



January 2023

This Factsheet does not bind the Court and is not exhaustive

# Gender identity issues

See also the factsheet on [“Sexual orientation issues”](#).

## From the *Rees* case to the *Christine Goodwin* case

### Rees v. the United Kingdom

17 October 1986

In this case a female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition.

The European Court of Human Rights held that there had been **no violation of Article 8** (right to respect for private and family life) of the [European Convention on Human Rights](#). It noted in particular that the changes demanded by the applicant would have involved fundamentally modifying the system for keeping the register of births, which would have had important administrative consequences and imposed new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the costs of the applicant’s medical treatment. However, the Court was conscious “of the seriousness of the problems affecting transsexuals and of their distress” and recommended “keeping the need for appropriate measures under review, having regard particularly to scientific and societal developments” (§ 47 of the judgment). The Court also held that there had been **no violation of Article 12** (right to marry and found a family) of the Convention in the present case, noting in particular that the traditional concept of marriage was based on union between persons of opposite biological sex and that States had the power to regulate the right to marry.

### Cossey v. the United Kingdom

27 September 1990

The Court came to similar conclusions as in *Rees v. the United Kingdom* (see above) and did not find new facts or particular circumstances that would lead it to depart from the earlier judgment.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the present case. It reiterated in particular that “gender reassignment surgery did not result in the acquisition of all the biological characteristics of the other sex” (§ 40 of the judgment). It also noted that an annotation in the birth register would not be an appropriate solution. The Court also held that there had been **no violation of Article 12** (right to marry and found a family), noting in particular that attachment to the traditional concept of marriage provided “sufficient reason for the continued adoption of biological criteria for determining a person’s sex for the purposes of marriage” and that it was for the States to regulate by national law the exercise of the right to marry.

### B. v. France (application no. 13343/87)

25 March 1992

In this case **the Court concluded for the first time that there had been a violation of Article 8** (right to respect for private and family life) of the Convention **in a case concerning the recognition of transsexuals**.

A male-to-female transsexual complained of the refusal of the French authorities

to amend the civil-status register in accordance with her wishes.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, taking into consideration factors distinguishing the case of *B.* from *Rees v. the United Kingdom* and *Cossey v. the United Kingdom* (see above, page 1), particularly the differences between the United Kingdom and the French civil status systems. Whilst there were major obstacles in the United Kingdom preventing birth certificates from being amended, in France these were intended to be updated throughout the life of the person concerned. The Court observed that in France many official documents revealed “a discrepancy between [the] legal sex and [the] apparent sex of a transsexual” (§ 59 of the judgment), which also appeared on social-security documents and payslips. The Court accordingly held that the refusal to amend the civil status register in her regard had placed the applicant “in a daily situation which was not compatible with the respect due to her private life”.

### **X, Y and Z v. the United Kingdom (no. 21830/93)**

22 April 1997

The first applicant, X, a female-to-male transsexual, was living in a permanent and stable union with the second applicant, Y, a woman. The third applicant, Z, was born to the second applicant as a result of artificial insemination by donor. The applicants submitted that the lack of legal recognition of the relationship between X and Z amounted to a violation of their right to respect for family life.

Whilst the Court concluded that here had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the present case, it did nonetheless acknowledge the **existence of family life between a transsexual and his partner’s child**: “X ha[d] acted as Z’s “father” in every respect” since the birth. In these circumstances the Court consider[ed] that the [*de facto*] family ties link[ed] the three applicants.” (§ 37 of the judgment).

### **Sheffield and Horsham v. the United Kingdom**

30 July 1998

In this case the Court was not persuaded that it should depart from its *Rees* and *Cossey* judgments (see above, page 1). It noted in particular that “transsexualism continue[d] to raise complex scientific, legal, moral and social issues in respect of which there [wa]s no generally shared approach among the Contracting States” (§ 58 of the judgment).

The Court held that there had been **no violation of Articles 8** (right to respect of private and family life), **12** (right to marry and found a family) **and 14** (prohibition of discrimination) of the Convention. However, it reaffirmed “that the area need[ed] to be kept under permanent review by the Contracting States”, in the context of “increased social acceptance of the phenomenon and increased recognition of the problems which post-operative transsexuals encounter[ed]” (§ 60 of the judgment).

