex marker among the options for modifying this component.

Therefore, given the need for this decision to have an impact on information systems and the current citizen identification scheme, the Court will urge the National Government and the National Civil Registry to, within six (6) months of notification of this decision, within the scope of their powers, (i) the former to modify the content of the first paragraph of Article 2.2.6.12.4.3. of Decree 1227 of 2015, and the corresponding regulations, to include the category "*non-binary*" among the sex markers in the citizen identification system, and (ii) jointly, make all necessary arrangements for the implementation of this



identification scheme, so that non-binary persons who meet the other requirements provided for in relation to the correction of the sex component may opt for that category, with the same guarantees as those who officially identify themselves as binary.

In addition, the Chamber will note that, after that period has elapsed, if the aforementioned regulation and its implementation have not yet materialized, in any case, persons with non-binary gender identities who meet the other requirements for the correction of the sex component may change the assignment of non-binary gender in their identity documents before the competent authorities, under the terms of this ruling.

89.2. Regarding the second type of general orders Like several of the participants, the Chamber assumes that the creation of a new gender marker is an initial step toward effective social participation and that it requires moving beyond formal recognition to the provision of the rights, services, and obligations that correspond to one's being, given that on more than a few occasions the State has adopted gender as a criterion for differentiating access to services and benefits. Such is the case, among others, with the rules on access to old-age pensions, military service, and the allocation of prison quotas. There are areas in which gender determines access to certain services. However, these are currently limited to male and female classifications, as the system does not contemplate non-binary identities. In this regard, there is a legal vacuum.

Consequently, it will urge the Congress of the Republic to regulate, within two (2) years, all those rights, obligations, and services that use sex or gender as an allocation criterion. The purpose of this is to specify the conditions under which the population with non-binary gender identities will have access to them.



Summary of the decision

90. The Sixth Review Chamber addressed the case of a person who has constructed a non-binary gender identity. After finding this action for protection to be admissible, it resolved the matter as described below:

First, I would like to point out that the decision not to change the plaintiff's name a second time in the civil registry and on their identity card, on the grounds that Article 94 of Decree Law 1260 of 1970 provides for this only once, violates the rights claimed. This interpretation disregards the provisions of **Ruling C-114 of 2017**, which provides for an exception to that rule. This exception was established for cases in which the change of name seeks to represent gender identity. In view of this, it confirms the decision of the second instance. However, it adds to it in the sense of also granting that change on the identity card.

Secondly, it concluded that the entities sued disregarded the rights claimed by refusing to modify the sex component, for the second time, in the civil registry and on the identity card of a person with a non-binary gender identity, due to the failure to comply with the 10-year term since the first change and because the request exceeded the scope provided for that modification ("M" or "F"). For the Chamber, in this case, it was appropriate to apply the constitutional principles preferentially and to disregard the relevant legal provisions in order to realize the rights of the plaintiff. However, it found that the defendants



acted in accordance with the letter of the law in force, and that both the law and the conceptions of the trial judges were permeated by binary gender preconceptions, which resulted in a failure to recognize the plaintiff's identity.

In view of this, it decided to grant the amparo and order the modification of the sex component in the identity documents of the plaintiff. To do so, it opted for the "*non-binary*" or "NB" marker, finding that it is the most protective in this matter.

III. DECISION

In view of the foregoing, the Sixth Review Chamber of the Constitutional Court, administering justice on behalf of the people and by mandate of the Political Constitution,

RESOLVES

First. TO PARTIALLY REVOKE the second instance ruling of May 24, 2021, issued by the Superior Court of the Judicial District of Medellín, which, in turn, partially revoked the ruling of April 12, 2021, issued by the Eighteenth Civil Court of the Circuit of Medellín, which denied the amparo requested by Dani García Pulgarín.

Second. Consequently, **CONFIRM** the decision to grant constitutional protection with regard to the change of name of the plaintiff; and **GRANT** protection of the rights to equality, human dignity, legal personality, and free development of personality with respect to the requested sex change, in accordance with the grounds for this decision.

Third. ORDER the Ninth Notary Public of Medellín to, within eight (8) days of



notification of this ruling, to include in Dani García Pulgarín's civil birth registry, in the sex component, the marker "*non-binary*" or "*NB*."

Fourth. ORDER the National Civil Registry to include the marker "*non-binary*" or "*NB*" in the sex field of the citizenship card of the person who filed this writ of protection within one (1) month of notification of this decision. In addition, it shall insert the name Dani García Pulgarín in said document.

Fifth. URGE the National Government and the National Civil Registry to, within six (6) months following notification of this decision, within the scope of their powers, (i) the former, modify the content of the first paragraph of Article 2.2.6.12.4.3. of Decree 1227 of 2015, and the corresponding regulations, to include the category "*non-binary*" among the sex markers in the citizen identification scheme, and (ii) jointly, make all necessary arrangements for the implementation of this identification scheme, so that non-binary persons who meet the other requirements relating to the correction of the sex component may opt for that category, with the same guarantees as those who officially identify themselves as binary. In this regard, **WARN** that, after that period, if the aforementioned regulation and its implementation have not yet materialized, in any case, persons with non-binary gender identities who meet the other requirements for the correction of the sex component may change the assignment of non-binary gender in their identity documents before the competent authorities, under the terms of this ruling.

Sixth. URGE the Congress of the Republic to regulate, within two (2) years, all rights, obligations, and services related to



sex or gender, a criterion for assignment. The foregoing, in order to specify the conditions under which the population with non-binary gender identities will have access to them, independently.

Seventh. By the General Secretariat, **issue** the communication referred to in Article 36 of Decree 2591 of 1991.

Copy, notify, communicate, comply, and publish on the website of this Corporation.

GLORIA STELLA ORTIZ DELGADO
Magistrate

CRISTINA PARDO SCHLESINGER
Magistrate
With dissenting opinion

JOSÉ FERNANDO REYES CUARTAS
Judge

MARTHA VICTORIA SÁCHICA MÉNDEZ
Secretary General



**DISSENTING OPINION OF MAGISTRATE CRISTINA PARDO
SCHLESINGER
TO JUDGMENT T-033/22**

Reference:

Case T-
8.292.437

Action for protection of
constitutional rights
brought by Dani García
Pulgarín
against the
National Civil Registry and
the Ninth Notary
Public of Medellín.

Presiding Judge: GLORIA
STELLA
ORTIZ DELGADO

1. With the customary respect for majority decisions, I would like to state that I do not agree with the decision adopted by the Sixth Review Chamber in judgment T-033 of 2022, which granted protection of the rights to equality, human dignity, legal personality, and free development of personality and, consequently, (i) ordered the Ninth Notary Public of Medellín and the National Civil Registry to incorporate into the sex component of the registration civil of birth and of the identity card of



citizenship of the petitioner the marker "*non-binary*" or "*NB*", (ii) urged the National Government and the National Civil Registry to modify, within the scope of their powers, the content of the first paragraph of Article 2.2.6.12.4.3. of Decree 1227 of 2015 and take all necessary measures to implement this identification scheme, and (iii) urged the Congress of the Republic to regulate all rights, obligations, and services that find in sex or gender a criterion for assignment.

2. Below, I will explain the reasons why I disagree with the decision.

Regarding the application of the exception of unconstitutionality

3. Constitutional jurisprudence establishes that the exception of unconstitutionality "*is used to protect, in a specific case and with inter partes effect, fundamental rights that are at risk due to the application of a lower-level rule that clearly and evidently contradicts the provisions contained in the Political Norms contained within the Political Constitution.*"

4. The ruling used the exception of unconstitutionality with respect to the first paragraphs of Articles 2.2.6.12.4.3. and 2.2.6.12.4.6 of Decree 1227 of 2015, thereby creating "*a new gender marker that cannot be restricted to the specific case, but rather transcends it by affecting the databases that support the current identification system.*"

5. The application of this procedural figure is contingent upon the fact that no ruling has been issued regarding the constitutionality of the provision under review. The ruling concludes that, with regard to Articles 2.2.6.12.4.3. and 2.2.6.12.4.6 of Decree 1227 of 2015, the Court has not made "*a general assessment of*



its conformity with the Constitution."

6. Notwithstanding ² the ⁹¹ 1 above, in a ruling dated November 23, 2020 the claim of unconstitutionality filed by two citizens in relation to Decree 1227 of 2015 was rejected, and on that occasion the following was explained:

"Decree 1227 of 2015 is a regulatory provision that lacks material force and the status of law, as it is at a lower level than the norm it develops, which is why the Constitutional Court is not competent to rule on its constitutionality in the context of abstract review. Consequently, the claim will be rejected insofar as it concerns the review of that decree, due to the obvious lack of jurisdiction of this Corporation to undertake the proposed constitutionality review."

7. It is important to note that the Attorney General's Office, in exercising its power of nullity, filed a lawsuit against Decree 1227 of 2015, a case that was assigned file number 11001032400020150036700. It is therefore clear that the Administrative Jurisdiction is the natural forum for resolving the controversy over the aforementioned decree.

8. In light of the foregoing, I do not agree with the possibility of extending the decision of the judgment *erga omnes*, insofar as it creates ***"a new gender marker that cannot be restricted to the specific case, but rather, by affecting the databases that support the current identification system, transcends it."*** (Boldface added). In my opinion, this decision does not fall within the jurisdiction of the Review Chamber in the context of specific control, that is, during the processing of a tutela action in which



the exception of unconstitutionality is invoked. This exception only applies to specific cases that are examined by judges.

On gender ideology

9. As I stated in the discussion that led ^[2 to 92] the Plenary Chamber to adopt ruling SU-440 of 2021, I reiterate that I do not agree with the Court's uncritical acceptance of the so-called "*gender ideology*" based on the philosophical doctrines of existentialism and Marxist historical materialism.

