

Article

Gender Identity in Chile: Pending Challenges for Effective Protection

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RESUMEN

Este artículo se propone examinar de forma crítica el derecho a la identidad de género en Chile, con énfasis en su reconocimiento legal y su aplicación respecto de los derechos de NNA (niños, niñas y adolescentes) transgénero. Se utiliza la metodología cualitativa, basada en el estudio de las leyes, la doctrina y la jurisprudencia, con revisión legislación chilena (Ley N.º 21.120), instrumentos internacionales que recogen derechos humanos y decisiones destacadas de tribunales chilenos. Los resultados evidencian que, si bien ha habido avances normativos, persisten deficiencias importantes: excluye a los adolescentes que aún no han cumplido 14 años del proceso para cambiar de nombre y sexo registrado oficialmente, la invisibilización de identidades no binarias y la exigencia de representación legal para adolescentes, lo que contradice principios como desarrollo gradual de la capacidad de NNA y la primacía de su interés general. Además, se identifican impactos concretos en la salud y la educación, en contextos donde la discriminación estructural sigue presente. Se concluye que es necesario avanzar hacia una interpretación que garantice eficazmente el derecho a vivir conforme al género con el que se identifica, e igualmente, promover reformas legales y políticas públicas inclusivas que aseguren su pleno ejercicio.

Palabras clave: autonomía progresiva; derechos de la infancia; discriminación por motivos de género; identidad de género.

ABSTRACT

This article critically examines the right to gender identity in Chile, with a particular focus on its legal recognition and implementation in relation to the rights of transgender children and adolescents. A qualitative methodology is employed, based on the analysis of legislation, legal doctrine, and jurisprudence, including a review of Chilean law (Law No. 21.120), relevant international human rights instruments, and significant decisions issued by national courts. The findings indicate that, despite certain normative advances, substantial legal deficiencies remain. These include the exclusion of minors under the age of 14 from the legal procedure for amending their officially registered name and sex; the lack of recognition for non-binary identities; and the requirement of legal representation for adolescents, which contradicts foundational principles such as the evolving capacities of the child and the primacy of their best interests. Furthermore, the study identifies specific adverse impacts on access to healthcare and education, particularly in contexts where structural discrimination persists. The article concludes that it is essential to advance towards an interpretive approach that effectively guarantees the right to live in accordance with one's self-identified gender. It also advocates for comprehensive legal reforms and inclusive public policies that ensure the full exercise of this right.

Keywords: evolving capacities; children's rights; gender-based discrimination; gender identity.



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Introduction

The right to identity constitutes a highly relevant element within human rights theory and is subject to ongoing evolution. According to Rada and Bustos (2021, p. 2), it is deeply linked to the manner in which each individual is perceived by society and how they conceive themselves within that society. It is not limited solely to the name or appearance but encompasses a series of characteristics and qualities inherent to each individual as a unique being, enabling them to construct their own existence in relation to others. The Inter-American Court of Human Rights (IACHR, 2011) describes it as a set of elements and traits that enable the identification of a person in society, noting that its scope may include various rights depending on the subject and the specific context in which it is invoked.

Thus, personal identity is a complex legal construct that manifests itself at different levels, such as the right to a name, cultural identity, the right of children and adolescents to know their biological origin, as well as gender identity, the latter understood as an essential aspect of personal development (Rada and Bustos, 2021,2). In this sense, the Yogyakarta Principles (2007) are a relevant reference for the implementation of the essential rights related to gender identity and sexual orientation, by establishing that the latter corresponds to an intimate and personal experience, which must be legally recognized without discrimination or pathologization. These principles also constitute the duty for States to guarantee accessible, expeditious and free administrative procedures to legally validate gender identity, together with the prohibition of all forms of discrimination in public and private life based on this ground (Yogyakarta Principles, 2007).

The effective protection of the right to gender identity is an essential dimension for the fulfillment of multiple Sustainable Development Goals (SDGs), as it has a direct impact on the guarantee of fundamental rights and the reduction of structural inequalities. This right is primarily related to SDG 5, which promotes gender equality and the elimination of all forms of discrimination against women and girls, extending its scope to diverse gender identities and expressions. It is also linked to SDG 3 (health and well-being), SDG 4 (inclusive education) and SDG 10 (reducing inequalities), by addressing the structural barriers faced by trans and gender-diverse people. Guaranteeing this right is therefore a legal obligation and a requirement to fulfill the 2030 Agenda (United Nations, 2015).

In the Chilean case, Law Number 21,120 enshrines and safeguards the right to gender identity, defining it as the personal and internal affirmation of being a man or a woman, in accordance or not with the sex assignment at birth, and contemplates legal mechanisms for the rectification of the officially registered name and sex when these documents do not reflect the person's identity (Law No. 21,120, 2018). In this framework, this study proposes to reflect on the progress achieved in Chile up to 2024, in terms of gender identity and access to education and health, considered essential pillars for a dignified life. At the same time, it examines how health and educational institutions can reproduce dynamics of discrimination towards trans and non-binary people, affecting their welfare and access to fundamental services.

