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Key Cases: Legal Gender Recognition in European and National Courts (2017–2024)

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AUTHOR
Ana-Bianca Oprea

EDITOR
Richard Köhler

CO-EDITOR
Nisha Damji

REVIEWERS
Richard Köhler, Deekshitha Ganesan

LAYOUT DESIGN
Dragiša Mioč

COVER PHOTO CREDITS
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TGEU (Trans Europe and Central Asia) is a member-based organisation working to strengthen the rights and wellbeing of trans people in Europe and Central Asia.

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ABBREVIATIONS

CJEU	Court of Justice of the European Union
CNIL	National Commission on Informatics and Liberty
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GDPR	General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
SNCF	National Society for French Railways
UN	United Nations
UK	United Kingdom

LIST OF CASES

UN Human Rights Committee

European Court of Human Rights

European Committee of Social Rights

Court of Justice of the EU

National Courts

EXECUTIVE SUMMARY

This publication is designed to support lawyers, activists, and non-governmental organisations involved in advancing the rights of trans communities through litigation. It compiles 50 significant judgments from regional, international and selected domestic courts on the right to legal gender recognition, including refugees and asylum seekers, the right to gender self-determination, recognition of non-binary identities, minors' right to their own identity and parental rights. For a comprehensive understanding of the evolution of jurisprudence on legal gender recognition in Europe, this toolkit should be read in conjunction with the TGEUs toolkit on legal gender recognition from 2013 and 2017.

Since the last edition in 2017, jurisprudence concerning legal gender recognition has progressed notably. The European Court of Human Rights (ECtHR) has emphasised the obligation of Council of Europe member states to establish clear, accessible procedures allowing trans people to change their civil status documents in alignment with their gender identity. The ECtHR has also ruled against requiring gender reassignments surgeries or sterilisation as a prerequisite for legal gender recognition, deeming these violations of fundamental rights.

Constitutional Courts in Germany, Belgium and Austria have increasingly recognised people's right to self-determination, including the acknowledgment of a third gender for non-binary people in civil status documents.

The toolkit includes ECtHR landmark judgments such as Rana v. Hungary (40888/17), which ensured access to legal gender

recognition for trans refugees as well as judgments recognising minors' right to their own identity. It also addresses issues such as divorce requirements for trans people and procedures for changing children's birth certificates following legal gender recognition of their parent(s).

Another challenge is mutual gender recognition between EU Member States, particularly when individuals hold conflicting civil status documents issued by different countries, as confirmed in the recent Mirin (C-4/23) case. The CJEU is also asked to decide in the Mousse case whether non-binary people have to accept binary titles under EU data protection rules in accessing goods and services (C-394/23). Further, the EU top court will hear on a case dealing with a de-facto ban on legal gender recognition and its compliance with EU law in Shipov (C-43/24).

In conclusion, this toolkit provides a comprehensive overview of evolving legal landscapes surrounding legal gender recognition in Europe, aiming to support efforts towards equality and recognition for trans communities.

I. THE RIGHT TO LEGAL GENDER RECOGNITION

ECtHR – X. and Y. v. Romania (Application no. 2145/16), 19 January 2021

In this case, two trans men requested before domestic courts to change their birth certificates and civil status registry entries to reflect their gender identity. The national courts rejected X's request because he refused to undergo genital surgery, even though he provided medical evidence supporting his trans identity. The applicant moved to the United Kingdom (UK) and managed to modify documents issued by British authorities through the Deed Poll procedure, resulting in two sets of identity documents: one issued by United Kingdom authorities corresponding to his male gender identity and one issued by Romanian authorities where he was registered as 'female'. The second applicant succeeded in changing his civil status documents after a long period, but only because he accepted the precondition of undergoing surgical interventions.

The ECtHR identified a violation of Article 8 of the Convention and reiterated the State's positive obligation to ensure effective respect for the physical and mental integrity of its citizens. The Court emphasised that Romania lacked a specific procedure for legal gender recognition, having only one article in national legislation and one judgment from the Constitutional Court acknowledging the possibility of modifying civil status documents. It noted that the State infringed upon the applicant's right to private life due to the

unclear and unforeseeable nature of the Romanian legal framework for legal gender recognition. Furthermore, the ECtHR stressed that the national authorities failed to respect and recognise the self-determined gender identity of the individual, particularly regarding the requirement for the applicant to undergo genital surgery for the modification of civil status documents.