10. Personally, I do not agree with the conceptual basis that led to the adoption of the ruling. On this particular discussion, I agree with the dissenting opinion ^[2 v 9 3] presented in the case of ruling T-063 of 2015, which stated the following:

"Theories about the irrelevance of biological differences between men and women, and about the exclusively cultural origin of such differences, are part of theories on which there is no consensus in the scientific community, and which are linked more to activism than to science. (...) The Court should approach the richness and complexity of the scientific and social debate with caution, prudence, and rigor, taking into account all the uncertainties that currently exist on this front, rather than uncritically accepting one of the theories as the only truth or scientific fact, and then building the entire dogma of fundamental rights on a basis that is still controversial today."

On the inclusion of a third sex marker on identity documents

11. In accordance with the decision



reference, the creation of a new sex-gender category that is distinct and autonomous from the existing ones allows for the protection of the right to legal personality of persons with non-binary gender identities.

12. I do not share the uncritical assumption of *gender ideology* that underlies this conclusion, given that even among those who hold a generally accepted position, there is division regarding the existence and classification of multiple gender identities. Without going any further, one of the participants in the process that culminated in Ruling SU-440 of 2021 pointed out that, in the opinion of the IACHR, non-binary persons are not considered cisgender or transgender persons. However, in some cases, the categorization of gender identities includes ~~cis~~ trans, trans masculinities, and non-binary gender. [29]

13. I believe that the new category creates a scenario of indeterminacy with regard to marital status, understood as an attribute of personality that determines a person's situation ~~in~~ in the family and in society and from which rights and obligations are derived. On this point, "[t]he Court has defined marital status as an institution of public order, universal, indivisible, inherent to human beings, unavailable, inalienable, irrevocable, unseizable, imprescriptible, which cannot be established by confession and which confers ~~est~~ ^{est} and has effects vis-à-vis other persons." [25]

14. Thus, civil status is "*the set of legal conditions inherent to the person, which identify and differentiate them from others and make them subject to certain rights and obligations.*"

15. The right of transgender persons to modify or



correct the sex component in the civil registry when they consider that the sex recorded does not correspond to [\[296\]](#) their effectively assumed and lived gender identity.

16. Notwithstanding this, I believe that the creation of a third "non-binary" gender marker disregards the legitimate purpose of civil registry stability. I find that registration based on the established markers "M" or "F," in the case of persons who claim to be non-binary and which is based on biological condition, allows for personal identification, does not disregard the free development of personality, and the objective element does not generate uncertainty in terms of rights, obligations, and services that find a criterion for assignment in the two sexes or genders.

17. To cite examples, the decision adopted would have an impact on matters such as pensions, the definition of military service, deprivation of liberty, and the possibility of enjoying maternity or paternity leave, among others.

With my customary and profound respect, Date as

above

CRISTINA PARDO SCHLESINGER
Magistrate



[1] Writ of protection. p. 5.

[2] Writ of protection. p. 4.

[3] Writ of protection. p. 5.

[4] The plaintiff does not specify the date on which the response was issued. As an attachment, it provides what appears to be that response, but only the last page of the document is included in the file. Although the National Civil Registry provided a communication addressed to the interested party, it was not clear whether it corresponded to that response. The fact is that its last page does not match the one submitted by the plaintiff.

[5] The plaintiff refers to Judgments T-1033 of 2008, T-977 of 2012, T-077 of 2012, and T-099 of 2015.

[6] *Article 2.2.6.12.4.3. Scope of the correction. The correction of the sex component in the Civil Registry of Birth may consist of the registration of male (M) or female (F). // The Unique Personal Identification Number (NUIP) will not be modified with the correction of the sex component in the Civil Registry. In the case of identity cards issued prior to March 2000, the numerical quota will be canceled so that a ten (10)-digit Unique Personal Identification Number (NUIP) can be assigned."*

[7] *Article 2.2.6.12.4.6. Limits on the correction of the sex component in the Civil Registry. A person who has adjusted the sex component in the Civil Registry of Birth may not request a correction within ten (10) years of the*



the issuance of the Public Deed by the Notary.

// The sex component may only be corrected up to two times."

[8] Ibid. p. 7.

[9] Ibid.

[10] **"Article 52.** *The birth registration shall be divided into two sections: one generic and one specific. The generic section shall only include the name of the person registered, their sex, the municipality and date of birth, the office where they were registered, and the folio and general numbers of the central office. // The specific section shall also include the time and place of birth, the name of the mother, the name of the father; if possible, the identity of both, their profession or occupation, their nationality, their marital status, and the code of their birth and marriage records; the name of the professional who certified the birth and their license number. // In addition, the footprints of the registered person under the age of seven and the thumbprints of the registered person over that age shall be printed. // The expression of the data in the generic section is an essential requirement for registration."*

[11] Written response to the facts and claims of the writ of protection filed by the National Civil Registry.

[12] Ibid. p. 6.

[13] Ibid.

[14] Ibid. p. 7.

[15] Ibid. p. 10.

[16] Ibid. p. 11.

[17] Written response to the facts and claims of



the writ of protection filed by the Ninth Notary Public of Medellín. p. 3.

[18] Ibid. p. 3.

[19] Ibid. pp. 3 to 4.

[20] Ibid. p. 4.

[21] Ibid.

[22] First instance ruling. p. 11.

[23] Ibid. p. 12.

[24] The second instance decision specifically referred to progress in this area in Argentina, Costa Rica, the United States, and Germany.

[25] Second instance ruling. p. 22.

[26] Ibid. p. 32. “FIRST: *PARTIALLY REVOKE*

PARTIALLY the judgment under review, handed down by the Eighteenth Civil Court of the Circuit of Medellín, on the twelfth (12th) of April two thousand twenty-one (2021), within the action for protection brought by DANIELA GARCÍA PULGARÍN against the NATIONAL CIVIL REGISTRY and the NINTH NOTARY PUBLIC OF THE CIRCULATION

OF MEDELLÍN for the reasons set forth in the grounds for this ruling and, instead, ORDERS the NINTH NOTARY PUBLIC OF THE CIRCULATION OF

MEDELLÍN, within forty-eight (48) hours of notification of this decision, to disapply Article 94 of Decree 1260 of 1970, in accordance with the reasoning section of this ruling and with effects exclusively limited to the present case, consequently, proceed to modify the name in the terms requested by the plaintiff in this action, for which purpose it shall take the necessary steps to ensure that the new name



is recorded in the civil registry of births and the identity document can be updated."

[27]

Ibid. p. 28.

[28]

Ibid. p. 30.

[29]

Ibid. p. 31.

[30]

Ibid.

[31]

Idem.

[32]

Because the evidentiary process took longer than expected, the Sixth Review Chamber suspended the terms for ruling on this matter for 15 days, by means of the Order of November 11, 2021.

[33]

Order of October 26, 2021. *"First. ORDER that, through the General Secretariat of the Constitutional Court, the plaintiff be notified to respond to the following questionnaire within five (5) days of the communication of this decision: // a) Provide the response received to the request of December 30, 2019, from the National Civil Registry, as only the last page of the file is included. // b) Since the second instance order consisted of changing your name, under the responsibility of the Ninth Notary Public of Medellín, indicate whether the latter has already carried out the ordered modification. When did this take place?*

What was its scope? Which identity documents were affected by this order? For the record, please also send a copy of the new document(s) with the change made. // c) After the second instance ruling was issued did you request a change of name on your citizenship card from the National Civil Registry? If so, what is the status of the procedure? And what was



The result? Provide a copy of your current citizenship card. // d) According to the statements contained in the writ of protection, the EPS has denied you medical services related to your prostate. Which EPS are you referring to? Which EPS currently provides you with services? To date, have you received the diagnostic tests and treatment you require in relation to that organ? If there have been refusals in this regard and they are current, that is, they are recorded or have effects at the time of answering this question, please refer to them and provide the documents that support your answer. // e) You argued that not only the EPS, but also the pharmacology service denied you access to hormone treatment, as recommended by your treating physician. Which legal entity are you referring to? Is it the pharmacology service associated with the EPS? When did the omissions you are reporting occur? Do these difficulties persist today? If there are any current refusals in this regard, please refer to them. // f) Provide all the documentation you have available on the writ of protection you filed on September 28, 2015, against the Bellavista Prison. If you do not have it, refer to which judges processed it in both the first and second instances (if the latter took place). // g) In relation to the Metro de Medellín company, you stated that you were the victim of discriminatory actions. What exclusionary conduct did you suffer at the hands of that legal entity? Do these persist today? To what extent? Have you experienced any limitations in accessing metro services? // h) In the writ of protection, you mentioned that you were the victim of some exclusionary treatment that you had to face because of the conduct of some members of the National Police . Describe in detail the same and



indicate whether the conduct is ongoing and verifiable at present. If so, specify the conditions of time and place in which it occurred. // i) In relation to the events you describe regarding discriminatory conduct perpetrated against you by the EPS, the pharmacology service, the Metro de Medellín company, and the National Police, did you file any other writs of protection prior to the date of issuance of this order? If so, please provide any documentation you have and specify the status of each of the proceedings and their outcome. In particular, please provide the details of the courts that heard the cases.

[34] GARCÍA PULGARIN Dani, d**@gmail.com. Sent: Monday, November 15, 2021, 12:12 p.m. Subject: "*Response ~~plaintiff~~ AUTO-8292437_Evidence.*" Attachments: one.

[35] See the previous clarification of this ruling.

[36] GARCÍA PULGARIN Dani, d**@gmail.com. Sent: Monday, November 15, 2021, 12:12 p.m. Subject: "*Response ~~plaintiff~~ AUTO-8292437_Evidence.*" Attached document attached: "*Response plaintiff AUTO-8292437_Evidence_compressed.*" p. 3.

[37] Ibid. p. 3.