## **The Christine Goodwin case**

### **Christine Goodwin v. the United Kingdom**

11 July 2002 (Grand Chamber)

The applicant complained of the lack of legal recognition of her changed gender and in particular of her treatment in terms of employment and her social security and pension rights and of her inability to marry.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in the present case, owing to a clear and continuing international trend towards increased social acceptance of transsexuals and towards legal recognition of the new sexual identity of post-operative transsexuals. “Since there [we]re no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, the Court reache[d] the conclusion that the notion of fair balance inherent in the Convention now tilt[ed] decisively in favour of the applicant” (§ 93 of the judgment). The Court also held

that there had been a **violation of Article 12** (right to marry and found a family) of the Convention in the applicant's case. It was, in particular, "not persuaded that it [could] still be assumed that [the terms of Article 12] must refer to a determination of gender by purely biological criteria" (§ 100). The Court added that it was for the State to determine the conditions and formalities of transsexual marriages but that it "f[ound] no justification for barring the transsexual from enjoying the right to marry under any circumstances" (§ 103).

See also the [\*\*I. v. the United Kingdom \(no. 25680/94\)\*\*](#) judgment delivered by the Grand Chamber on the same day, in which the Court, similarly, found a violation of Article 8 and a violation of Article 12 of the Convention.

Following the Grand Chamber judgment in the case of *Christine Goodwin*, the United Kingdom introduced a system whereby transsexuals could apply for a gender recognition certificate. The two cases below both concerned a transsexual who was married before the sex reassignment surgery and who wanted to make use of this gender recognition procedure.

### **Parry v. the United Kingdom (no. 42971/05) and R. and F. v. the United Kingdom (no. 35748/05)**

28 November 2006 (decisions on the admissibility)

The applicants were respectively married and had children. In each case, one of them underwent gender reassignment surgery and remained with his/her spouse as a married couple. Following the introduction of the Gender Recognition Act 2004, the applicants who had undergone gender reassignment surgery made an application for the issue of a Gender Recognition Certificate, which could not be obtained unless they terminated their marriage. The applicants complained in particular that they had been unable to obtain legal recognition of their acquired gender without terminating their marriage.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It noted in particular that the applicants were requested to annul their marriage because same-sex marriages were not permitted under English law. The United Kingdom had not failed to give legal recognition to gender re-assignment and the applicants could continue their relationship through a civil partnership which carried almost all the same legal rights and obligations. The Court further observed that, when the new system was introduced following the *Christine Goodwin* judgment (see above), the legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. The Court found that it could not be required to make allowances for that small number of marriages.

## Subsequent judgments and decisions of the Court

### **Van Kück v. Germany**

12 June 2003

The applicant complained about the alleged unfairness of German court proceedings concerning her claims for reimbursement of gender reassignment measures against a private health insurance company. She further considered that the impugned court decisions had infringed her right to respect for her private life.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair hearing) of the Convention, finding that the proceedings, taken as a whole, had not satisfied the requirements of a fair hearing. It noted in particular that the German courts should have requested further clarification from a medical expert. With regard to the Court of Appeal's reference to the causes of the applicant's condition, the Court further found that it could not be said that there was anything arbitrary or capricious in a decision to undergo gender re-assignment surgery. The Court also held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in

the present case. In this regard, the Court noted in particular that, since gender identity was one of the most intimate aspects of a person's private life, it appeared disproportionate to require the applicant to prove the medical necessity of the treatment. The Court found that in the applicant's case no fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.

### **Grant v. the United Kingdom**

23 May 2006

The applicant, a 68-year-old post-operative male-to-female transsexual, complained about the lack of legal recognition of her change of gender and the refusal to pay her a retirement pension at the age applicable to other women (60).

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It noted in particular that the applicant had been in a situation identical to that of the applicant in the case of *Christine Goodwin* (see above, pages 2-3). While it was true that the Government had had to take steps to comply with the *Christine Goodwin* judgment, which had involved passing new legislation, the Court found that it was not the case that that process could be regarded as in any way suspending the applicant's victim status. Following the *Christine Goodwin* judgment there was no longer any justification for failing to recognise the change of gender of post-operative transsexuals. The applicant in the present case did not have at that time any possibility of obtaining such recognition and could claim to be prejudiced from that moment. The applicant's victim status had ceased when the Gender Recognition Act 2004 had entered into force, thereby providing her with the means on a domestic level to obtain legal recognition. Consequently, she could claim to be a victim of the lack of legal recognition from the moment, after the *Christine Goodwin* judgment, when the authorities had refused to give effect to her claim, namely from 5 September 2002. This lack of recognition had breached her right to respect for her private life.