ECtHR – X. v. the former Yugoslav Republic of Macedonia (Application no. 29683/16), 17 January 2019

In this case, the applicant requested an administrative change of gender marker from female to male on birth certificate, as well as the modification of first name and surname. The Ministry of Interior accepted the change of the first name to a male one, but the gender marker remained unchanged. The applicant filed a new request, which was rejected on the grounds of lack of evidence for gender reassignment surgery. X challenged the Ministry's initial decision,

Macedonian trans activists march for their rights, including implementation of X. v. YROM. Photo credits: TransFormA.

arguing that gender reassignment surgeries were unavailable in the country and could lead to sterilisation, but despite the Administrative Court annulling this decision and X showing proof of a double mastectomy, the Ministry rejected his request again, stating there was insufficient proof of 'sex change'.

The ECtHR found a violation of Article 8 ECHR because national authorities had failed to fulfil their positive obligation to respect the applicant's right to private life by ensuring a clear, foreseeable and accessible legal framework; the applicant was left in uncertainty regarding his private life, leading to significant consequences on the applicant's mental health.

ECtHR – A.D. and Others v. Georgia (Application no. 57864/17, 79087/17, 55353/19), 1 December 2022

Three trans men received approval from the Civil Status Agency to change their female first names to male ones. However, the administrative authority and domestic courts rejected their requests to change the gender marker in the civil status records.

The main reasons for rejecting the applicant's requests stem from Georgian legislation, which makes legal gender recognition conditional on the 'change of sex', without clearly defining the necessary procedures or evidence that a person must fulfil. Furthermore, the Supreme Court held that the sex entry in civil status documents is not determined by the physical appearance of the person but by biological attributes, arguing with principles of public interest and legal stability in civil status records.

The ECtHR found a violation of Article 8 ECHR as the Georgian State failed to fulfil its positive obligation to ensure a clear, quick, transparent and accessible procedure for legal gender recognition.

While the Court acknowledged the importance of legal security and public interest in civil status records, the judges emphasised that the imprecision of the current legislation grants a discretionary power to domestic authorities that could potentially lead to arbitrary decisions. This undermines, in practice, the right of trans people to modify their civil status documents in accordance with their gender identity.

ECtHR – Y.T. v. Bulgaria (Application no. 41701/16), 9 July 2020 and 4 July 2024 (revision)

A trans man asked the domestic court to change his name, surname, mentions of gender marker, and civil identification number to better align with his gender identity. Additionally, the plaintiff wanted to obtain the modification of civil status documents to perform voluntary surgical interventions, which were not accessible without legal gender recognition.

The national courts rejected the applicant's request on the grounds that national legislation recognised 'sex' based on existing biological characteristics, and a contrary solution would violate the principle of legal security and coherent civil status. The European Court of Human Rights (ECtHR) found a violation of Article 8 and ruled that the rigid interpretation of the national courts had caused the applicant an unreasonable and continuous period of vulnerability, humiliation, and anxiety.

Additionally, the European judges referred to the principle of the margin of appreciation of national states. The ECtHR uses the principle to assess whether a state's limitations on rights under the European Convention on Human Rights (ECHR) should be sanctioned, taking into account differences in domestic laws and allowing states some discretion in implementing convention obligations to balance national

interests with individuals' rights. In short, the greater the coherence between States in their approach to a matter, the less discretion a State has to differ from that approach; its margin of appreciation is narrow. Specifically, in this judgment the ECtHR pointed out that national states had a narrow margin of appreciation in the analysis of the interference brought to the recognition of gender identity under the motivation of protecting the general interest and legal security.

In 2023, the Bulgarian Government requested a revision of the judgment on the grounds that the applicant had initiated a separate procedure for legal gender recognition, which had not been brought to the Court's attention. The Sofia District Court had granted the applicant's request through a final judgment, allowing changes to be made in the birth register. The ECtHR accepted the Bulgarian Government's request for revision and declared the applicant's initial application inadmissible.

However, the Strasbourg Court reiterated that Bulgarian authorities have an obligation, under Article 8 of the Convention, to ensure legal gender recognition to allow trans people to update their civil status records in line with their gender identity. This obligation is particularly important in light of the mandatory judgment pronounced by the Bulgarian Supreme Court of Cassation in 2023, which makes it impossible to amend civil status documents according to trans peoples' gender identity.