[38] The plaintiff claimed that he filed three writs of protection to assert his right to health care. These were as follows: "**Second Court of Sentence Enforcement**, to request access to an appointment with a psychiatrist and to begin hormone replacement therapy (judge granted protection). **Seventeenth Criminal Circuit Court**, to change my identity document number, and because my number appeared as CANCELED in the Registry, FOSYGA had



first reported as *WITHDRAWN*, then as *SUSPENDED*, and finally as *DECEASED*, so I was unable to receive any kind of medical care or treatment, including general medicine, endocrinology, psychiatry, coloproctology, hormone treatment, etc. (judge granted protection) // **Sixteenth Criminal Court of the Circuit**, due to a request for surgery related to my gender transition process, to remove my Adam's apple, which was quite prominent (judge granted protection). I waited two and a half years for the surgery."

[39]

Ibid. p. 4.

[40]

Ibid. p. 5.

[41]

Ibid.

[42]

Ibid. p. 6.

[43]

Ibid. p. 7.

[44]

Ibid.

[45]

Notary Ninth of Medellín,
novenamedellin@supernotariado.gov.co. Sent: Thursday, November 11, 2021, 2:46 p.m. Subject: "File T-8292437." Attachments: one.

[46]

Order of October 26, 2021. "*Second. TO OFFICIALLY REQUEST the Ninth Notary Public of Medellín to respond to the following questionnaire within five (5) days of receiving this decision: // a) The order of the Superior Court of the Judicial District of Medellín, issued in the second instance ruling of May 24, 2021, consisted of changing the name of the plaintiff. Therefore, please indicate whether you have already made the ordered change. When did it take place?*

What documents from identity were affected with



occasion of said order? Furthermore, please specify whether you communicated the change to the Sole Notary Public of La Tebaida, where the birth of the person bringing this action was registered. // b) Provide a list of all the changes in the identity documents that you have processed and registered in the file of the person bringing this action for protection. Refer to their current status. // c) What is the effect of the replacement of serial number 53000689 of the Sole Notary Public of La Tebaida by the Ninth Notary Public of Medellín, following the change in the unique personal identification number (NIUP)? Does this mean that the civil birth registration of the person concerned is now the sole responsibility of the Ninth Notary Public of Medellín? Currently, which of the two notaries is responsible for the civil birth registration of the person bringing this action? Does the Sole Notary Public of La Tebaida, where his birth was registered, have any involvement or role in the change of sex or name of the plaintiff? // d) What are the guidelines for notaries in the Medellín area for recording the "sex" component in the Civil Birth Registry? From what source do they take the data? What role does the live birth certificate play in this function in the timely (not untimely) birth registrations?

[47]

Notary Ninth of Medellín,

novenamedellin@supernotariado.gov.co. Sent: Thursday, November 11, 2021, 2:46 p.m. Subject: "File T-8292437." Document attached:

"File T-8292437." p. 5.

[48]

The aforementioned order specified that the information on the referenced cases, in which a non-binary sex marker had presumably been ordered to be generated, originated from the following press releases: (i) CALLE,



David. (October 16, 2021). How the first person recognized as transgender in a civil registry fought for their rights. *El Tiempo*.

<https://www.eltiempo.com/colombia/medellin/mike-duran-primera-persona-con-registro-civil-como-persona-trans-625769>; (ii)

RODRÍGUEZ, Jhordan C. (October 15, 2021). Person registered for the first time with "T" as trans in Colombia. *El*

Espectador. <https://>

www.elespectador.com/judicial/registran-por-primera-vez-con-t-a-persona-trans-en-colombia/; and (iii) ALCARAZ, Juan. (October 15, 2021). Civil registry with T for trans, the first in Colombia. *El Colombiano*.

<https://www.elcolombiano.com/tendencias/primera-persona-en-colombia-que-es-trans-en-el-registro-civil-GF15899852>.

[49]

Order of October 26, 2021. *"Fourth. TO OFFICIALLY REQUEST that the National Civil Registry, within five (5) days of notification of this decision, respond to the following questionnaire: // a)*

What is the status of the plaintiff's identity document? List the modifications and pending processes carried out in relation to it, the time of their completion, and their current status. // b) What is the practical use of the "sex" component in the identity document, from the point of view of the citizenship card as an identity document (not an electoral document)? To what extent is it a factor that allows the identification of the person carrying it? Is it decisive for identification, as part of birth data, when it is part of an identity system made up of biographical, photographic, and biometric data? What is the usefulness of this component in that identification system? // c) Your website contains a brief reference to the evolution of the citizenship card in Colombia. Please specify when and with which of the ID cards adopted in the country the "sex" component was adopted as an identification mechanism.



What internal institutional guideline established it as such?

On what basis? // d) Specify what citizen data has been and is being recorded in the various models of identity cards that have been used in Colombia? // e) What has been the role of the sex item on the identity card with respect to the different functions of that document? // f) What has been the institutional response of the Registry to the challenges regarding the use of the sex component to identify individuals, in a context in which gender differences are projected onto the subjects' bodies themselves? // g) In its response to the writ of protection, the entity asserts that the information reflected on the citizenship card must replicate and match the information contained in each person's civil birth registry. From this perspective, it must expand and substantiate this requirement from the point of view of the identification function attributed to the citizenship card. // h) In its response to the writ of protection, the entity specified that there are internal institutional regulations which, in compliance with a decision of the Constitutional Court (Judgment T-450A of 2013), allow for the temporary selection of a third gender category other than male or female. In this regard, it must list all the protocols, circulars, and internal guidelines that summarize the nature of this registration (such as those based on any other decision of this Corporation) and specify its scope and current requirements. Identify what is temporarily recorded in the sex component in these cases and, if more than one designation is used, explain how and who chooses it. // Specifically indicate whether an adult could access that non-binary form(s) of registration of the "sex" component and justify your answer. In addition, indicate whether it is possible for someone who accessed it as a child



that option remains in that third category indefinitely. If not, specify under what conditions they are required to determine their sex in a binary manner. // i) Does changing the sex of adults who opt for non-binary forms of registration for the "sex" component imply altering that item and the information recorded in it when reporting the birth through the civil birth registry? If so, why is it important that these two documents match for the purposes of identifying citizenship? Highlight in particular the reason for the correspondence of information for the purposes of the citizenship card and device of identification? // j)

What are the main effects of the possible lack of correspondence between the two documents? In your answer, not only explain the concept of the citizenship card as a means of identification, but also refer to its other functions. // k) What is the purpose and what are the differences between the existing identification mechanisms in Colombia: "The registration and identification of Colombians is done through the Civil Registry (where births, marriages, and deaths are recorded), the Identity Card (which identifies minors between the ages of seven and seventeen), and the Citizenship Card (for adults)"? What role does gender play in each of these and how are they interconnected? // l) What is the institutional position regarding the plaintiff's assertion that the citizenship card does not reflect their identity, as they have both female and male characteristics? // m) In light of recent events related to the court order to change the "gender" field in the Civil Registry of



Birth Registry in Medellín, which is unrelated to this case, the media outlet El Espectador warned that the Registry had difficulties in complying with the protective measure. // For the purposes of the matter currently under review, please outline the facts of that case and the decisions of the judge or judges who heard it. What specifically are the institutional, operational, and regulatory obstacles, difficulties, or uncertainties regarding the opening of a third gender category? What category or categories has the entity provided for the inclusion of non-binary identities in the process of complying with the court decision? How would they be chosen? What alternatives has the entity provided to resolve this?

What internal guidelines has it issued in this regard? This has no effect, nor is there any possibility of assessing compliance with the constitutional proceedings that were the subject of the news report, and it has no impact on the guardianship proceedings that gave rise to that order. Provide the necessary documents to support your response. // j) Provide the communication issued by the National Civil Registry in response to the request filed by the person bringing this action on December 30, 2019. Clarify whether this is the communication made on March 26, 2021, which was provided as an annex to the response to the complaint. If not, specify the purpose of the latter communication.

[50]

National Civil Registry
Office, notificacionespachos@registraduria.gov.co . Sent: Tuesday,
November 23, 2021, 3:16 p.m. Subject: "RESPONSE TO
QUESTIONNAIRE T-8292437."

attached: four.



[51] The numerical quotas historically assigned to the person filing this writ of protection will be concealed to prevent access to them. They are not relevant to the definition of the case under review.

[52] National Registry, notificacionadespachos@registraduria.gov.co . Sent: Tuesday, November 23, 2021, 3:16 p.m. Subject: "RESPONSE TO QUESTIONNAIRE T-8292437." Attached document: "8.1 RESPONSE TO REQUEST." p. 4.

[53] Ibid. p. 4. In this regard, it specified that “[t]he specific data on biological characteristics (sex) recorded in the identity document has three dimensions: i) information collection, ii) information management, and iii) public policies. // **The first dimension** is limited to the recording, processing, storage, treatment, and security of the information obtained from the identification of citizens. **The second dimension** responds to different needs, including generating qualitative and quantitative information as tools that enable the functioning of the social structure, which transcends peoples or countries to regions and continents. This process allows for a broad scope of study of individuals and social factors that require social policies. **The third dimension** allows individuals to exercise their rights within the legal system through public service policies for the enjoyment of fundamental rights, which is achieved through population registration, which allows for the identification and anticipation of social problems. In terms of health, this is the issue with the greatest impact on birth rates, prevention and promotion plans, among others" (emphasis in the original).



[54] Ibid. p. 5.

[55] Ibid. p. 8.

[56] Ibid. p. 6.

[57] Ibid. p. 21.

[58] Ibid. p. 36.

[59] Ibid. pp. 6 to 8. The entity presented a list of entities that use its databases. Some of them have biometric consultation agreements with the entity.

[60] Ibid. p. 5.

[61] Ibid. p. 20.

[62] *“Article 14. The National Government shall proceed to contract in England, the United States of America, Belgium, Switzerland, Holland, Sweden, or Canada, a technical mission charged with ruling on the systems to be used in identification and issuance of identification cards and in the formation of the corresponding censuses, and to draft general rules on the issuance of identification cards, their cancellation where appropriate, the registration and removal of citizens from the permanent electoral register, systems for the preservation of such registers, the creation and preservation of the permanent electoral register or its revision, as well as matters concerning the organization of the National Electoral Identification Office and other technical provisions on the subject. The President of the Republic shall be vested with specific extraordinary powers until*

December 31, 1949, for the sole purpose of giving permanent legal status to the recommendations made by the technical mission and unanimously approved by the Electoral Court. The decrees issued by the Government in exercise of this power shall replace



the provisions currently in force on the matter."