Methodology

This study adopts a qualitative methodology of a legal-critical nature, framed in the socio-legal paradigm and with a hermeneutic-critical orientation, which allows analyzing the right to gender identity in Chile - especially with respect to trans BGT- not only as a normative set, but as a social phenomenon crossed by power relations and institutional practices. This approach, as Cabrita and Chamorro (2020), Vega (2018) and Atienza (2012) point out, conceives the right in its dimension valorative, axiological and practical, which makes it possible to make visible situations of exclusion that escape a purely formalistic reading. Consequently, the legal analysis is articulated from an interdisciplinary perspective, integrating positive law (national and international)



with categories of gender studies, human rights theory and legal sociology, thus making it possible to identify normative tensions, structural deficiencies and forms of discrimination against trans and gender-diverse people.

The general objective of the research is to critically analyze legislation, jurisprudence and public policies related to the right to gender identity in Chile, identifying advances, regulatory gaps and practical barriers, with special emphasis on the rights of children and adolescents in the areas of health and education.

The type of study consists of an applied legal research, with a documentary, exploratory and analytical approach.

The data collection techniques are described below:

- 1. Systematic review of national and international doctrine (academic articles, books, reports).
- 2. Normative analysis of Law No. 21,120 and other relevant legal bodies, both in domestic and international human rights law.
- 3. Jurisprudential study of judgments handed down by national courts (Supreme Court, family courts) and regional courts (Inter-American Court of Human Rights).
- 4. Review of reports from international organizations and complementary empirical studies on gender identity, health and education.

This methodological approach makes it possible to observe how Chilean institutions - in their regulatory, judicial and administrative dimensions - respond to, resist or transform international standards related to the right to gender identity, and how these responses impact on the actual exercise of fundamental rights by trans and gender-diverse children and adolescents.

Results and Discussion

International standards on gender identity

Quinche (2009, 32), points out that international standards can be understood as those legal norms and guidelines developed by the international human rights protection system, especially by its judicial bodies, which should guide and condition "transitional justice procedures" and the prosecution of violations of fundamental rights. These standards are legally enforceable criteria derived from the process of official interpretation of treaties and other tools of international law - such as advisory opinions, declarations and general comments - that enshrine human rights and whose observance is legally binding on States (Quinche, 2009, 35). In this sense, Müller argues that the enshrinement of the right to gender identity in international positive law has been a relatively recent process, since this right was not expressly established in the first human rights treaties. However, he emphasizes that such recognition has been possible thanks to a process of evolutionary interpretation developed by international jurisprudence and the reports of bodies specialized in fundamental rights, both regionally and universally (Müller, 2023, 360).

Thus, gender identity has been recognized mainly in other *soft law* instruments, such as the Yogyakarta Principles, adopted in 2007, which define it as a deep and internal experience of gender, which may or may not coincide with the assigned sex. This experience is related to the perception of one's own body, which may involve physical changes through medical operations or other procedures. It also includes various forms of gender expression, such as style of dress, manner of speaking or body gestures (ICJ, 2007). Much later, in 2017, this right was explicitly incorporated in the Inter-American Convention on the Protection of the Human Rights of Older Persons, considering it part of the protected rights (Müller, 2023, 362).

Although the Yogyakarta Principles have no binding force and constitute only recommendations addressed to States, they have acquired notable normative value by virtue of their application by the IACHR Court, promoting a progressive interpretation of the right to identity. As Zelada (2022, 182) notes, while the IACHR



Court has only recently begun to address this issue in its jurisprudence, the Strasbourg Court or ECtHR has a much longer history.

In this framework, the IACHR Court has interpreted the right to identity as a set of characteristics or attributes that individualize each person -both in terms of his or her own perception and in society-, noting that this right encompasses various dimensions depending on the person who holds the right and the specific context in which it is exercised (IACHR Court, 2011).

Likewise, the Inter-American Court has based the right to gender identity on Article 1.1 of the Pact of San José, Costa Rica or American Convention (hereinafter, AC), which contains the principle of equality and non-discrimination, which it recognizes as a guiding principle of the inter-American system, in itself a right and, in addition, an indispensable guarantee for the full exercise of the rights contained in the AC. The Court holds that this norm is *ius cogens*, which implies that it generates obligations *erga omnes*, that is to say, that not only bind the States but also all individuals. Furthermore, it has affirmed that the legal structure of public order is based on this principle, both in the domestic order of States and in the international order, and that it permeates the entire normative system (I/A Court H.R., 2017). Jurisprudential line, according to which it recognizes that any unequal treatment based on gender identity or sexual orientation constitutes a "suspect category", and which requires a rigorous examination carried out by the State. In this sense, Núñez emphasizes that the Court has gone beyond the limits of the simple prohibition of formal discrimination, moving towards a model of substantive equality, which recognizes the need to implement affirmative action and special protection for LGBTIQ+ people, particularly transgender people. This interpretative line was consolidated in emblematic decisions such as Advisory Opinion OC-24/17, called "Gender identity, and equality and non-discrimination to same-sex couples", where the court affirmed that the recognition of gender identity and its expression is incorporated in the notion of the right to privacy and dignity of persons, being demandable that there are administrative mechanisms that allow its recognition without pathologizing requirements or judicialization (Núñez, 2019, 14-16).