ECtHR–R.K. v. Hungary (Application no. 54006/20), 22 June, 2023

ECtHR – A.C. and Others v. Hungary (Application no. 66078/17 and 12918/19) – pending

In both cases, the ECtHR found a violation of Article 8 and reaffirmed the positive obligation of the States to provide quick, transparent and accessible procedures for legal gender recognition. The Court emphasised that the Hungarian legislation at the time (prior to the LGR ban 2020) contained legislative gaps and serious deficiencies. Because clear rules were absent regarding the authority competent to attest to the change of the gender marker and to issue a supporting expert medical opinion, a mandatory condition mentioned in the national legislation. These deficiencies collectively constituted a significant obstacle to the plaintiff's ability to exercise his right to legal gender recognition.

Hungary - Administrative and Labor Court of Pecs – (No. 4.K.27/748/2019/12), 17 February 2020

In this case, this Hungarian court ruled that the rights of trans people to have access to legal gender recognition and to change their civil status documents in line with their gender identity was a fundamental right. The lack of detailed legislation in this area of national law constituted a violation of fundamental rights for trans people.

Furthermore, the court clarified that a medical expert's opinion could not be issued by the Ministry of Human Capacities (Ministry of Health) as it was not required by law. Applicants could submit medical

evidence in support of their requests, or when such an opinion was necessary, the opinion of a forensic expert could be requested.

Hungary - Constitutional Court of Hungary – (No. 6/2018), 19 June, 2019

In this judgment, the Constitutional Court rejected the plaintiff's claim that the absence of a legal framework for legal gender recognition for non-Hungarian citizens was unconstitutional. Nevertheless, the Court, acting on its own initiative, ruled that the absence was a legislative gap that was contrary to the Fundamental Law. It emphasised that the right of trans people to change their name and gender marker in accordance with their gender identity was a fundamental right connected to the right to human dignity. Additionally, the Court applied the ECtHR jurisprudence and affirmed that trans people had the right to marry under the conditions of national legislation. Importantly, the Court clarified that medical interventions were not a prerequisite for legal gender recognition.

Hungary Constitutional Court of Hungary – (No. 11/2021), 9 March, 2021

In 2020, the Hungarian Parliament passed a law that banned legal gender recognition.[1] The constitutional judges determined that parts of the new law were unconstitutional because they prevented trans people from changing their gender marker and first name on civil status documents. The Court ruled that these new provisions could not be applied retroactively to applications that were already ongoing before the new law came into effect. Additionally, the Court

1 On 29 May 2020 Act no. XXX of 2020 entered into force. Its Section 33 makes it effectively impossible to change one's gender marker.

emphasised that the new law unconstitutionally restricted a right guaranteed by the Fundamental Law, depriving trans people of their fundamental rights.

Hungary - Constitutional Court of Hungary – (No. 3058/2023), 31 January 2023

Contrary to its 2021 judgment, in 2023 the Hungarian Constitutional Court ruled that the law banning legal gender recognition was constitutional. This case involved a trans person's request to change their civil status documents in accordance with their gender identity submitted in 2021, after the new law had become applicable.

Despite arguments from the lower court that denying trans people the ability to legally change their gender marker violated their rights to dignity and the right to private life, the Constitutional Court rejected these claims. The constitutional judges stated that the sex assigned at birth must be known for medical and legal reasons.[2]

Lithuania - District Court of Vilnius – (No. e2YT-5329-934/2017), 7 April 2021 and (No. e2YT5326-987/2017), 2 May 2017

In both cases, the court granted the requests of two trans people to change their civil status documents in line with their gender identity, without mandating the applicants to undergo irreversible gender reassignment surgeries. This medical procedure is not available in Lithuania. The plaintiffs received a medical diagnosis of 'gender dysphoria' from a psychiatrist. Initially, the applicants submitted

2 For more domestic cases challenging the LGR ban in Hungary see here: *https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33*

their requests for legal gender recognition to the civil registry, which rejected them due to a perceived lack of a legal basis. However, the court acknowledged their right to change their gender marker and personal identification number in their civil status documents.

Kosovo - Court of Appeal of Kosovo – (No. 244/2019), 2 August 2019

A trans man requested the Civil Status Office in the Municipality of Prizen to change the first name and the gender marker in his civil status documents. However, his request was rejected by the administrative authority. The court of first instance and the Court of Appeal both granted the plaintiff's request for legal gender recognition, without imposing prior medical requirements. The court determined that the administrative authority's refusal represented a violation of the right to personal dignity, the principle of non-discrimination and the right to private life, as developed in ECtHR jurisprudence.