[63]

National

Civil

Registry,notificacionadespachos@registraduria.gov.co . Sent: Tuesday, November 23, 2021, 3:16 p.m. Subject: "RESPONSE TO QUESTIONNAIRE T-8292437." Attached document: "8.1 RESPONSE TO REQUEST." p. 13.

[64]

Ibid. p. 10.

[65]

"Article 2. To obtain a citizenship card, proof of age and personal identity is required. This can be done with any of the following documents: old citizenship card, military ID, military identity card, Colombian passport, police ID, postal identity card, copy of church baptism certificate or civil birth or marriage certificate, declaring, in the latter three cases, under oath before the Registrar or his delegate, that it is the same person to whom the document refers. All of this shall be recorded on a special form bearing the fingerprint of the interested party, his signature, if he knows how to do so, and that of the official issuing the card."

[66]

"Article 62. To obtain a citizenship card, you must prove that you are at least 18 years of age and your personal identity by presenting your civil birth certificate or identity card, your letter of naturalization in the case of naturalized citizens, and your registration card in the case of Hispanic Americans and Brazilians by birth, to the Registrar of Civil Status or his delegate."

[67]

National

Civil

Registry,notificacionadespachos@registraduria.gov.co . Sent: Tuesday, November 23, 2021, 3:16 p.m. Subject: "RESPONSE TO QUESTIONNAIRE T-8292437." Attached document



attached: "8.1 RESPONSE TO REQUEST." p. 25.

[68] Ibid. p. 29.

[69] Ibid. p. 34.

[70] This version is dated May 15, 2020. By the time the response from the National Civil Registry was received, a sixth version had already been issued, dated October 20, 2021.

[71] National Civil Registry, notificacionadespachos@registraduria.gov.co . Sent: Tuesday, November 23, 2021, 3:16 p.m. Subject: "RESPONSE TO QUESTIONNAIRE T-8292437." Attached document: "8.1 RESPONSE TO REQUEST." p. 38.

[72] Ibid. p. 45.

[73] Order of October 26, 2021. *"Fifth. TO OFFICIALLY REQUEST the Ministry of Justice and Law, within five (5) days of notification of this decision, to respond to the following questionnaire: // a) What is the purpose of the temporary restrictions on name changes (only once) and sex changes (with a 10-year difference) in the various identity documents in Colombia? This is in accordance with the reasons that supported the issuance of the regulation that this tutela action seeks to have declared inapplicable. // b) What is the institutional assessment of the search for a sex assignment system beyond the scope granted by Decree 1227 of 2015? What challenges could this pose for the individual, for institutions, and for the functionality of the citizenship card as a means of identification? If you see effects in other areas, please indicate them.*

[74] Ministry of Justice and Law, lei***s@minjusticia.gov.co . Sent: Friday, November 12,



November 2021 7:32 a.m. Subject: "Your Order of 10/26/2021. Official Letter OPT-A-2734/2021 from 10/28/2021.

File: T-8.292.437. Plaintiff: Daniela García Pulgarín. Filed with the MJD under number MJD-EXT21-0051253." Attachments: three.

[75]

Ministry of Justice and Law, lei***s@minjusticia.gov.co . Sent: Friday, November 12, 2021, 7:32 a.m. Subject: "Your Order of 10/26/2021. Official Letter OPT-A-2734/2021 dated 10/28/2021.

File: T-8.292.437. Plaintiff: Daniela García Pulgarín. Filed with the MJD under number MJD-

EXT21-0051253." OFI21- Document attached: "MJD-0041985." p. 2.

[76]

Ibid. p. 2.

[77]

Ibid. p. 4.

[78]

Ibid. p. 5.

[79]

Ibid.

[80]

Ibid.

[81]

Ibid. p. 3.

[82]

Order dated October 26, 2021. "Seventh. TO REQUEST the Ministry of Health and Social Protection to respond to the following question within five (5) days of notification of this decision: What are the medical and scientific guidelines used by health professionals to assign sex at birth? Specify which concept of biological sex (anatomical, phenotypic, gonadal, and/or chromosomal) is currently used for this task in Colombia. Describe the procedures followed for its assignment on the live birth certificate."

[83]

Ministry Health correoseguro@e-entrega.co.



Sent: Friday, November 12, 2021, 4:10 p.m. Subject: "File No. 202111301809941 Ministry of Health and Protection." Attachments: 11.

[84]

Ministry Health correoseguro@e-entrega.co. Sent:

Friday, November 12, 2021, 4:10 p.m. Subject: "File No. _____"

202111301809941 Ministry of Health and Protection." Attached

document: "Download 202111301809941." p. 1.

[85]

Ibid. p. 2.

[86]

Ibid. p. 2. The entity highlighted the following: "**Genetic sex**, determined by chromosomes (XX or XY); **gonadal sex**, defined by the presence of ovaries, testicles, or, in exceptional situations, ovotestis; **genital sex**, which focuses on the male or female reproductive system, without taking into account the gonads; **hormonal sex**, which has a significant impact on sexual appearance; **legal sex**, which refers to the sex with which a person is registered: male or female; and **psychosocial sex**. The sexual behavior of the person themselves and their relationship with those around them. These last two categories could be better considered as linked to the series of social archetypes that define gender. Closely related to the above, other important definitions have to do with what are called sexual development anomalies or disorders (SDD), which can occur in all or some of the three levels of sexual differentiation: chromosomal, gonadal, or genital, which may or may not involve an intersex condition (ambiguous external genital differentiation or discordance with genetic or gonadal sex)" (emphasis in source).

[87]

GONZÁLEZ ESCANDÓN, María Mónica. (August 19,

August 2021). For the first time in Colombia, a non-binary person is recognized in an academic title.



FM. <https://www.lafm.com.co/colombia/por-primera-vez-en-colombia-se-reconoce-una-persona-no-binaria-en-titulo-academico#:~:text=Johnajohn%20Campo%2C%2039%20years%20old,with%20the%20masculine%20and%20feminine.>

[88]

The Order of October 26, 2021 asked members of academia and social organizations working to defend sexual and gender diversity for alternatives to non-binary markers. In addition to asking for their opinion on the matter, it requested references to experiences in other states. Given the extent of the information related to the latter and its reiteration by various participants, it will be presented in the section dedicated to the analysis of the specific case.

[89]

Order of October 26, 2021. *“Eighth. TO OFFICIALLY NOTIFY the Presidential Council for Women's Equality, the Medellín Women's Secretariat, the Manizales Women's and Gender Equality Secretariat, the Bogotá District Women's Secretariat, and the Santa Marta Women's and Gender Equality Secretariat to respond to the following questionnaire within five (5) days of receiving this decision: // a) What challenges do transgender people face in terms of their identification in binary terms? Specify the barriers and factors of social exclusion related to them, according to what you have identified in your institutional work. // b) What challenges does the non-binary assignment of sex on identity documents pose for (i) the person carrying them and (ii) institutions? // c) What impact does the lack of consistency between identity documents and an individual's conception of*



gender and sex?

[90]

Order dated October 26, 2021. First, the decision stated: "*Ninth. INVITE the National University of Colombia, through its Faculty of Humanities, School of Gender Studies, Departments of History and Sociology, and the "Interdisciplinary Group on Gender Studies (GIEG)"; the University of the Andes through the Faculty of Social Sciences, the Prisma Circle, the Action Program for Equality and Social Inclusion (PAIIS), the "Law and Gender Research Group"*, *the Interdisciplinary Center for Development Studies (CIDER), and, within it, the Master's Degree in Gender and CiderX ; the University of Antioquia, through the Center for Gender Studies ; the University of Valle, through the Center for Research and Studies on Gender, Women, and Society ; the Francisco José De Caldas University, through IPAZUD, the Doctorate in Social Studies, and the Master's Degree in Interdisciplinary Social Research; the University of Caldas, through the Research Group "Gender, Sexualities, and Recognition"; the Pontifical Javeriana University and the EAN, del Norte, Libre, EAFIT, del Rosario, and Externado Universities, so that within five (5) days of notification of this decision, if they so wish, they may express their general opinion on this matter and respond to the following questionnaire: // a) What is the scope of non-binary sexual identities? What characterizes them? // b) Although, broadly speaking, the concepts of gender and sex are different, in that one is usually recognized as a social phenomenon and the other is often considered a biological factor, how do these concepts operate and interact in transgender worldviews in which the person not only constructs a conception of self*"



regardless of the sex assigned at birth, but also chooses to incorporate it into their body so that it corresponds to their being? // c) What are the similarities and differences between the concepts of intersexuality and transgenderism? Is the former conceived beyond hermaphroditism? Does it denote a purely biological category? Can a transgender person who has chosen not to complete their gender transition be considered intersex? // d) Do you consider that option "X" is intended to protect transgender people? Explain your answer, whether affirmative or negative, as well as any concerns you may have in this regard. // e) In your opinion, what alternatives that respect gender diversity exist for registering non-binary options in the sex component of the citizenship card? Explain why you consider them to be an option that protects the interests of non-binary identities. // f) From a historical perspective, how has the identity card in Colombia evolved and what role has the sex component played? When was it included? What role have the components of the personal identification section contained in that document played in social dynamics? // g) Specify whether you are aware of experiences in other states regarding the legislative or judicial recognition of non-binary categories of the "sex" component in citizens' identity documents. Refer to them and give your opinion on each of them, in terms of their limitations and potential. // Invited persons are advised that, for the purposes of the above, and in order to protect the right to privacy of the person who filed this writ of protection, no copy of the file will be provided. It contains sensitive information. Therefore, the exercise must be limited to the account of the background information contained in this ruling. In addition,