Similarly, Núñez emphasizes that the IACHR Court has interpreted Article 11 of the CA, which enshrines privacy, as a right that constitutes the essential foundation for recognizing gender identity as a manifestation of personal autonomy. Following this line, the Court has affirmed that the experience of gender identity is an integral part of the intimate life of each person and is closely linked to the free development of his or her personality and dignity. Thus, denying the legal recognition of such identity implies an arbitrary intrusion into private life (Núñez, 2019, 14).

In recent years, Chile has incorporated legal provisions that enshrine gender identity as a right, and the courts of justice have begun to interpret them in accordance with the international standards and criteria of the international courts previously mentioned. However, in practice, there are still many situations that constitute threats or violations of the right to gender identity, which has a negative impact on the exercise of other fundamental rights, especially ESCR, by transgender and gender-diverse individuals. Against this backdrop, the objective of this paper is to identify these situations of violation, analyze how they affect the exercise of ESCR, and propose measures aimed at preventing or eliminating such practices.

Law that enshrines gender identity in Chile. Reflections on the legislation and jurisprudence of the Chilean courts.

According to Gauché and Lovera (2022) Law 21.120 has represented a significant advance in the legislative consecration of gender identity in Chile, although with important limitations. From a legal perspective, the authors emphasize that this regulation formally recognizes gender identity as an autonomous right, regulating the procedure for rectification of the certificate that registers name and sex at birth, which constitutes a relevant



change with respect to the previous regulation, based only on general rules on change of name (Gauché and Lovera, 2022, 124).

They add that one of the main contributions introduced by this law is its rights-based approach, which moves away from pathologizing views that have historically conditioned the legal recognition of trans persons to medical interventions or psychological evaluations. The legislation recognizes essential principles such as "non-pathologization", the prohibition of arbitrary discrimination, dignified treatment and confidentiality, the best interests of the child and the evolution of the capacities of children and adolescents, which makes it possible to understand it as a law with a markedly protective content (Gauché and Lovera, 2022, 125-126).

Similarly, Basoalto (2024), points out that Law No. 21,120 represents a significant advance in the consecration of the right to gender identity in Chile, by establishing a regulatory framework that allows, for the first time, legal access to change one's name and registered sex according to one's perception of gender identity. The law explicitly recognizes that every individual is entitled to the right to gender identity and enshrines key principles such as the evolving capacities of the child, non-pathologization and the best interests of the child. However, Basoalto criticizes several aspects of the Chilean legal approach, pointing out that significant normative deficiencies persist that hinder its effective application, particularly with respect to children and adolescents.

Among the main shortcomings identified by the author, she highlights that the law does not include non-binary gender identities, since the first article of the law defines gender identity exclusively in binary terms - male or female-, which excludes other gender expressions and violates the principle of equality and non-discrimination. In addition, it is questioned that the law prevents children under 14 years of age from accessing the procedure that allows them to change their name and sex in official records, which makes trans children invisible and contradicts international standards on children's rights. Even in the case of young people between 14 and 18 years old¹, the law requires the intervention of their legal representatives to submit the request, which can be a barrier when there is opposition or lack of support from the families (Basoalto, 2024, 11-13).

Similarly, Mondaca *et al.* (2024) warn about the practical difficulties derived from the non-legalization of non-binary identities, and add that the requirement of appearance through legal representatives for adolescents between 14 and 18 years of age may constitute an additional barrier to the effective realization of the right to gender identity, particularly in those cases in which responsible adults do not accompany or validate the transit process of their sons or daughters. This regulation, according to the authors, reflects a limited conception of the autonomy of adolescents who want to exercise very personal rights, such as the right to identity (Mondaca *et al.*, 2024, 124).

Likewise, Ravetllat (2024) warns that Chile's Gender Identity Law No. 21,120 presents important deficiencies under the approach of the fundamental rights of children and adolescents by excluding adolescents 13 years of age or younger from the process to modify sex and officially registered name.

Ravetllat points out that this regulation ignores international human rights principles, such as progressive autonomy and the best interests of the child, enshrined both in the CRC and in various pronouncements of the Inter-American system. In addition, he states that the law incurs in an adult-centric approach that subordinates the gender identity of children and adolescents to the will of their responsible adults, preventing their autonomous exercise of such personal rights as identity recognition (Ravetllat, 2024, 66).

¹ Article 14 of Law 21.120 states: ACTIVE LEGITIMIZATION. The request for rectification of persons over fourteen and under eighteen years of age must be filed by their legal representatives or one of them, at the choice of the person over fourteen and under eighteen years of age, if more than one.



The author advocates for a harmonization between Law No. 21,120 and Law No. 21,430 on the Guarantee and Integral Protection of Children, in order to ensure an interpretation consistent with international standards of non-discrimination and effective exercise of rights. Along these lines, it proposes that national legislation should recognize the progressive capacity of trans children and adolescents to make decisions related to their identity, without requiring authorizations that may become factual barriers to legal recognition (Ravetllat, 2024, 66-67).

