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Japan's Supreme Court hands down a landmark transgender rights decision

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 Anthony Kuhn

The unnamed plaintiff's lawyers, Kazuyuki Minami, left, and Masafumi Yoshida, right, speak to media after the ruling of the Supreme Court on Wednesday in Tokyo.

Eugene Hoshiko/AP

SEOUL — Japan's Supreme Court has ruled that an existing requirement for sterilization surgery for people who seek to legally change their gender is unconstitutional.

The unanimous decision on Wednesday by the court's 15-judge Grand Bench is being hailed by campaigners as a landmark for LGBTQ+ rights in Japan. But as the Supreme Court sent the plaintiff's case back to a high court for further examination, her fate remains unclear.

The plaintiff, identified only as a transgender woman "under 50," had sought to legally change gender in her family registry from assigned male at birth to female. But her request was subsequently denied by lower courts, because she did not undergo sterilization surgery required under Japanese law.

In her complaint, the plaintiff argued the sterilization procedure would impose a physical and economic burden on her, and would deprive her of constitutional rights to pursue happiness and be free from discrimination. Her lawyer argued that her reproductive abilities had already been in "extreme decline" following years of hormone therapy.

Legal gender change in Japan requires a diagnosis of gender dysphoria, being at least 18 years of age, being unmarried and having no underage children.

It also requires the person to have no functional reproductive glands. And it requires that the person's genitals resemble "those of the opposite gender."

The court stopped short of issuing a decision on that last requirement, and requested a lower court to give the issue additional deliberation.

"I am very disappointed that my gender change will not be realized at this moment," the plaintiff said in a statement issued by her lawyers.

The top court acknowledged that the current rules force people "to make a tough choice between surgery and abandoning the decision to change genders."

It added that requiring sterilization violates constitutional guarantees of freedom from "invasion into their body against their will."

Human Rights Watch said Wednesday's "judgment is a major step toward upholding the rights to health, privacy, and bodily autonomy of trans people in Japan. It will also resonate regionally and globally as governments increasingly recognize that the process for legal recognition of trans people needs to be separate from any medical interventions."

Judicial statistics show that nearly 12,000 people in Japan have legally changed their gender under since the current law came into force in 2004.

United Nations agencies and other international bodies have said that involuntary sterilization surgery is a violation of human rights and should be eliminated.

Advocates of retaining the sterilization surgery requirement argue that dropping it could sow confusion in society or embolden men posing as transgender women to invade women-only toilets and bathing areas.

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