it was resolved: "Tenth. INVITE Colombia Diversa; Corporación Caribe Afirmativo; Corporación Humanas; Fundación Ayllu Familias Transmasculinas; Casa Diversa Comuna 8; Red Alas; Dejusticia; Fundación Heinrich Böll - Bogotá Office; Red Somos; Red Comunitaria Trans; Red Distrital de Hombres Trans; Coalición de Organizaciones Aquejarre Trans; PRIDE LGBTI-Colombia; the Latin American Institute for an Alternative Society and Law (ILSA), Bogotá Office; UN Women, Colombia Office; the International Intersex Organization – Spanish-speaking; the GATE Organization for the defense of trans, gender-diverse, and intersex people in action; the Trans Action and Support Group Foundation (GAAT); the Brújula Intersexual Organization; the No Binarix Resistance Collective; OutRight Action International; so that within five (5) days of notification of this decision, if they are interested in participating in the matter at hand, they may express their general opinion on the matter and respond to the following questionnaire: // a) What is the scope of non-binary sexual identities? What aspects characterize them? What are their current and historical challenges in society? // b) What challenges do transgender people face because of identification documents designed in binary terms? Specify the barriers they encounter and the factors of social exclusion related to them. // c) Although, broadly speaking, the concepts of gender and sex are different, in that one is usually recognized as a social phenomenon and the other as a biological factor, how do these concepts operate and interact in transgender conceptions and identities in which the person not only constructs a vision of themselves



the sex assigned at birth, but also chooses to incorporate it into their body and image so that it corresponds with their being? // d) What are the similarities and differences between intersexuality and transgenerism? // e) In your opinion, what are the potentialities of non-binary sex assignment in identity documents for the person carrying them, in terms of their identity? What challenges can be expected from this for the institutions with which they interact? How might these challenges affect transgender people? // f) In this matter, the person filing the writ of protection considers that the exercise of their rights (which they consider to be unknown) can be restored by modifying the "sex" component. One of the options proposed is to replace the letter "M" or "F" with the letter "X." However, in contexts such as Argentina, a transgender movement has emerged in defense of the idea "We are not an X."

Do you recognize their demands? Are you aware of other contexts in which they have arisen? What is your view on the approaches of this movement? // g) Do you consider that option "X" aims to protect the constitutional guarantees of transgender people? Explain your answer, whether affirmative or negative, as well as any concerns you may have in this regard. // h) In your opinion, what alternatives that respect gender diversity exist for registering non-binary options in the sex field of the citizenship card? Explain why you consider them to be an option that protects the interests of people with non-binary identities. // i)

Are you aware of any practical and everyday difficulties for transgender people associated with the frequency of sex changes set out in the article of Decree 1227 of 2015? What are they? // j) Please specify whether you have



knowledge of experiences in other states regarding the legislative or judicial recognition of non-binary categories of the "sex" component in citizens' identity documents. Please refer to them and give your opinion on each of them, in terms of their limitations and potential. // The invited persons are advised that, for the purposes of the above, and in order to protect the right to privacy of the person who filed this writ of protection, no copy of the file will be provided. It contains sensitive information. Therefore, the exercise must be limited to the background information contained in this ruling." Several of the persons summoned in the transcribed orders requested additional time to comment on this matter. All of them were granted an extension of the deadline to respond, in accordance with their own investigative needs.

[91]

Order of October 26, 2021. *"Eleventh. INVITE Johnajohn Campo (through the Ministry of National Education), Brigitte Baptiste (through EAN University), and Matilda González Gil (through the Mayor's Office of Manizales) to, within five days*

(5) days following notification of this decision, if you wish to do so, please express your general opinion on this matter and answer the following questionnaire: // a) From your perspective, what are the current and historical challenges faced by non-binary people in society? // b) What challenges do people face because of identification documents designed in binary terms? What are the everyday consequences they may experience as a result? // c) Although, broadly speaking, the concepts of gender and sex are different, in that one is usually recognized as a social phenomenon and the other as a biological factor, how do



and interact these concepts in transgender conceptions and identities in which the person not only constructs a vision of themselves outside the sex assigned at birth, but also chooses to incorporate it into their body and image so that it corresponds to their being?

// d) In this matter, the plaintiff considers that the exercise of their rights (which they consider to be unknown) can be restored by modifying the "sex" component. One of the options proposed is to replace the letter "M" or "F" with the letter "X." However, in contexts such as Argentina, a transgender movement has emerged in defense of the idea "We are not an X."

Do you recognize their demands? Are you aware of other contexts in which they have arisen? What is your view on the proposals of this movement? //

e) Do you consider that option "X" aims to protect the constitutional guarantees of transgender people in terms of their identification? // f) Are you aware of any practical and everyday difficulties for people with non-binary identities due to the frequency of sex changes established in Article 1227 of 2015? What are they? // g) Please specify whether you are aware of experiences in other states regarding the legislative or judicial recognition of non-binary categories of "sex" in citizens' identity documents. Please refer to them and give your opinion on each of them, in terms of their limitations and potential. // Invited persons are advised that, for the purposes of the above, and in order to protect the right to privacy of the person who filed this writ of protection, no copy of the file will be provided. It contains sensitive information. Therefore, the exercise must be limited to the background information contained in this ruling. // Twelfth. Through the Secretariat of



this Corporation, ORDER the Ministry of National Education, EAN University, and the Mayor's Office of Manizales, using the contact information of the persons summoned in the previous order, to cooperate with this Corporation within one (1) day of the communication of this decision and to forward to them the communications associated with this case.

[92] Mayor's Office of Medellín. Sexual Diversity Management and Identities of Gender. M***o@medellin.gov.co. Sent: Tuesday, November 16, 2021, 10:51 a.m. Subject: "Response to official letter No.

OPT-A-2734/2021." Document attached: "202130502764." p. 2.

[93] Ibid.

[94] Ibid. p. 7.

[95] Ibid.

[96] Ibid. p. 6.

[97] By way of example, the entity mentioned the pension system, military service, and labor restrictions such as those contained in Article 242 of the Substantive Labor Code: "**Article 242. Prohibited Work.** 1. [Unenforceable provision] // 2. It is prohibited to employ minors under eighteen (18) years of age and women in industrial painting work involving the use of white lead, lead sulfate, or any other product containing such pigments. // 3. [Partially unenforceable] and minors under eighteen (18) years of age may not be employed in underground mining work or work requiring great physical effort.

[98] Secretariat District of la Woman,



notificacionesjudiciales@sdmujer.gov.co.

Sent:

Tuesday, November 16, 2021, 4:04 p.m. Subject: "*Response SdMujer Official Letter OPT-A-2734/2021 File: T-8292437 - Plaintiff: Daniela García Pulgarín.*" Attached document: "*ORFEO Response to Official Letter Corte SdM.*" Ibid. p. 13.

[99]

Ibid. p. 2.

[100]

Ibid. p. 14.

[101]

Ibid. p. 12.

[102]

Ibid. p. 6.

[103]

Ibid. p. 7. Quoting Judgment T-477 of 1995.

[104]

Caribe Afirmativo, direccion@caribeafirmativo.lgbt . Sent:

Tuesday, November 16, 2021, 3:59 p.m. Subject: "*Reference: File T-8.292.437.*" Attached document: "*Response from the Constitutional Court - Caribe Afirmativo - T-8.292.437.*" p. 2.

[105]

Ibid.

[106]

Ibid. p. 3.

[107]

Ibid. p. 7.

[108]

Ibid. p. 6.

[109]

Ibid.

[110]

Ibid. p. 8.

[111]

Ibid.

[112]

Ibid.

[113]

Transgender Action and Support Group Foundation (GAAT).

Legal GAAT Foundation. juridica@fundaciongaat.org. Sent: Thursday, November 18, 2021, 4:54 p.m. Subject: "*Response to Official Letter*"



OPT-A-2734/2021, File T-8.292.437." Attached document: "*Response to Official Letter OPT-A-2734_2021 (10)*." The Foundation submitted its intervention and attached the positions it considered in order to form its opinion. These come from various activists and defenders of the rights of the trans community and non-binary people. It identified and presented them as follows: Isabella Cortés, from the Armonía y Paz Antioquia Foundation (FAPA); María Victoria Palacios Romaña, Director of the Latidos Chocó Foundation (an independent organization that works to defend the rights of the populations in Chocó, prioritizing people with diverse sexual orientations and gender identities, "*as well as the reduction of GBV that occurs on the basis of sexual orientation and ethnicity*"); Christopher Plata and Ángel Neira, from RATDIVERSA (a diverse trans support network for gender identities with experience of binary and non-binary trans life); Camilo Losada, researcher and activist, coordinator of Trans*Lúcido ("*a space for recognition and knowledge building from trans perspectives for political action in defense of the human rights of trans people*"); Francesca Mcqoid, lawyer specializing in international human rights law and international humanitarian law; Alanis Bello Ramírez, professor in the Philosophy program at the National Pedagogical University of Colombia; Posá Suto ("*an Afrocentric space that works for the well-being of black queer, trans, gay, and gender-diverse people*"); Andrew Aguacia; Ed. Rojas; April Otero; Santi Palomino; Asotransnor; Ambar Sánchez; Valeria Durango, activist with the City-Trans Collective; and Suto. pp. 44-80.

[114]

Ibid. p. 37.

[115]

Ibid. p. 14. On this concept, the Foundation



explained: "*Butler (1990) 5 In her text Gender Trouble, she understands heteronormativity as a matrix of cultural intelligibility through which bodies, genders, and desires are naturalized by means of the binary gender model, which then leads to the compulsory practice of heterosexuality and the imposition of a cisnormative model.*"

[116] Ibid. p. 15.

[117] Ibid.

[118] Ibid. p. 35.

[119] Ibid.

[120] Ibid. p. 15.

[121] Specifically, it referred to the cases: *Christine Goodwin v. The United Kingdom* Application No. 8957/95, July 11, 2002, I. v. *United Kingdom* Application No. 25680/94, July 11, 2002, and *Van Kück v. Germany* Application No. 35968/97, June 12, 2003.