Natalia Miranda criticizes the structural limitations of Law No. 21,120 on Gender Identity, highlighting its omission with respect to trans children under 14 years of age, who are excluded from a procedure that allows them to rectify their registered name and sex. This exclusion, according to the author, invisibilizes and denies the legal recognition of trans children, violating the principle of equality, the best interest of the child and progressive autonomy, all of which are recognized in legislation and international standards binding on Chile (Miranda, 2024).

Miranda warns that this approach reflects an adult-centered and pathologizing logic, which denies the possibility that children can be aware of their gender identity from a very young age. In addition, there is a legal inconsistency between both laws -21.120 and 21.430-, which explicitly protect the right of children and adolescents to develop their own gender identity and require the State to promote its effectiveness (Miranda, 2024, 86).

In light of this scenario, the author proposes a set of reforms and intervention strategies, such as amending Law Number 21,120 to include youth under 14 years old, the implementation of Comprehensive Sexual Education (ESI), and the creation of anti-discrimination protocols in educational institutions. Furthermore, the author emphasizes the need for social awareness campaigns, the strengthening of family support, and the recognition of trans children as holders of full rights and active participants in the development of public policies that directly affect them (Miranda, 2024, p. 86).

Sepúlveda (2018), states that the Supreme Court has played a key role in the evolution of the right to gender identity, even prior to the entry into force of Law Number 21,120, by exercising a control of conventionality and directly applying international human rights law. An emblematic case is Rol No. 70.584-2016, in which the Court resolved to accept an appeal for cassation and left without effect a judgment that had rejected the change in the sex and name records of a trans person who had undergone surgery for sex reassignment (Sepúlveda, 2018, 237-254).

In that judgment, the Supreme Court established that, although the national legislation did not expressly consecrate the change of sex in the registry, the courts could not excuse themselves from resolving the case because of that normative omission. On the contrary, they had to apply the constitutionally established principles and the international instruments that Chile had ratified, especially those that enshrine the principle of non-discrimination, the right to identity, personal autonomy and human dignity. In this framework, the court recognized that requiring surgical interventions for gender identity to be ascertained constituted a violation of fundamental rights, even citing jurisprudence from the Strasbourg Court (ECHR) and the Yogyakarta Principles (Sepúlveda, 2018, 239-241). The author adds that this judgment represented a very important precedent, not only for the concrete protection granted to the applicant, but also for adopting a gender-focused analysis in the judicial function. The Court recognized that transgender people suffered structural discrimination, which required an active jurisdictional response, aimed at promoting the full realization of the right to justice in conditions of real equality, even anticipating the content of the future law (Sepúlveda, 2018, 250-252).

In this same sense, Basoalto argues that national jurisprudence has attempted to remedy these normative omissions through pro-person interpretations and in accordance with the constitutional block, appealing to international principles such as the evolution of faculties, the best interests and the free development of the



personality of children and adolescents. Thus, several courts have authorized the change of sex and name in official records even in the case of adolescents 13 years of age or younger, persons with a non-binary identity, even using regulations such as Law No. 17,344 -originally intended for name changes for other reasons- and arguing on the basis of the natural capacity of the applicant and his or her emotional maturity. Although these decisions may seem *contra legem*, the author argues that they are based on a systematic and evolutionary interpretation of the law, consistent with the international legal framework on fundamental rights (Basoalto, 2024, 14-22).

Gauché and Lovera argue that Chilean courts, especially family courts, have applied Law 21.120 in a progressive manner, recognizing the right of children and adolescents 14 years of age and older to rectify their sex and officially registered name. However, the impossibility of applying this procedure to young people 13 years of age or younger has been criticized, as the authors consider it unconstitutional and incompatible with international standards for the protection of fundamental rights, particularly those emanating from the CRC (Gauché and Lovera, 2022, 124).

In summary, although Law No. 21,120 has meant a significant achievement in the normative consecration of the right to gender identity in Chile, several authors agree that it presents important structural deficiencies and practical limitations, especially in relation to the rights of children and adolescents. As argued by Gauché and Lovera (2022), Basoalto (2024), Mondaca *et al.* (2024), Ravetllat (2024) and Miranda (2024), the exclusions that affect young people aged 13 or younger, the lack of a legal consecration of non-binary identities, and the requirement of intervention of legal representatives in the case of young people between 14 and 18 years, restrict the effective realization of very personal rights and are contrary to international standards that enshrine the principle of equality and non-discrimination, progressive autonomy and the best interests of the child. For its part, the national jurisprudence, especially through resolutions of the family courts and superior courts, has attempted to correct these omissions by means of a *pro persona* interpretation and in accordance with the constitutional block, recognizing rights even outside the express framework of the law. The following sections will analyze how these normative and jurisprudential tensions impact on the effective enjoyment of other fundamental rights, particularly the right to health and education, as they relate to gender identity.

Right to Education and Gender Identity in Chile

Several recent reports and studies have shown that transgender and gender-diverse people, especially adolescents, face multiple barriers in the full realization of their right to education in Chile. The IACHR has recognized the efforts of the Chilean State to address school bullying, but has also warned that harassment of transgender students continues to be a structural problem. In particular, it highlights that physical, verbal and symbolic violence continues within school environments, which violates fundamental rights of trans students, and has led to urge Chile -as well as other member countries- to implement inclusive public policies, human rights education and affirmative action in schools (IACHR, 2015).

