

# Legal Gender Recognition in Belgium

## The Ruling of the Constitutional Court

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**Institute for the Equality of Women and Men**

**2022 EU-Taiwan LGBTI Human Rights Conference**

**Session 1: The Promotion and Challenges of Transgender People's Rights**

# Institute for the Equality of Women and Men

- °2002
- Independant federal public institution
- Equality Body
- Mandate
  - Promote and protect gender equality
  - Fight discrimination

# Legal Gender Recognition (LGR)

- The judicial or administrative possibility that the law offers to (transgender) persons to realize congruence between their gender (identity) and their official sex/gender marker, as assigned and registered by the State.<sup>1</sup>

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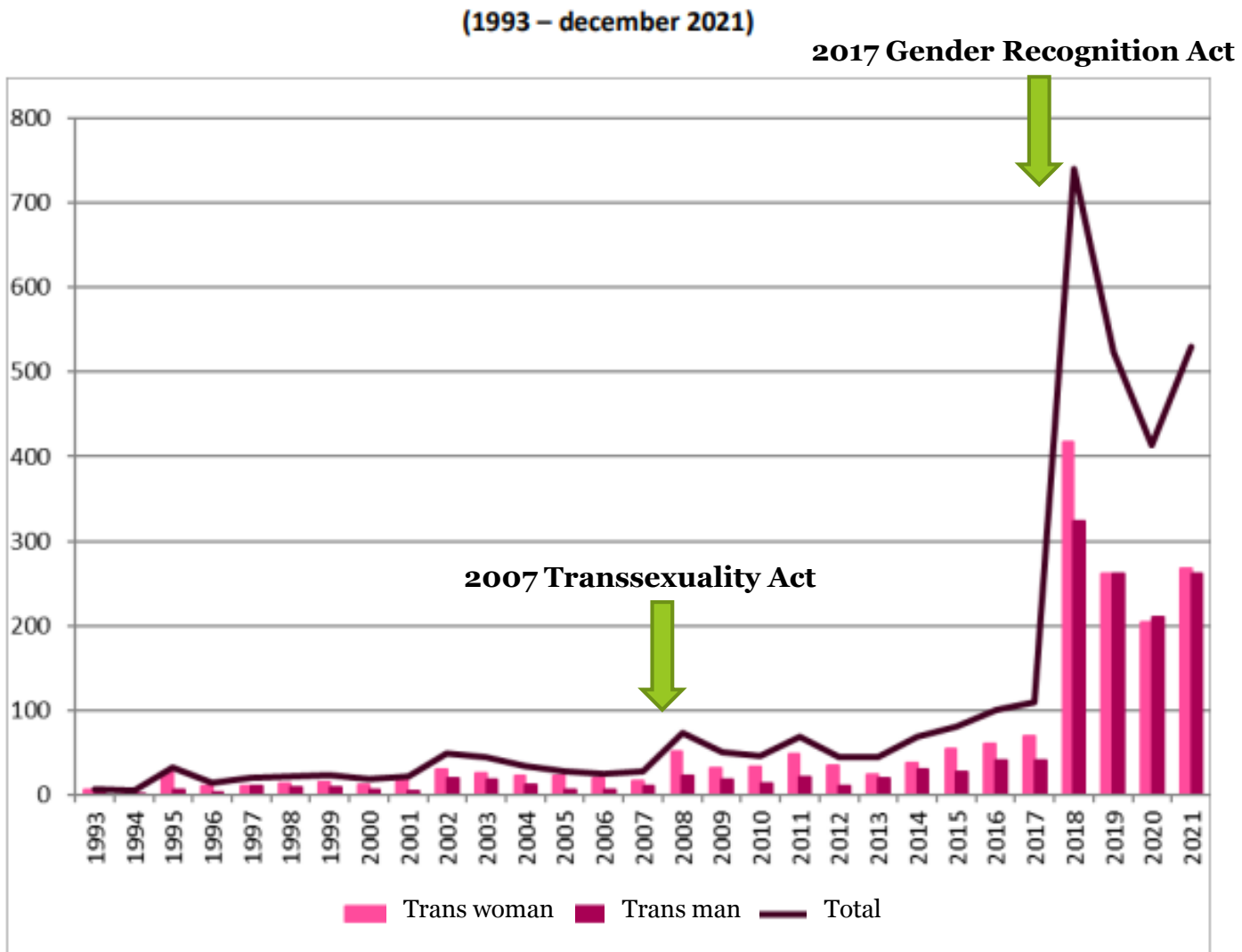
1: CANNOOT, P., The Right to Personal Autonomy Regarding Sex, Gender and Sexual Orientation, 2022, p. 168

# 2007 Act on Transsexuality

- Before 2007: **judicial procedure**
  - F/M
  - Costly and long
  - Uncertain outcome
- Since 2007: **administrative procedure**
  - F/M
  - Irreversible conviction of belonging to ‘other sex’
  - Invasive gender-affirming surgery
  - Sterility

# 2017 Gender Recognition Act

- **Self-determination – administrative procedure**
  - F/M
  - Repeated (2) declarations before public registrar + waiting period
  - Provisions to prevent ‘identity fraud’
  - No medical requirements
  - Only once, second change via judicial procedure



Source: National Register

# 2019 Constitutional Court Ruling

- Binary registration (F/M) unjustifiably limits right to self-determination for non-binary persons
- Judicial procedure for subsequent change(s) unjustifiably limits right to self-determination for genderfluid persons

# Court suggests two solutions

- End sex/gender registration
- Create one or more additional gender markers



# Considerations

- Sex  $\neq$  Gender identity
- Privacy
- Statistics & Research
- Maximal self-determination for trans persons, minimal impact for cisgender persons
- International obligations (reporting, passports,...)

Thank you!

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