[122] Transgender Action and Support Group Foundation (GAAT). ~~Legal~~ GAAT Foundation. juridica@fundaciongaat.org. Sent: Thursday, November 18, 2021, 4:54 p.m. Subject: "*Response to Official Letter OPT-A-2734/2021, File T-8.292.437.*" Attached document: "*Response to Official Letter OPT-A-2734_2021 (10).*" p.32.

[123] Among these, it states that there are four: "*1. The high cost of notary services and discretionary fees (...). // 2. Failure to consider gender identity or sexual orientation in the procedures for sex correction and name change, as these are not required by notarial regulations on the procedure for sex correction (sic) and change of name and because they are considered as a*



violation of personal privacy. // 3. Failure to collect data on trans applicants: it is not possible to track the realization of the rights of the trans community. // 4. Confusion between the concepts of gender identity and sex at birth: there is no differential approach in these procedures, even though the trans population is one of the main beneficiaries of these procedures.

[124]

Transgender Action and Support Group Foundation (GAAT). GAAT Legal Foundation. juridica@fundaciongaat.org. Sent: Thursday, November 18, 2021, 4:54 p.m. Subject: "Response to Official Letter OPT-A-2734/2021, File T-8.292.437." Attached document: "Response to Official Letter OPT-A-2734_2021 (10)." p.

20. The Foundation identified 13 barriers in the cities of Bogotá, Barranquilla, and Medellín. They are as follows: "1. Classification of the identity name as unreal and illegal because it does not correspond to the legal name. // 2. Need to carry the civil birth certificate everywhere in order to confirm identity, since gender expression does not match the photo or name on the ID card. // 3. Inability to initiate the process of sex correction and name change due to the high costs of such services and inability to afford them. // 4. Subjection to personal scrutiny questioning gender identity due to the adoption of binary government measures that exclude diverse sexual diversities, such as "pico y género" (gender and appearance) and/or "pico y cédula" (gender and ID card) during mandatory quarantine.

// 5. Exclusion from employment processes due to the difference between the legal name and the identity name. // 6. Exclusion from educational institutions due to the difference between the legal name and the identity name, requiring them to change their documents in order to modify lists and ID cards. // 7. Lack of access to the right to to to health due to discrepancy between name



and legal name. Different health entities do not recognize or respect people's gender identity and refer to the name that appears on their identity document, often despite the person requesting to be called by their identity name. // 8. Normalization of violence. //

9. Situations of verbal violence, finger-pointing, and humiliation by society in general, based on prejudice and religious fanaticism. // 10. Police and military abuse, ridicule for displaying gender identity (requiring military ID cards from trans men, searches, physical and verbal violence, irregular procedures, and summonses without just cause) and risks during detention, people are often sent to detention cells according to the sex that appears on their documents, which poses great risks, especially for trans women who must share cells with cisgender men. // 11. Self-exclusion in public spaces. // 12. Exclusion from access to public establishments (banks, shops, bathrooms, bars). // 13. Lack of information or ignorance of Decree 12/27

(sic).

[125]

Ibid. p. 26.

[126]

Ibid. p. 39.

[127]

Action Program for Equality and Social Inclusion (PAIIS), mf.***o@uniandes.edu.co. Sent: Monday, November 22, 2021, 4:45 p.m. Subject: "PAIIS intervention file T-292437." Attached document: "PAIIS intervention file T-292437." p. 3.

[128]

However, the intervener acknowledges that some people with non-binary identities describe themselves as transgender.

[129]

Ibid. pp. 13–14.



[130] Ibid. p. 14.

[131] Interdisciplinary Center for Development Studies (Cider), CiderX, and Department of Languages and Culture, University of the Andes, ciderprogramas@uniandes.edu.co . Sent: Wednesday, November 24, 2021, 6:47 p.m. Subject: "*Technical Opinion Court - Tutela No. T-8.292.437.*" Attachments: 1.

[132] Interdisciplinary Center for Development Studies (Cider), CiderX, and Department of Languages and Culture of the University of the Andes, ciderprogramas@uniandes.edu.co . Sent: Wednesday, November 24, 2021, 6:47 p.m. Subject: "*Technical Opinion of the Court - Tutela No. T-8.292.437.*" Attached document: "*Uniandes_Concepto_Nov2021.*" Ibid. p. 4.

[133] Ibid. pp. 9-11. Specifically, these are Germany, Argentina, Australia, Belgium, Canada, Denmark, the United States, Iceland, Malta, Nepal, the Netherlands, and Pakistan.

[134] As noted, this section will not refer to findings related to the experiences of non-binary gender markers. The statements of the participants will be discussed at length in the analysis of this specific case.

[135] Ibid. 14.

[136] Ibid. 7.

[137] Ibid. p. 3.

[138] Ibid. 2.

[139] Ibid. p. 5.

[140] EAFIT University, m***3@eafit.edu.co. Sent: "*Tuesday, November 16, 2021 5:33:44 PM.*" Subject: _____



“Statement on case T-8292437.” Attached document: “*Statement by the Constitutional Court on EAFIT’s DIVERSE SEXUALITY GROUP 2021-2.*”

p. 4.
[141]

Ibid. p. 6. Quoted from: SALDIVIA, Laura. On sexual/gender binary and public bathrooms. See also: SALDIVIA, Laura. “*Sin Etiquetas*” (*Without Labels*), Palermo Law Review, Year 8, No. 1, 2007.

[142]

Ibid. p. 6.

[143]

Ibid. 11.

[144]

Refers to the case of Mike Durán Guio, unrelated to this constitutional proceeding.

[145]

At the time of registration of this project, the matter had not yet been filed with the General Secretariat of the Constitutional Court for a decision on its possible selection.

[146]

Free University. Observatory of Constitutional Citizen Intervention, Free University of Bogotá. observaciudadanoderecho@gmail.com. Sent: Tuesday, November 16, 2021, 5:29 p.m. Subject: “*T-8.292.437. Magistrate: Gloria Stella Ortiz Delgado.*” Attached document: “*T-8.292.437.*” p. 2.

[147]

Ibid. p. 2.

[148]

Ibid. p. 6.

[149]

Ibid. p. 10.

[150]

CAMPO, Johnajohn jt@gmail.com Sent: Wednesday, November 17, 2021, 8:59 a.m. Subject: “*Response to request OPT-A-2734/2021 from Johnajohn Campo Betancourt Ref: File T-8.292.437.*” Attached document: “*Questions for the Constitutional Court johnajohn.*” p. 2.



[151] Ibid. p. 4.

[152] Agreement of July 22, 2015. *"Whereby the Rules of Procedure of the Constitutional Court are unified and updated."* Article 64, first paragraph: *"Evidence in review of guardianship cases. With a view to the immediate and effective protection of the fundamental right violated and to bring relevant evidence to the guardianship review process, the presiding judge, if deemed appropriate, shall order evidence to be taken. Once received, the evidence shall be made available to the parties or interested third parties for a period not exceeding three (3) days so that they may comment on it, during which time the file shall remain with the General Secretariat."*

[153] Although the plaintiff states that he or she is a *"transvestite,"* in his or her writ of protection, he or she argues that his or her gender identity does not correspond to the sex assigned at birth. This is the characteristic that defines transgender persons, which motivates the use of this term, which, according to Ruling T-143 of 2018 (M.P. José Fernando Reyes Cuartas), includes transvestites.

[154] Petition for constitutional protection. p. 54.

[155] Rulings T-373 of 2015 (M.P. Gloria Stella Ortiz Delgado) and T-416 of 1997 (M.P. José Gregorio Hernández).

[156] Ruling T-416 of 1997. M.P. José Gregorio Hernández.

[157] **"Article 42. Admissibility.** *The writ of protection shall proceed against actions or omissions of individuals in the following cases: // 1. When the person against whom the request has been made is responsible for providing the public service of education. // 2. When the person*



against whom the request has been made is responsible for providing public health services. // 3. When the person against whom the request has been made is responsible for the provision of public services. // 4. When the request is directed against a private organization, against the person who effectively controls it or is the actual beneficiary of the situation that gave rise to the action, provided that the applicant has a relationship of subordination or defenselessness with that organization. // 5. When the person against whom the request has been made violates or threatens to violate Article 17 of the Constitution. // 6. When the private entity is the one against whom the request has been made in exercise of habeas data, in accordance with the provisions of Article 15 of the Constitution. // 7. When rectification of inaccurate or erroneous information is requested. In this case, a transcript of the information or a copy of the publication and the requested correction that was not published in conditions that ensure its effectiveness must be attached. // 8. When the individual acts or must act in the exercise of public functions, in which case the same regime shall apply as to public authorities. // 9. When the request is to protect someone who is in a situation of subordination or defenselessness with respect to the individual against whom the action was brought. The defenselessness of the minor requesting protection is presumed.

[158]

“Article 120. The electoral organization is made up of the National Electoral Council, the National Civil Registry, and other bodies established by law. It is responsible for organizing, directing, and monitoring elections, as well as matters relating to the identity of individuals.”

[159]

Ruling C-029 of 2019. M.P. Alberto Rojas Ríos.



[160] Ruling C-1508 of 2000. M.P. Jairo Charry Rivas.

[161] "*Article 131. The law is responsible for regulating the **public service provided by notaries** and registrars, defining the labor regime for their employees, and matters relating to contributions as special taxation of notaries, for the administration of justice. // The appointment of permanent notaries shall be made through a competitive examination. // The Government is responsible for the creation, abolition, and merger of notary and registry districts and for determining the number of notaries and registry offices*" (emphasis added).

[162] Ruling C-1508 of 2000. M.P. Jairo Charry Rivas.

[163] Ibid.

[164] Ruling T-079 of 2021 (Presiding Judge Cristina Pardo Schtesinger). Similarly, see rulings T-135 of 2020 (Presiding Judge Carlos Bernal Pulido) and T-447 of 2019 (Presiding Judge Gloria Stella Ortiz Delgado).