During 2016 and 2019, two national surveys were conducted on school climate, promoted by the Todo Mejora Foundation and GLSEN Research Institute, which reported on the violence faced by LGBTIQ+ students in Latin America. In Chile, the survey found that despite the legislative advances implied by the enactment of Law No. 21,120 already mentioned, in 2016 44% of the complaints to the superintendence of education were linked to cases of mistreatment and school discrimination based on gender and sexual orientation. The report highlights the urgency of having a public policy aimed at establishing measures to reduce violence in the school environment linked to sexual orientation, as well as gender identity and expression. Additionally, the survey shows that more than 70% of the children and adolescents belonging to LGBTIQ+ groups do not feel safe at school about their gender and sexual orientation, that more than 80% heard negative



or anti-LGBTIQ+ comments, more than 60% suffered verbal harassment, almost 30% suffered physical harassment and almost 10% suffered physical attacks. These alarming figures of violence within educational centers show the violence and victimization suffered by sexual diversities, which are often invisible or go unpunished.

According to Ravetllat (2019, 65), the school continues to be a space where practices that reinforce gender and sexual orientation stereotypes are reproduced. These dynamics can be observed in the separation of boys and girls for certain activities, in the organization of contents or subjects according to a binary approach, as well as in the reproduction of the classic division between public affairs -associated to men- and private affairs -associated to women-. In addition, the author warns that many educational centers transmit, consciously or not, norms that hierarchize desire and perpetuate structures that polarize gender and sexual identities.

In Chile, the Order of the Superintendence of Education No. 768, issued in April 2017, establishes guidelines to ensure the rights of trans BGT in the educational environment, defining guiding principles, specific rights and responsibilities for supporters and management teams. It also contemplates a procedure for establishments to recognize the gender identity of their students. However, this procedure conditions its initiation to a formal request made by the legal representatives of the students. Only in the case that the student has reached the age legally established to be considered an adult, he or she may initiate the procedure autonomously. Ravetllat (2019, 66) warns that, despite the fact that this regulation is based on what is enshrined in the CRC and on respect for gender identity, by requiring adult intermediation to recognize the identity of BGT, essential principles such as self-determination, the opportunity to be involved in decision-making, free expression and their right to be heard, all recognized by the resolution itself, are violated.

The lack of respect and protection for the gender expression of transgender students in educational centers can have serious, even fatal, consequences. In Chile, there have been cases in which young people have attempted against their lives due to systematic harassment and discrimination suffered in their educational environments. Such is the case of José Matías, a 16-year-old transgender, who took his own life in 2019 after being a victim of repeated bullying at a school in Copiapó. After his death, a bill was promoted - Bulletin No. 13.893-04-, which allows reforming the rules of school coexistence, expressly incorporating respect for sexual and gender identity, and including sanctions against any unequal treatment based on such conditions. In March 2023, another similar case -the case of Renato- showed once again the urgency of advancing in this matter.

Although the Superintendence of Education is currently empowered to impose administrative measures, including fines that can reach 55 UTM -equivalent to approximately US\$ 3,800-, the bill proposes more robust measures. These include the obligation of the establishments to adapt their internal regulations to guarantee the free exercise of gender identity and sexual orientation and of the student body, the imposition of criminal sanctions on employees who commit mistreatment due to gender identity or expression, and the requirement to have trained personnel with proven experience in school coexistence. The approval of this legislative initiative would not only contribute to make visible the various manifestations of violence faced by trans youth during their growth and socialization process, but would also strengthen preventive strategies, detection and punishment of these behaviors in the educational environment.

From the perspective of ESCR (economic, social, cultural and environmental rights), both the IACHR and the Rapporteur on ESCR have pointed out that transgender and gender-diverse people have the right to education, which plays a key role in the eradication of poverty by providing tools that allow access to decent living conditions. They have also emphasized that, in accordance with the principle of equality and non-discrimination, it is the duty of States to ensure that educational institutions do not reproduce discriminatory practices or promote hate speech or intolerance towards trans identities (IACHR & REDESCA, 2020).



Along the same lines, Maldonado (2024, 2) identifies that transgender children and adolescents face discrimination in accessing and remaining in the school system, due to the rigidity of the predominant binary approach. According to the author, the school represents not only a space to exercise the right to education, but also a key place for socialization and containment, especially in those cases where families do not recognize the identity of transgender children. However, it is noted that these students are affected by various forms of violence -including exclusion, bullying and offensive comments by peers and educational staff- which has a direct impact on their emotional state and the results obtained in the educational environment, generating high levels of anxiety, stress, low self-esteem and risk of depression or suicide (Maldonado, 2024, 17).

From a regulatory standpoint, Law No. 21,675, in force since June 2024, represents a step forward in addressing different forms of gender-based violence under an approach that incorporates LGBTIQ+ people. In particular, Article 12 recognizes a key role of education in social transformation aimed at eliminating violence, promoting a cross-cutting gender approach in the context of education. However, its implementation faces obstacles such as the lack of specific training of academics, cultural resistance, in addition to the lack of adequate resources (Law No. 21.675, 2024).