### **L. v. Lithuania (no. 27527/03)**

11 September 2007

This case concerned the failure to introduce implementing legislation to enable a transsexual to undergo gender-reassignment surgery and change his gender identification in official documents.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention in the present case. While the applicant had suffered understandable distress and frustration, the Court found that the circumstances were not of such an intense degree, involving exceptional, life-threatening conditions, as to fall within the scope of this provision. The Court held, however, that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the applicant. In this regard, it noted in particular that Lithuanian law recognised transsexuals' right to change not only their gender but also their civil status. However, there was a gap in the legislation in that there was no law regulating full gender-reassignment surgery. This legislative gap had left the applicant in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity. The Court further noted that budgetary restraints in the public-health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years. Given the limited number of people involved, it considered that the budgetary burden would not have been unduly heavy. In the applicant's case, the Court found that the State had therefore failed to strike a fair balance between the public interest and the applicant's rights.

### **Schlumpf v. Switzerland**

8 January 2009

This case concerned the refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting

period before gender reassignment surgery, as required by the case-law as a condition for payment of the costs of such operations.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in the applicant's case, finding that the waiting period had been applied mechanically without having regard to the age (67) of the applicant, whose decision to undergo an operation was likely to be affected by that delay, thus impairing her freedom to determine her gender identity.

### **P.V. v. Spain (no. 35159/09)**

30 November 2010

This case concerned a male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) **in conjunction with Article 14** (prohibition of discrimination) of the Convention in respect of the applicant. It found in particular that the restriction on contact had not resulted from discrimination on the ground of the applicant's transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant's temporary emotional instability, had been the child's well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father's gender reassignment.

### **P. v. Portugal (no. 56027/09)**

6 September 2011 (strike out decision)

At birth, the applicant was registered as male. On reaching adulthood, she underwent gender reassignment treatment followed by surgery. She complained of the lack of legal recognition of her situation, coupled with the alleged absence of any legislation on the matter.

The Court **struck** the application **out of its list of cases**, pursuant to Article 37 (striking out applications) of the Convention, finding that the matter had been resolved in that the applicant's request for legal recognition to the domestic courts had finally been successful.

### **Cassar v. Malta**

9 July 2013 (strike out decision)

The applicant complained of the fact that Maltese law did not recognise transsexuals as persons of the acquired sex for all intents and purposes, including that of contracting marriage.

The Court, noting that an out-of-court settlement had been reached between the Government and the applicant, **struck** the application **out of its list of cases**, pursuant to Article 37 (striking out applications) of the Convention.

### **Hämäläinen v. Finland**

16 July 2014 (Grand Chamber)

The applicant was born a male and married a woman in 1996. The couple had a child in 2002. In September 2009 the applicant underwent male-to-female gender reassignment surgery. Although she changed her first names in June 2006, she could not have her identity number changed to indicate her female gender in her official documents unless her wife consented to the marriage being turned into a civil partnership, which she refused to do, or unless the couple divorced. Her request to be registered as female at the local registry office was therefore refused. The applicant complained that she could only obtain full official recognition of her new gender by having her marriage turned into a civil partnership.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that it was not disproportionate to



require the conversion of a marriage into a registered partnership as a precondition to legal recognition of an acquired gender as that was a genuine option which provided legal protection for same-sex couples that was almost identical to that of marriage. The minor differences between these two legal concepts were not capable of rendering the current Finnish system deficient from the point of view of the State's positive obligation under Article 8 of the Convention. In addition, such a conversion would not have any implications for the applicant's family life as it would not affect the paternity of the applicant's daughter or the responsibility for the care, custody, or maintenance of the child. The Court further considered that **no separate issue arose under Article 12** (right to marry) of the Convention and found that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Articles 8 and 12** of the Convention.

### **Y.Y. v. Turkey (no.14793/08)**

10 March 2015

This case concerned the refusal by the Turkish authorities to grant authorisation for gender reassignment surgery on the grounds that the person requesting it, a transsexual, was not permanently unable to procreate. The applicant – who was registered at the time of the application as being of the female sex – complained, in particular, of an infringement of his right to respect for his private life. He notably submitted that the discrepancy between his perception of himself as a man and his physical constitution had been established by medical reports and complained of the refusal by the domestic authorities to put an end to that discrepancy on the grounds that he was able to conceive. Ultimately, in May 2013, the Turkish courts granted the application and authorised the surgery.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention finding that, in denying the applicant, for many years, the possibility of undergoing such an operation, the Turkish State had breached his right to respect for his private life. The Court reiterated in particular that the possibility for transsexuals to have full enjoyment of the right to personal development and physical and moral integrity could not be regarded as a controversial question. It considered that, even supposing that the denial of the applicant's initial request for access to such surgery had been based on a relevant ground, it was not based on a sufficient ground. The resulting interference with the applicant's right to respect for his private life could not be considered "necessary" in a democratic society.