[165] Ruling SU-696 of 2015. M.P. Gloria Stella Ortiz Delgado.

[166] Both the plaintiff and the National Civil Registry, at the request of this Corporation, provided the response issued by the latter entity to the request of December 30, 2019. In the version held by both parties, the date of issue of the document is not recorded, and neither of them reports when it was produced and/or received.

[167] Ninth Notary Public of Medellín. Response to the request of March 12, 2021. Annex submitted by the plaintiff to its writ of protection. pp. 78 and 79.

[168] Distribution record. p. 1.

[169] Judgment T-480 of 2011. M.P. Luis Ernesto Vargas



Silva.

[170]

Judgment T-106 of 1993. M.P. Antonio Barrera Carbonell.

[171]

"Article 6. *Grounds for inadmissibility of the writ of protection.*

The writ of protection shall not proceed: 1. When other legal remedies or means of defense exist, unless it is used as a temporary mechanism to prevent irreparable harm. The existence of such means shall be assessed on a case-by-case basis, in terms of their effectiveness, taking into account the circumstances of the applicant (...) Irreparable harm is understood to be harm that can only be fully remedied through compensation."

[172]

Judgment T-447 of 2019. Presiding Judge Gloria Stella Ortiz

Delgado.

[173]

Ibid.

[174]

General Code of Procedure. Article 18.6. *"Jurisdiction of municipal civil judges in the first instance. Municipal civil judges hear cases in the first instance: // 6. The correction, substitution, or addition of civil status entries or names or pseudonym annotations in civil registry records or folios, without prejudice to the jurisdiction attributed by law to notaries."*

[175]

Judgment T-063 of 2015. M.P. María Victoria Calle Correa.

[176]

Ruling C-114 of 2017. M.P. Alejandro Linares Cantillo.

[177]

Ruling T-498 of 2017. M.P. Cristina Pardo Schlesinger.

[178]

Ruling T-675 of 2017. M.P. Alejandro Linares



Cantillo.

[179] Ibid.

[180] Consolidated based on the considerations of Ruling T-444 of 2019.

M.P. Gloria Stella Ortiz Delgado.

[181] BOBBIO, Norberto. *The Time of Rights*. Editorial Sistema. Madrid, 1991. p. 110.

[182] HOBBSAWN, Eric. *Nations and Nationalism since 1780*. Crítica. Barcelona, 1992. pp. 42 and 197.

[183] Ruling T-443 of 2020. M.P. José Fernando Reyes Cuartas.

[184] Ruling T-629 of 2017. M.P. Gloria Stella Ortiz Delgado.

[185] Ruling T-444 of 2019. M.P. Gloria Stella Ortiz Delgado.

[186] BOBBIO, Norberto. *The Time of Rights*. Editorial Sistema. Madrid, 1991.

[187] Ruling C-891 of 2002. M.P. Jaime Araujo Rentería.

[188] BOBBIO, Norberto. *The Time of Rights*. Op. cit. pp. 40–45

[189] Ibid.

[190] Ibid. p. 111

[191] Judgment T-629 of 2010. M.P. Juan Carlos Henao Pérez.

[192] Idem. *"by which a person or group of persons is restricted or excluded from exercising a right or accessing a particular benefit."*



[193] Ruling T-291 of 2009. M.P. Clara Elena Reales Gutiérrez. *"application of rules that are apparently neutral but which in practice have an adverse and disproportionate impact on a traditionally marginalized or discriminated group."*

[194] Ruling T-629 of 2010. M.P. Juan Carlos Henao Pérez.

[195] Ruling T-077 of 2016. M.P. Jorge Iván Palacio Palacio.

[196] BUTLER, Judith. *Bodies That Matter: On the Material and Discursive Limits of "Sex."* Paidós, Buenos Aires, 2002. pp. 179 et seq.

[197] Ibid.

[198] Ruling T-804 of 2014. M.P. Jorge Iván Palacio Palacio.

[199] Ruling T-447 of 2019. M.P. Gloria Stella Ortiz Delgado.

[200] Ruling T-068 of 2021. M.P. Diana Fajardo Rivera.

[201] Rulings T-236 of 2020 (M.P. Luis Guillermo Guerrero Pérez) and T-447 of 2019 (M.P. Gloria Stella Ortiz Delgado).

[202] Universal Declaration of Human Rights. Article 2. *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."*



a person, whether it be an independent country, a trust territory, a non-self-governing territory, or a territory subject to any other limitation of sovereignty."

[203] American Convention on Human Rights. "*Article 1. Obligation to Respect Rights. 1. The States Parties (sic) to this Convention undertake to respect the rights and freedoms recognized herein and to guarantee their free and full exercise to every person subject to their jurisdiction, without any discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other condition. // 2. For the purposes of this Convention, a person is every human being.*

[204] In this regard, the IACHR stated that "[t]aking into account the general obligations of respect and guarantee established in Article 1.1 of the American Convention, the criteria for interpretation set forth in Article 29 of said Convention, the provisions of the Vienna Convention on the Law of Treaties, the Resolutions of the OAS General Assembly, the standards established by the European Court and United Nations bodies [...], the Inter-American Court establishes that a person's sexual orientation and gender identity are categories protected by the Convention. Therefore, any discriminatory rule, act, or practice based on them is prohibited by the Convention (Inter-American Court of Human Rights. Case of Atala Riffo and Girls v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012, Series C No. 239, para. 91.). Similarly, Judgment T-192 of 2020. M.P. Alberto Rojas Ríos.

[205] Judgment T-192 of 2020. M.P. Alberto Rojas Ríos.



- [206] Judgment T-002 of 2021. M.P. Gloria Stella Ortiz Delgado.
- [207] TAYLOR, Charles. Identity and Recognition. 1996. pp. 1-2.
- [208] Ibid.
- [209] Ibid.
- [210] Rulings T-143 of 2018 (M.P. José Fernando Reyes Cuartas) and T-443 of 2020 (M.P. José Fernando Reyes Cuartas).
- [211] Ruling T-063 of 2015. M.P. María Victoria Calle Correa.
- [212] Ruling T-099 of 2015. M.P. Gloria Stella Ortiz Delgado.
- [213] BUTLER, Judith. Gender Trouble: Feminism and the Subversion of Identity. Paidós, 2007.
p. 54.
- [214] Ruling T-143 of 2018. M.P. José Fernando Reyes Cuartas.
- [215] SUÁREZ CABRERA, Julia Marcela (Coord.). Glossary of sexual diversity, gender, and sexual characteristics. National Council for the Prevention of Discrimination, Mexico, 2016. P. 31. "*Reference to the sexual bodies of persons; that is, to the biological characteristics (genetic, hormonal, anatomical, and physiological) on the basis of which persons are classified as male or female of the human species at birth, who are referred to as men or women, respectively.*"
- [216] Ruling T-068 of 2021. M.P. Diana Fajardo Rivera. " *riente sexual se relaciona con los*



desires, feelings, and sexual and emotional attractions that may exist between people. In this area, there may be various manifestations, such as heterosexuality, homosexuality, bisexuality, or asexuality, which constitute legitimate and constitutionally relevant expressions of the right to free development of personality, without any interference from external agents such as the State or private individuals."

[217]

Ruling T-099 of 2015. M.P. Gloria Stella Ortiz Delgado.

[218]

Ruling T-1033 of 2008. M.P. Rodrigo Escobar Gil.

[219]

Ruling T-532 of 1992. M.P. Eduardo Cifuentes Muñoz.

[220]

Ruling C-336 of 2008. M.P. Clara Inés Vargas Hernández.

[221]

Ruling C-246 of 2017. M.P. Gloria Stella Ortiz Delgado.

[222]

Ruling C-336 of 2008 (Presiding Judge Clara Inés Vargas Hernández) and C-746 of 2011 (Presiding Judge Mauricio González Cuervo).

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Ruling T-881 of 2002. M.P. Eduardo Montealegre Lynett.

[224]

"Article 14. Every person has the right to recognition of their legal personality."

[225]

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M.P. Gloria Stella Ortiz Delgado.

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recognition. *New Left Review* (Spanish), 4, 2000. pp. 62-63.

[228]

Ibid. p. 61

[229]

United Nations. General Assembly. Human Rights Council. 47th session, June 21 to July 9, 2021. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity, Víctor Madrigal-Borloz. *The right to inclusion*. p. 12.

[230]

Judgment T-498 of 2017. M.P. Cristina Pardo Schlesinger.

[231]

Ibid.

[232]

Rulings T-106 of 1996 (M.P. José Gregorio Hernández Galindo) and Ruling T-498 of 2017. M.P. Cristina Pardo Schlesinger.

[233]

Judgment T-086 of 2014. M.P. Jorge Ignacio Pretelt Chaljub.

[234]

United Nations. General Assembly. Human Rights Council. 47th session, June 21 to July 9, 2021. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity, Víctor Madrigal-Borloz. *The right to inclusion*.

[235]

Inter-American Court of Human Rights. Advisory Opinion 24 of 2017.

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Judgment T-231 of 2013. M.P. Luis Guillermo Guerrero Pérez.

[237]

Ruling C-114 of 2017. M.P. Alejandro Linares Cantillo.



[238] "**Article 94.** *The registered person may, on one occasion only, by means of a public deed, request the modification of the registry to replace, rectify, correct, or add to their name, all for the purpose of establishing their personal identity.*"

[239] Ruling C-114 of 2017. M.P. "*The rules in force in this matter are as follows: (i) the power to modify the name includes the first name or given name, as well as the surnames or patronymic names; (ii) the request for modification, when made for the first time, may be processed before notaries in accordance with the provisions of Article 6 of Decree Law 999 of 1988 - granting the public deed - or before municipal civil judges, exhausting the voluntary jurisdiction process, in accordance with the provisions of Articles 18.6 and 577.11 of the General Code of Procedure; (iii) the modification of the name, when this has already been done on a first occasion, can only be carried out before the judicial authority, after exhausting the voluntary jurisdiction process; and (iv) the representatives of minors may, on one occasion only, arrange for the change of their name, without prejudice to the possibility of the person modifying it again once they have reached the age of majority.*"

[240] M.P. Alejandro Linares Cantillo.