Regarding the perception of educational actors, the study by Vidal *et al.* (2024, 5) reveals a high valuation of legislative changes related to diversity and gender issues in the school context, as well as a growing acceptance of LGBTIQ+ students and other expressions of diversity. However, the research also shows that such acceptance decreases significantly when it comes to trans teachers, evidencing the persistence of gender binarism in the perception of teachers. Likewise, there is an alarming lack of training in sexuality and gender diversity: more than 80% of the teachers surveyed had not received specific training during their initial training. The most favorable attitudes towards inclusion are associated with young teachers, women and non-religious people or those with progressive ideologies, while resistance tends to be linked to more conservative profiles. Despite regulatory advances, there are still relevant gaps between current legislation and its effective implementation in the classroom (Vidal *et al.*, 2024, 5-6).

On the other hand, Mujica-Johnson *et al.* (2024, 339-345) have questioned the scant consideration of the gender perspective in teacher training, especially in Physical Education, where binary approaches persist that exclude students who do not identify with traditional gender categories.

At the university level, the study by Ojeda *et al.* (2024) analyzes the experiences of trans students in higher education, pointing out multiple obstacles, such as lack of respect for the social name, discriminatory administrative practices and poor training of academic staff. Despite the fact that some laws, such as Law No. 21.369, promote inclusion, the study concludes that its implementation is still deficient. Testimonies collected point to peer support as key to creating safer environments, but also to the urgency of training teachers and administrative staff in gender diversity so that inclusion policies translate into effective actions (Ojeda *et al.*, 2024, 103-106). For example, the use of social names is not consistently respected, exposing them to uncomfortable and vulnerable situations (Ojeda *et al.*, 2024, 98). Similarly, interviewees report that interactions with some faculty and administrative staff show a lack of knowledge about gender diversity, resulting in negative experiences that affect academic performance and social integration (Ojeda *et al.*, 2024, 98-103).

For their part, respondents point out that inclusion experiences are mediated mainly by fellow students, who are more open to respecting gender identity, providing a crucial social support environment. Similarly, respondents state that the Universities and institutes to which they belong either lack specific and accessible policies for transgender inclusion or do not have adequate dissemination (Ojeda *et al.*, 2024, 101-102).

Despite the existence of laws such as No. 21.369 that promote inclusion in education, there is insufficient evidence to support their effective application in higher education. This situation reveals the urgency of strengthening the training of the entire educational community -especially faculty and administrative staff- in



issues related to gender diversity, in order to ensure that inclusive policies translate into real transformations within institutions.

Right to health and gender identity

The IACHR has warned that transgender persons have persistently experienced significant obstacles in accessing medical care, often due to mistreatment, discrimination, institutional violence and the pathologization of their identities within the health system. These forms of structural violence are compounded by the lack of requirements for health centers to offer body modification procedures, as well as the limited training and awareness of medical personnel and the lack of adequate resources to provide comprehensive care (IACHR, 2020).

In the Chilean context, an emblematic case took place in April 2022, when the Supreme Court upheld an action for protection filed against the Carabineros Hospital, which refused to perform a surgical procedure of uterine removal - abdominal hysterectomy - requested by a 19-year-old trans youth who had requested the intervention since 2018. The maximum court considered that the refusal of the hospital center was illegal, irrational and contrary to the guarantees established in Article 19, numbers 1, 2 and 4 of the Charter. In addition, it held that the hospital's attitude violated the best interests of the child and constituted a form of arbitrary discrimination, by not respecting the self-determination of the young man regarding his gender identity.

The Supreme Court points out in the ruling that the hospital unjustifiably delayed the surgery by requiring that both parents of the applicant sign notarized deeds exempting the center from any responsibility. This requirement disregards the fundamental right of the young man to freely define his identity, since such a decision corresponds exclusively to his personal sphere. In addition, the ruling recalls that, although the young man initiated the procedures for his bodily transition when he was still a minor -specifically at the age of 16-, at the time of the pronouncement he was already of legal age. Therefore, his right to decide on his gender identity is an essential part of his human dignity and cannot be subject to any form of external conditioning (SC, 2021).

In its ruling, the highest court holds that the right to gender identity constitutes a fundamental expression of the principle of equal treatment in the Chilean legal framework, since it allows each person to self-determine his or her sexual orientation and construct his or her existence according to his or her own will. This power is recognized as an expression of individual autonomy, inherent to every rational human being and capable of freely choosing his or her way of life (SC, 2022).

Likewise, the court emphasizes that the State has the duty to protect the dignity of transgender persons, understanding that gender identity is a fundamental and inalienable component of the human condition. Therefore, it affirms that no actor -whether public or private- can disregard or violate this right without seriously affecting individual dignity. In this case, the court also applies the principle of the best interests of the child, recognizing it as a guiding principle in matters affecting trans children (SC, 2022).

