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European Court of Human Rights holds Romania liable for violating the rights of transgender persons

On 19 January 2021, the European Court of Human Rights (ECtHR) issued a judgment in a landmark case that is considered essential for creating a clear legal framework for gender recognition in Romania.

The ECtHR ruled that Romania was in violation of Article 8 of the European Convention on Human Rights (right to respect for private and family life) and concluded that Romania lacked a clear and foreseeable procedure for legal recognition of gender identity that would make it possible to amend a person's name and indicated gender on official documents, in a quick, transparent and accessible manner.

The refusal of the national authorities to recognize the applicants' male identity in the absence of surgery amounted, in the opinion of the ECtHR, to unjustified interference with their right to respect for their private life.

Background Information

The action against Romania was brought by two transgender persons. The applicants, both Romanian nationals, were registered as female at birth.

The requests for legal recognition of gender reassignment from female to male were refused by the national courts on the grounds that the applicants must undergo gender reassignment surgery to be recognized as male and consequently to be entitled to request that the civil status records be amended.

Relying on Article 8 (right to respect for private and family life) and on Article 3 (prohibition of inhuman or degrading treatment), the applicants

complained that Romania had not established and did not provide a clear legal framework for the recognition of gender reassignment. The applicants argued that the requirements of the Romanian state with regard to gender reassignment surgery as a prerequisite for a change in their civil status had breached their right to respect for their private life.

The applicants argued that the lack of an appropriate legal framework had allowed the authorities to impose an additional requirement on them in order to have their requests granted, in the form of gender reassignment surgery.

Moreover, the applicants argued that this requirement constituted interference without any legal basis which did not pursue a legitimate purpose and was not necessary in a democratic society.

Decision of the ECtHR

The ECtHR noted that the complaint of the applicants concerned the refusal of the national authorities to recognize their male identity and to amend their civil status.

The ECtHR observed that the national courts had presented the applicants with an impossible dilemma: (i) either they had to undergo the surgery, against their better judgement and contrary to their right to respect for their physical integrity, or (ii) they had to forego recognition of their gender identity, which also came within the scope of respect for private life.

The Strasbourg Court reiterated that Article 8 of the ECHR imposes a negative obligation on the States to refrain from interfering with the right to respect for private and family life of individuals as well as a positive obligation to ensure the effective respect of such right, including the protection



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of the physical and psychological integrity of individuals. Such a positive obligation may involve the adoption of specific measures, including the provision of an effective and accessible means of protecting the right to respect for private life. The ECtHR reaffirmed that the states have a limited margin of appreciation in relation to a question concerning one of the most intimate aspects of private life, the sexual identity of an individual.

The ECtHR recalled recommendations issued by international bodies against violence and discrimination based on sexual orientation and gender identity calling on states to adopt procedures allowing persons to have their name and gender changed in official documents in a quick, transparent and accessible manner.

It considered that the Romanian legal framework in the matter was not clear and therefore predictable due to the lack of administrative procedures

allowing transgender persons to change their personal information, and it also found that Romania failed to provide a fair balance between the interests of the individual and those of the community as a whole.

The ECtHR ordered Romania to pay the applicants a total of nearly EUR 26,000 in damages and to cover their costs and expenses.

For more information

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