[241] "**Article 2.2.6.12.4.3.** *Scope of the correction. The correction of the sex component in the Civil Registry of Birth may consist of the **registration of male (M) or female (F)**. // The Unique Personal Identification Number (NUIP) will not be modified with the correction of the sex component in the Civil Registry. In the case of identity cards issued prior to March 2000, the numerical quota will be canceled so that a ten-digit Unique Personal Identification Number (NUIP) can be assigned*



*Personal Identification Number (NUIP) with ten (10) digits" and "Article 2.2.6.12.4.6. Limits to the correction of the sex component in the Civil Registry. A person who has adjusted the sex component in the Civil Registry of Births may not request a correction within **ten (10) years of the issuance of the Public Deed by the Notary.***

*// The sex component may only be corrected **up to two times.**" (emphasis added).*

[242]

M.P. Alejandro Martínez Caballero.

[243]

M.P. Jorge Iván Palacio Palacio.

[244]

M.P. Luis Guillermo Guerrero Pérez

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M.P. María Victoria Calle Correa.

[246]

Judgment T-447 of 2019. Presiding Judge Gloria Stella Ortiz Delgado.

[247]

Presiding Judge Gloria Stella Ortiz Delgado.

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Chief Justice Cristina Pardo Schlesinger.

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Justice Gloria Stella Ortiz Delgado.

[250]

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[253]

RODRIGUEZ PIZARRO, Alba Nubia and RIVERA

CRESPO, Janet. Sexual diversity and gender identities: between acceptance and recognition. Institutions of Higher Education (IES). CS, 2020, no. 31



[254] GIDDENS, Anthony and SUTTON, Philip W. *Essential Concepts of Sociology*. Alianza editorial. Madrid, 2017. pp. 721 to 722.

[255] GÓMEZ SUÁREZ, Agueda. "*Third gender and ethnicity in Latin America*." In: VALCUENDE DEL RÍO, José María et. al. (Coords.). *Studies on Sexual Diversity in Ibero-America*. Aconcagua Libros. Seville, 2013. pp. 44 to 45.

[256] Inter-American Commission on Human Rights. *Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights*. Approved on August 7, 2020.

[257] Ibid. p. 45.

[258] Ibid.

[259] United Nations. General Assembly. Human Rights Council. 47th session, June 21 to July 9, 2021. *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity*, Víctor Madrigal-Borloz.

[260] Ibid.

[261] Nepal Supreme Court Division Bench, Sunil Babu Pant and Others v. Nepal Government and Others, Mandate Number 917, December 21, 2007, http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&task=download&id=33%3Anja-law-journal-2008-issue-2&Itemid=157.

[262] Supreme Court of India, National Legal Services Authority v Union of India and others, April 15, 2014, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41411>.



[263] Presidency of the Republic of Argentina. At:

<https://www.boletinoficial.gob.ar/detalleAviso/primera/247092/20210721>

[264] The table mainly reflects contributions from PAIS, the Interdisciplinary Center for Development Studies (Cider), CiderX, and the Department of Languages and Culture at the University of the Andes. The data referred to in their submissions were supplemented with other interventions and findings made by the Chamber during the review process.

[265] Ibid. p. 11.

[266] Ibid. p. 5.

[267] CIDERX. p. 9.

[268] Universidad del Rosario, gap@urosario.edu.co . Sent: Tuesday, November 16, 2021, 6:34 p.m. Subject: "*Response to request Auto 10/26/21 official letter OPT A 2734-2021. case T-8.292.437.*" Attached document: "*URosario_Concept T-8'292437.*" p. 6.

[269] Ibid. p. 12

[270] Committee on Economic, Social, and Cultural Rights. General Comment No. 20.

[271] "*Article 4. The Constitution is the rule of rules. In any case of incompatibility between the Constitution and the law or other legal norm, the constitutional provisions shall apply. // It is the duty of nationals and foreigners in Colombia to abide by the Constitution and the laws, and to respect and obey the authorities.*"

[272] Ruling T-704 of 2012. M.P. Luis Ernesto Vargas Silva.



- [273] Ruling T-049 of 2002. M.P. Marco Gerardo Monroy Cabra.
- [274] Ruling C-335 of 2006. Justices Jaime Araújo Rentería and Clara Inés Vargas Hernández.
- [275] Ruling T-704 of 2012. Justice Luis Ernesto Vargas Silva.
- [276] Ruling C-122 of 2011. Justice Juan Carlos Henao Pérez.
- [277] Ruling C-600 of 1998. Justice José Gregorio Hernández Galindo.
- [278] Ruling T-704 of 2012. Presiding Judge Luis Ernesto Vargas Silva.
- [279] Ibid. p. 19.
- [280] Ibid. p. 18.
- [281] Ibid. p. 21. Quoted from: *"ILGA Europe, Non-binary Gender registration, (free translation). On this point, the report also refers to a survey conducted in the United Kingdom with non-binary people, which found that "only 41% would support the complete elimination of public gender registration, while 73% of the 895 survey participants would favor the introduction of a 'third' gender category."*
- [282] Ibid. p. 8.
- [283] Ruling C-345 of 2019. M.P. Gloria Stella Ortiz Delgado.
- [284] Ruling C-345 of 2019. M.P. Gloria Stella Ortiz Delgado.
- [285] Action Program for Equality and Social Inclusion
-



(PAIIS), mf.***o@uniandes.edu.co . Sent: Monday, November 22, 2021, 4:45 p.m. Subject: "PAIIS Intervention File T-292437." Attached document: "PAIIS Intervention File T-292437." p. 14.

[286] EAFIT University, m***3@eafit.edu.co. Sent: "Tuesday, November 16, 2021 5:33:44 PM." ~~Subject: "Statement on the file T-8292437."~~ Attached document attached: "Statement Constitutional Court DIVERSE SEXUALITY GROUP EAFIT 2021-2" p. 8.

[287] Caribe Afirmativo,direccion@caribeafirmativo.lgbt . Sent: Tuesday, November 16, 2021, 3:59 p.m. Subject: "Reference: File T-8.292.437." Attached document: "Response from the Constitutional Court - Caribe Afirmativo - T-8.292.437." p. 8

[288] See, for example, Rulings C-178 of 2014 (Jurisdictional functions of the National Copyright Directorate "*it is not possible to establish an absolute difference between the objective and subjective dimensions of certain rights, since free competition is both a citizen's right to access the market and a collective right, which is protected by ensuring macroeconomic conditions to prevent the creation of monopolistic organizations. Evidently, the same applies to consumer rights, which, although classified by law as collective (Law 472 of 1998), may give rise to subjective positions for each consumer, which may be subject to protection by the Superintendency of Industry and Commerce, eventually, when hearing individual complaints.*"), T-199 of 2013 (Right to Health: "*(...) the Chamber will highlight in this ruling the objective dimension of fundamental constitutional rights in general and will emphasize, in particular, the*



close link between the effectiveness of the constitutional right to health and the validity of the fundamental constitutional rights of older adults and the need for the State—and individuals committed to the proper realization of such rights—to implement a set of actions, tasks, or activities aimed at guaranteeing the conditions necessary for these rights to enjoy full protection”), T-283 of 2012 (Children's right to health: "The inclusion of the concept of the objective dimension of fundamental rights in the jurisprudence of this Corporation in no way excludes or limits their subjective dimension; it complements it by recognizing the dual dimension of these rights in our legal system. In this sense, fundamental rights, in addition to their main function of regulating the individual-State relationship, have a facet in which, as principles of the highest level of abstraction in Alexy's terms, they affect all areas of the legal system, imposing certain parameters of action on both the State and individuals."), C-587 of 1992 (Fundamental rights: "In the social state governed by the rule of law—which recognizes the breakdown of the classic categories of the liberal state and focuses on the protection of the human person, taking into account their real conditions within society and not the abstract individual—fundamental rights acquire an objective dimension, but—sic—beyond the subjective right they recognize for citizens. They form (...) the constitutional public order, (...) Consequently, the State is obliged to extend the binding force of fundamental rights to private relations: the State legislator must give effect to fundamental rights in private legal transactions; the State



judge must always interpret the law through the lens of fundamental rights") or T-406 of 1992 (Fundamental rights: "Two essential notes of this concept demonstrate this. First, its objective dimension, that is, its transcendence from the sphere of individual rights to the entire organizational apparatus of the State. Moreover, the apparatus has no meaning unless it is understood as a mechanism aimed at the realization of rights. Secondly, and in line with the first point, the existence of the action of tutela, which was established as a mechanism for the immediate protection of rights against all public authorities.").

[289]

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[290]

Constitutional Court, ruling SU-132 of 2013 (MP Alexei Julio Estrada; AV Nilson Pinilla Pinilla).

[291]

Case D-14063. Judge Gloria Ortiz Delgado was the presiding judge in the ruling of November 23, 2020.

[292]

Constitutional Court, ruling SU-440 of 2021 (MP Paola Andrea Meneses Mosquera; SVP Cristina Pardo Schlesinger and Antonio José Lizarazo Ocampo; AV Cristina Pardo Schlesinger).

[293]

Constitutional Court, ruling T-063 of 2015 (MP María Victoria Calle Correa; SV Luis Guillermo Guerrero Pérez).



[294] Constitutional Court, ruling SU-440 of 2021 (MP Paola Andrea Meneses Mosquera; SVP Cristina Pardo Schlesinger and Antonio José Lizarazo Ocampo; AV Cristina Pardo Schlesinger).

[295] Constitutional Court, ruling T-023 of 2016 (MP María Victoria Calle Correa).

[296] Constitutional Court, ruling T-498 of 2017 (MP Cristina Pardo Schlesinger).



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