### **D.C. v. Turkey (no. 10684/13)**

7 February 2017 (decision on the admissibility)

The applicant, a transsexual whose gender reassignment has not yet been carried out, complained of the refusal of the authorities of the Ministry of Justice to bear the cost of her gender reassignment despite medical evidence which, she submitted, clearly showed that she urgently needed treatment.

The Court declared the application **inadmissible**, for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 (admissibility criteria) of the Convention.

### **A.P. (no. 79885/12), Garçon and Nicot v. France**

6 April 2017

This case concerned three transgender persons of French nationality who wished to change the entries concerning their sex and their forenames on their birth certificates, and who were not allowed to do so by the courts in the respondent State. The applicants submitted, among other points, that the authorities had infringed their right to respect for their private life by making recognition of sexual identity conditional on undergoing an operation involving a high probability of sterility.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the second and third applicants, on account of the obligation to establish the irreversible nature of the change in their appearance. It further held that there had been **no violation of Article 8** of the Convention, in

respect of the second applicant, on account of the obligation to prove that he actually suffered from gender identity disorder and, in respect of the first applicant, on account of the obligation to undergo a medical examination. The Court held, in particular, that making recognition of the sexual identity of transgender persons conditional on undergoing an operation or sterilising treatment to which they did not wish to submit amounted to making the full exercise of one's right to respect for private life conditional on relinquishing full exercise of the right to respect for one's physical integrity.

### **S.V. v. Italy (no. 55216/08)**

11 October 2018

This case concerned the Italian authorities' refusal to authorise a transgender person with a female appearance to change her male forename, on the grounds that she had not yet undergone gender reassignment surgery and that no final judicial decision had been given confirming gender reassignment. In May 2001 the Rome District Court authorised the applicant to undergo gender reassignment surgery. However, under the legislation in force at the time, she was unable to change her forename until the court confirmed that the surgery had been performed and gave a final ruling on her gender identity, which it did in October 2003.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It found in particular that the applicant's inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed by means of gender reassignment surgery, amounted to a failure by the State to comply with its positive obligation to secure the applicant's right to respect for her private life. In the Court's view, the rigid nature of the judicial procedure for recognising the gender identity of transgender persons, as in force at the time, had left the applicant – whose physical appearance and social identity had long been female – for an unreasonable period of time in an anomalous position apt to engender feelings of vulnerability, humiliation and anxiety. The Court further observed that the legislation had been amended in 2011, with the result that a second court ruling was no longer required in proceedings to confirm the gender reassignment of persons who had undergone surgery, and the amendment of the civil-status records could now be ordered by the judge in the decision authorising the surgery.

### **Y.T. v. Bulgaria (no. 41701/16)**

9 July 2020

This case concerned a transsexual who had taken steps to change his physical appearance and whose request for (female to male) gender reassignment had been refused by the Bulgarian courts. The applicant claimed that he had become aware of his male gender identity during adolescence and that he had lived in society as a man. He complained about the refusal by the Bulgarian courts to change the entries for his sex, forename, patronymic and surname in the civil-status registers.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Bulgarian authorities' refusal to grant legal recognition to the applicant's gender reassignment, without giving relevant and sufficient reasons, and without explaining why it had been possible to recognise identical gender reassignment in other cases, had constituted an unjustified interference with the applicant's right to respect for his private life. It noted in particular that the judicial authorities had established that the applicant had begun a process of gender transition, changing his physical appearance, and that his social and family identity had already been that of a male for a long time. Nonetheless, they had considered that the public interest required that the legal change of sex should not be permitted, without specifying the exact nature of this public interest, and had not balanced this interest against the applicant's right to legal recognition of his gender identity. The Court identified this as rigidity in the domestic courts' reasoning, which had placed the applicant – for an unreasonable and continuous period – in a troubling position, in which he was liable to experience feelings of vulnerability, humiliation and anxiety.