Although this ruling is consistent with the criteria established in the international order in relation to gender identity, it is worrying that in Chile young people must wait long periods of time to access sex affirmation surgeries. The IACHR Commission (2020) highlighted that in 2020, only one team within the Chilean public health system was prepared to carry out these interventions, a situation that has generated unjustified delays in their performance. This situation has led some trans people to resort to informal procedures without sanitary control, which implies facing unsanitary environments, use of inappropriate tools and lack of professional accompaniment, seriously endangering the right to health, and other essential guarantees such as physical and mental integrity, and even the right to life.



This is partly described in a recent study by Maldonado (2024, 10), which analyzes the relationship between the right to health and gender identity, focusing particularly on the obstacles faced by transgender children and adolescents in accessing adequate medical services in Chile. The author questions the persistence of a pathologizing approach within the health system, which associates trans identity with clinical diagnoses such as gender dysphoria, which contributes to reinforce stigmas and justify unnecessary treatments. Likewise, Maldonado warns that the poor training of health personnel generates discriminatory and uncomfortable environments for trans patients, noting that only a quarter of the trans people surveyed reported having been treated consistently according to their gender identity in health care (2024, 13). The absence of clear and specific protocols has a negative impact on quality standards of care, leading to insensitive and exclusionary experiences. In this context, the author emphasizes the need to establish specialized units within the public health system that provide comprehensive, accessible and respectful support, including psychological support, access to hormone blockers and hormone replacement treatments.

The use of hormone blockers and hormone replacement treatments in trans children and adolescents has generated intense debate, since there are still not enough conclusive studies on their long-term effects. In a recent review, Daurella (2024, 256) critically examines the psychological, medical, and social implications of these interventions. The author questions the "affirmative therapy" model of immediately validating adolescent gender self-identification, which may include initiating medical treatments such as puberty blockers or cross-sex hormone use. He warns that this approach could lead to premature and irreversible interventions, without having adequately explored the underlying causes of gender discomfort.

González and Yebra (2024, 51-74) point out that the "affirmative therapy" model poses the transition procedure for transgender people as a path that can be divided into four progressive stages. The first is social transition, which usually begins with the adoption of a new name and gender expression in the everyday environment. The second stage corresponds to the blocking of puberty, in which drugs are used that temporarily inhibit the development of secondary sexual traits, using gonadotropin-releasing hormone analogues. Subsequently, in the third stage, cross-hormonal treatment is initiated, with the administration of sex hormones (testosterone or estrogens), depending on the type of transition sought. Finally, the fourth stage involves surgical treatment, aimed at modifying the physical characteristics to approximate those of the self-perceived sex (Gonzalez and Yebra, 2024).

Daurella (2023, 256-265) highlights the possible adverse side effects, both physical and mental, that may result from these treatments, and refers to the lack of agreement in the scientific community regarding their effectiveness and safety over time. Due to these concerns, countries such as the United Kingdom and Sweden have restricted access to these treatments for children under 18 years of age, considering that the risks could outweigh the benefits. Meanwhile, other States such as Belgium, the Netherlands and Spain have opted to establish a minimum age for their application, also ensuring the participation of multidisciplinary medical teams with different clinical and ethical approaches. This discussion reveals the importance of striking a balance between respect for the self-determination of trans individuals and the protection of children and adolescents from medical issues that could have permanent consequences.

This issue is especially relevant, taking into consideration that according to data provided by the Ministry of Health (MINSAL) during the year 2023 more than 1200 children underwent the special program that supports gender identity, projecting that in the year 2024 another 2,940 children would enter, so the policies implemented by our country on this issue will be relevant for a large number of children, who are also going through the complex stage of puberty.

The possibility of applying affirmative therapy in Chile to trans children and adolescents (NNA) is mainly regulated by three normative bodies: Law No. 20,584, which establishes the rights and duties of the health



system users; Law No. 21,331, referring to mental health; and Law No. 20,120, which regulates scientific research on human beings. Zúñiga-Fajuri (2024, 252) warns that these norms establish important legal and ethical limits that restrict the application of irreversible medical interventions on minors.

The author indicates that Law No. 21.331 contemplates the principle of progressive autonomy applicable to children and adolescents to give consent in health, but maintains the requirement that informed consent must be given by their parents or legal representatives. However, any procedure involving sterilization is prohibited even with their authorization (Art. 9 of Law No. 21.331) (Zúñiga-Fajuri, 2024, 253).

He argues that, even with parental consent, physicians would not be legally authorized to perform procedures that may cause sterility, such as the administration of cross hormones or surgeries such as hysterectomy or orchiectomy. Even the use of puberty blockers in the context of gender dysphoria is questioned, since it is considered an *"off-label"* and experimental use, and therefore the rules contained in Law No. 20,120 on scientific research should be applied (Zúñiga-Fajuri, 2024, 252-253).

Similarly, the article criticizes the so-called *"affirmative model"* adopted in some health programs in Chile, which allows the initiation of transitional treatments without medical diagnosis, without evaluating the child's decision-making and without sufficient scientific evidence of the efficacy or safety of such procedures. This model, according to the author, violates the legal and bioethical triad of informed consent: capacity-diagnosis-treatment (Zúñiga-Fajuri, 2024, 241).