II. THE RIGHT TO GENDER SELF-DETERMINATION

Photo credits: TGEU

This section deals with cases that have affirmed the right to self-determine one's gender identity without vetting through a third party. This is distinct to how the ECtHR has so far interpreted the right to self-determine one's gender identity as it still allows for abusive access requirements, such as a mental health diagnosis, to prevail.

Germany - Constitutional Court of Germany – (No. BvR 2019/16), 10 October 2017

In this landmark judgment, the Constitutional Court determined that the general right of personality guarantees an individual's freedom of self-determination. The Court recognised that requiring people who identify outside the 'female' or 'male' categories to register according to a binary sex definition on civil status documents violates their constitutional rights. The judges mandated the legislator to adopt a normative act within a year that would allow the registration of non-binary people in the register of civil status.

The Court found that the gender identity of those who identify as neither 'male' nor 'female' falls under the protection of the general right of personality. Gender recognition is a particularly relevant factor in shaping how individuals are perceived by others and in defining their own personalities. The constitutional judges emphasised that "the official recognition of sex under civil status law has an identity-building and expressive effect" (para 47).

The civil status denotes a person's position within the legal system as defined by the law and constitutes a central aspect of a person's

legally relevant identity. The lack of legal gender recognition outside the gender binary jeopardises the self-determined and respectful development of the personality. The records in the civil status register must align with the self-determination and self-image of people who don't identify as 'male' or 'female', and the legislator must ensure this constitutional right.

Moreover, the Court asserted that the bureaucratic and financial costs associated with changes recognising non-binary people in civil status documents do not constitute a legitimate reason to justify the violation of fundamental rights.

Belgium - Constitutional Court of Belgium – (No. 99/2019), June 2019

The Court determined that certain provisions of the federal Gender Recognition Act were partially unconstitutional because they would not permit non-binary people to register their gender in civil status documents. Additionally, the Court nullified the provisions that restricted an individual's ability to change their gender marker and first name in civil status records more than once.

In this judgment, the constitutional judges demonstrated that the impossibility for non-binary people to change civil status documents according to their gender identity represented a violation of the right to self-determination and a breach of the principle of equality between non-binary people and those with a binary gender identity. The Court left it to the discretion of the legislator to address this unconstitutional gap in the Gender Recognition Act.

The Court also addressed the requirement to confirm that the change in gender marker and first name was permanent. It did not find that public order and fraud prevention arguments justified the

interference with the right to self-determination of people with a fluid gender identity. The judges emphasised that the legislator's aim should be to ensure self-development for all individuals, without imposing excessive conditions on the exercise of their rights.

Austria - Constitutional Court of Austria – (No. G 77/2018-9), 15 June 2018

The plaintiff is an intersex person registered 'male' at birth. They submitted a request to the civil status office to modify the civil status documents in accordance with their gender identity, proposing entries such as 'inter', 'diverse' or 'X' in the gender field. The civil status authorities rejected the plaintiff's request, citing that the gender entry in civil status records can only be 'male' or 'female'. This decision was upheld by the administrative court. Subsequently, the plaintiff approached the Constitutional Court, which admitted the constitutional complaint and based its resolution on the perspective of the ECtHR jurisprudence regarding Article 8. The Court emphasised that the gender identity of intersex people must be officially recognised by the State, particularly in cases where parents may feel pressured to choose a binary gender on the birth certificate of their intersex child. The State is obligated to implement effective legal measures allowing intersex people to autonomously determine their gender identity.

The constitutional judges underscored that the general interest outlined in Paragraph 2 of Article 8 ECHR cannot justify denying a third gender marker option.

Netherlands - District Court of Limburg – (No. C/03/232248/FA), 25 May 2018

This Dutch case involves a person whose gender could not be determined at birth, and the parents decided to register them as 'male'. Subsequently, the applicant changed their gender in the civil status documents from male to female. Over time, the applicant realised that they did not identify strictly as a man or a woman, prompting them to ask the court to be officially recognised by a third gender marker.

Guided by the Yogyakarta Principles, the court ruled that legal gender recognition must be considered independently of medical interventions or physical appearance. The Yogyakarta Principles assert that self-defined gender identity is grounded in the fundamental human rights, including the rights to self-determination, the right to private life and the right to human dignity.