### **Rana v. Hungary**

16 July 2020 (Committee judgment)

Born a female in Iran, the applicant, a transgender man who had obtained asylum in Hungary, complained about the Hungarian authorities' refusal to change his name and sex marker from "female" to "male" in his identity documents.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that a fair balance had not been struck between the public interest and the applicant's right to respect for his private life owing to the refusal to give him access to the legal gender recognition procedure. It noted in particular that the domestic system for gender recognition had excluded the applicant simply because he did not have a birth certificate from Hungary, a change in the birth register being the way name and gender changes were legally recognised.

### **X. and Y. v. Romania (nos. 2145/16 and 20607/16)**

19 January 2021

This case concerned the situation of two transgender persons whose requests for recognition of their gender identity and for the relevant administrative corrections to be made were refused on the grounds that persons making such requests had to furnish proof that they had undergone gender reassignment surgery.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the domestic authorities' refusal to legally recognise the applicants' gender reassignment in the absence of surgery had amounted to unjustified interference with their right to respect for their private life. The Court observed in particular that the national courts had presented the applicants, who did not wish to undergo gender reassignment surgery, with an impossible dilemma: either they had to undergo the surgery against their better judgment – and forego full exercise of their right to respect for their physical integrity – or they had to forego recognition of their gender identity, which also came within the scope of respect for private life. In the Court's view, this upset the fair balance to be struck by the States Parties between the general interest and the individual interests of the persons concerned.

### **A.M. and Others v. Russia (no. 47220/19)**<sup>1</sup>

6 July 2021

This case concerned a court decision to restrict the parental rights of the applicant, a post-operative transgender woman, and to deprive her of contact with her children on account of her gender transitioning and the allegedly negative effect it might have on her children's psychological health and development.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Russian courts had failed to make a balanced and reasonable assessment of the case, and that the restriction of the applicant's parental rights and of her contact with her children had not been "necessary in a democratic society". The Court noted, in particular, that the domestic courts had failed to consider the specific family situation of the applicant in the reasoning. It pointed out, furthermore, that a decision to entirely deprive a parent of contact should only be taken in the most extreme situations, which had not been so, given the lack of demonstrable harm to the children in this case. The Court also held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction Article 8** in respect of the applicant, finding that the decision to restrict her contact with her children had amounted to discrimination. It noted, in particular, that the applicant's gender identity had played a significant part – indeed it had been the decisive factor – in the domestic court decisions.

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<sup>1</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").



### **Y v. Poland (no. 74131/14)**

17 February 2022

This case concerned applications by a transgender man to have reference to his gender assigned at birth removed from his birth certificate, or to have a new birth certificate issued. The applicant also complained that he was discriminated against vis-à-vis adopted children, who were issued new birth certificates.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Polish authorities had acted within their broad discretion (“margin of appreciation”), striking a balance between the relevant interests in the current case. It noted, in particular, that the applicant’s short-form birth certificate and identity documents indicated his reassigned gender only, and that the long-form birth certificate was not accessible to the public and was required only in rare circumstances. Moreover, overall, the applicant had not demonstrated any negative consequences as a result of the refusals by the Polish authorities. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention, finding that the situation of the applicant and that of adopted children were insufficiently similar to make the argument that he had suffered discrimination.

### **M v. France (no. 42821/18)**

26 April 2022 (decision on the admissibility)

The applicant in this case, an intersex person who during childhood and adolescence underwent “feminising” surgery and medical treatment, complained in particular that she had not had the benefit of an effective official investigation into these facts, and alleged that the State had failed in its obligation to take effective action to protect her against the ill-treatment to which she had been subjected by others. She also maintained that the refusal to investigate in response to her complaint and her application to join the proceedings as a civil party amounted to a breach of her right of access to a court.

The Court left open the question whether the “normalising” medical procedures in question were liable, in the specific circumstances of the present case, to come within the scope of **Article 3** (prohibition of inhuman or degrading treatment) of the Convention, since the complaint under that provision was in any event **inadmissible** for failure to exhaust domestic remedies. In that respect, the Court noted, in particular, that the applicant had not previously raised her Article 3 complaint, even in substance, with the Court of Cassation. The Court also declared **inadmissible**, as being manifestly ill-founded, the applicant’s complaint under **Article 6** (right to a fair trial) of the Convention, finding that it could not be said that the applicant had been deprived of access to a court for the determination of her civil rights solely on account of the decision not to proceed with a judicial investigation in respect of her complaint and her application to join the proceedings as a civil party.