Finally, Zúñiga-Fajuri states that the law requires that, in order to validate informed consent, they must have the capacity to understand the possible effects and repercussions of the treatment. However, neuroscience indicates that the adolescent brain is not yet fully developed, which reduces the effective possibility that children and adolescents can make irreversible medical decisions (Zúñiga-Fajuri, 2024, 249-250). Therefore, the author calls for a critical review of current medical practice in this area and the creation of a specific regulation that ensures the protection of children and adolescents, medical ethics and fundamental rights in balance (Zúñiga-Fajuri, 2024, 254-255).

For their part, González and Yebra (2024), in their article *Gender dysphoria in adolescence: another bias in women's health*, conclude that the increase in diagnoses of gender dysphoria in adolescents, especially in girls, raises important questions that have not yet been sufficiently debated from a critical and multidisciplinary perspective.

They recognize that there are positive factors that have favored greater visibility and access to care -such as the presence in the press, social networks and other sources accessible on the Internet, and the approval of inclusive laws-, but they consider that these explanations are not sufficient to fully understand the phenomenon. Based on this, they raise open questions about the potential impact of gender roles and social constructions, the role of social networks, the vulnerability of adolescence, the role of the pharmaceutical industry, and the parallels with other mental health problems such as eating disorders.

In particular, they draw attention to the fact that it is mostly girls and female adolescents who are being medicalized, which could reflect a new bias in women's health care. In addition, they warn about the irreversibility of some medical interventions in a vital stage characterized by transformation and personal exploration, such as adolescence.

Finally, the authors stress the need to act prudently and to actively involve mental health specialists during the assessment, support and decision-making stages. They propose opening a space for critical reflection to avoid treatments that cause adverse and irreversible consequences, over-medicalization and premature decisions in contexts of uncertainty.

The literature reviewed warns that the so-called *"affirmative model"* -when applied without rigorous clinical diagnosis or evaluation of capacity- can lead to premature decisions, marked by social or family pressure,



and with permanent consequences for those who are in a vital stage of identity construction. In this scenario, the State has the unavoidable duty to strengthen the legal regulation of these practices, demanding evidence-based clinical protocols, independent interdisciplinary committees and a true guarantee of informed consent that takes into account the neurobiological maturity of children and adolescents.

It is also essential that public policies prioritize the creation of specialized health units, comprehensive psychosocial support and the active role of mental health as a prior and necessary step before any medical intervention. Only a responsible, gradual approach focused on the rights of children and adolescents will make it possible to avoid excessive medicalization, safeguard their dignity and ensure the full development of their identity in conditions of safety, respect and freedom. The author presents his legal-doctrinal and jurisprudential debate on the referenced arguments and bases his position on the topic selected for his research. The citation of recognized doctrine in the context of his research is significant to support his study and complement the analysis of the national and international norm.

Conclusion

Despite the regulatory advances achieved with the enactment of Law No. 21,120, this study concludes that the protection of the right to gender identity in Chile continues to be partial, especially with regard to children, adolescents and people with non-binary identities. The exclusion of minors under 14 years of age from the registration rectification procedure, the requirement of legal representation for adolescents, and the persistence of a binary paradigm in the legal definition of gender identity constitute serious limitations that contradict international human rights standards and violate principles such as progressive autonomy, the best interests of the child and the principle of equality and non-discrimination.

It is also evident that the areas of health and education continue to reproduce structural forms of exclusion. In the health sector, the absence of specific protocols, the poor training of personnel and the application of medical treatments without sufficient guarantees of safety and informed consent generate significant risks, especially for children and adolescents in the process of gender affirmation. The lack of specific regulation and the application of affirmative therapies without interdisciplinary evaluation or adequate clinical diagnoses pose bioethical challenges that must be urgently addressed from a perspective of rights and medical prudence.

In the educational sphere, inclusion policies are still insufficient and their implementation faces cultural resistance, lack of training and normative structures that subordinate the recognition of gender identity to adult consent. This scenario violates the right to education under equal conditions and negatively affects the mental health, academic performance and permanence in the educational system of transgender children and adolescents.

Against this backdrop, it is essential to advance in a comprehensive reform of the Chilean regulatory framework. In particular, it is recommended that:

- a. Amend Law No. 21,120 to allow access to the registry rectification procedure to minors under 14 years of age, through judicial mechanisms that evaluate their capacity and maturity on a case-by-case basis.
- b. Legally recognize non-binary identities as part of the gender spectrum protected by law.
- c. Implement intersectoral public policies with a focus on human rights, gender and intersectionality, both in the health and education systems.
- d. Establish clinical protocols based on scientific evidence that regulate access to medical treatment for transgender children and adolescents, ensuring respect for their progressive autonomy and the protection of their physical and psychological integrity.



- e. Strengthen mandatory and continuous training of health and education professionals on sexual and gender diversity, ensuring respectful, safe and inclusive environments.

In short, effectively guaranteeing the right to gender identity in Chile requires not only legislative adjustments, but also profound institutional, cultural and social transformations. Only in this way will it be possible to ensure that all people - regardless of their age or gender identity - can live with dignity, freedom and under equal conditions.

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