### **A.D. and Others v. Georgia (no. 57864/17)**

1 December 2022<sup>2</sup>

The applicants, transgender men (assigned female at birth), complained that they had been unable to obtain legal recognition of their gender because they had not undergone sex reassignment surgery. They submitted that they were unable to have gender changed in civil-status records since the legal framework was unclear.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the applicants. It noted in particular that, despite the fact that the right to have one’s sex changed in civil-status records had existed in Georgia since 1998, there had not apparently been one single case of successful legal gender recognition. The imprecision of the current domestic legislation undermined the availability of legal gender recognition in practice, and the lack of a clear legal framework left the domestic authorities with excessive discretionary powers, which could lead to arbitrary decisions in the examination of applications. The Court

<sup>2</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

found that such a situation was fundamentally at odds with the respondent State's duty to provide quick, transparent and accessible procedures for legal gender recognition.

**Y v. France (no. 76888/17)**

31 January 2023<sup>3</sup>

The applicant, who is a biologically intersex person, complained about the domestic courts' refusal to grant his request to have the word "neutral" or "intersex" entered on his birth certificate instead of "male".

The Court held that, having regard to the discretion ("margin of appreciation") enjoyed by the respondent State, France had not failed in its positive obligation to secure effective respect for the applicant's private life in the present case, and that there had therefore been **no violation of Article 8** (right to respect for private life) of the Convention. In examining the case in the light of the respondent State's positive obligation to secure to the applicant effective respect for his private life, the Court ascertained whether, in the applicant's case, the general interest had been duly weighed against his interests. The Court noted, firstly, that an essential aspect of individual intimate identity was central to the present case, in that gender identity was in issue, and acknowledged that the discrepancy between the applicant's biological identity and his legal identity was liable to cause him suffering and anxiety. The Court then acknowledged that the arguments put forward by the national authorities in refusing the applicant's request, based on respect for the principle of the inalienability of civil status and the need to preserve the consistency and reliability of civil status records and of the social and legal arrangements in place in France, were relevant. It also took into consideration the Court of Cassation's reasoning to the effect that judicial recognition of a "neutral" gender would have far-reaching consequences for the rules of French law, constructed on the basis of two genders, and would imply multiple coordinating legislative amendments. After noting that the Court of Appeal had held that granting the applicant's request would amount to recognising the existence of another gender category and therefore to exercising a normative function, which was in principle a matter for the legislature and not for the judiciary, the Court pointed out that respect for the principle of the separation of powers, without which there was no democracy, had thus been at the heart of the domestic courts' considerations. Recognising that although the applicant stated that he was not asking for the enshrinement of a general right to recognition of a third gender, but only for rectification of his civil status, the Court noted that if it were to uphold the applicant's claim this would necessarily mean that the respondent State would be required, in order to discharge its obligations under Article 46 (binding force and execution of judgments) of the Convention, to amend its national law to that effect; in consequence, the Court considered that it too was required to exercise restraint. In matters of general policy on which opinions within a democratic society could reasonably differ widely, a special weight had to be accorded to the role of the domestic policy-maker. This was particularly true where, as in the present case, the question was one on which society would have to make a choice. In the absence of a European consensus in this area, it was therefore appropriate to leave it to the respondent State to determine at what speed and to what extent it could meet the demands of intersex persons, such as the applicant, with regard to civil status, giving due consideration to the difficult situation in which they found themselves in terms of the right to respect for private life, especially the discrepancy between the legal position and their biological reality.

See also, recently:

**X v. "the former Yugoslav Republic of Macedonia" (no. 29683/16)**

17 January 2019

**P. v. Ukraine (no. 40296/16)**

11 June 2019 (decision on the admissibility)

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<sup>3</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

### **Solmaz v. Turkey**

24 September 2019 (Committee) (decision on the admissibility)

## Selection of cases pending before the Court

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### **Y.P. v. Russia (no. 8650/12)**<sup>4</sup>

Application communicated to the Russian Government on 23 February 2017

### **O.H. and G.H. v. Germany (nos. 53568/18 and 54941/18)**

Applications communicated to the German Government on 6 February 2019

### **Á.C. and Others v. Hungary (nos. 66078/17 and 12918/19)**

Applications communicated to the Hungarian Government on 4 March 2020

### **L.B. v. France (no. 67839/17)**

Application communicated to the French Government on 18 March 2021

## Texts and documents

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See in particular:

- the Council of Europe webpage on **"Sexual orientation or gender identity"**
  - **Handbook on European non-discrimination law – 2018 edition**, European Union Fundamental Rights Agency / Council of Europe, 2018
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<sup>4</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.