The judge prioritised the applicant's perception of their gender and their right to self-determination, ordering a new birth certificate to be issued mentioning that "the sex cannot be determined". According to the court, any other solution would constitute a violation of the fundamental rights of the interested party.

Switzerland - Federal Supreme Court of Switzerland – (No. 8C_385/2022), 14 June 2023

A high school teacher (the plaintiff) continued to use a trans student's previous feminine name and address him with feminine pronouns, despite contrary instructions from his principal.

Despite multiple discussions with the teacher's superiors, where the plaintiff was warned to respect the student's gender identity, the plaintiff refused to acknowledge the student's right to self-determination. The teacher cited his right to freedom of conscience and religion as grounds for non-compliance. Subsequently, the cantonal school decided to terminate the plaintiff's employment contract, prioritising the student's right to self-determination and personal dignity.

While the court of first instance ruled in favour of the plaintiff, the Supreme Court upheld the decision of the Court of Appeal and rejected the plaintiff's claim. The Supreme Court ruled that the cantonal school was obliged to protect the student's personality and had a duty to respect the student's well-founded desire to be addressed with male pronouns and first name.

Emphasising that federal law requires public schools to adhere to a neutrality requirement, and teachers acting on their behalf must remain neutral towards all students, the Court highlighted that the plaintiff violated the fundamental rights of the student. The cantonal school, in terminating the employment contract, effectively protected the student's right to self-determination, right to private life, and upheld the student's chosen name and pronouns.

Italy - Court of Rome – March 2022

The local court acknowledged the plaintiff's right to self-determination without conditioning the legal recognition on undergoing surgery or hormonal treatments. It was the first case in Italy recognising a non-binary person's right to legal gender recognition, even though the Italian legal framework does not provide for non-binary options.

III. THE RIGHT TO NAME CHANGE

ECtHR – S.V. v. Italy (Application no. 55216/08), 11 October 2018

A trans woman requested authorisation from the Rome District court to undergo gender reassignment surgery. The court granted her request. During the years awaiting surgery, she applied to the prefect to change her first name in the civil status records. The prefect rejected her request, arguing that without a final court decision mandating the change to her legal gender status, the first name could not be modified. The Regional Administrative court upheld the prefect's decision. Two years later, after the plaintiff underwent gender reassignment surgery, she obtained legal gender recognition through a court judgment.

Despite amendments to national legislation by the time the judgment was delivered, allowing the court to authorise both the surgical intervention and the modification of legal gender status, the ECtHR found a violation of Article 8 ECHR. The Court found that the national authorities had failed to analyse the specific situation of the applicant. The inability of the applicant to obtain a change in her first name in line with her gender identity for a period of two and a half years represented the Italian state's failure to fulfil its positive obligation to respect the plaintiff's right to privacy.

Italy - The Supreme Court of Cassation of Italy, first civil section, – (Ordinance of 17 February 2020, no. 3877)

The Turin Court of Appeal agreed to a change of gender marker, but rejected the applicant's chosen first name, arguing she cannot choose her own first name, and that the feminised form of the birth name must be retained in the civil status registers. The Supreme Court rejected this argument. It emphasised that the name is a primary distinguishing feature in society, and determining it is one of the individual's fundamental rights. The Court ruled that the judge should consider the new first name indicated by the applicant if it is legitimate and aligns with the plaintiff's gender identity.

Greece - The Court of Kallithea – (No.153/2020)

The claimant was registered at birth with a female gender marker and requested the court to recognise their non-binary identity. The judge authorised the modification of the female first name, originally registered at birth, to a neutral first name, along with a male last name. The court motivated its decision based on the individual's right to the free development of personality, since it did not infringe upon the rights of third parties, the Constitution, or good morals. Additionally, the court recognised everyone's right to the protection of health and identity, emphasising the State's obligation to refrain from intervening in the free development of personality.

IV. X-MARKER AND NON-BINARY RECOGNITION

ECtHR – Y. v. France (Application no.76888/17), 31 January 2023

In this case, the intersex applicant was registered as male at birth. In 2015, the applicant requested the prosecutor to go to court to replace the gender 'male' on their birth certificate with the mention 'neutral' or 'intersex'. The first-instance judge granted the request, but the Court of Appeal in 2016 and later the Court of Cassation rejected the request for legal gender recognition. In its judgment, the ECtHR did not find a violation of Article 8 ECHR.

The ECtHR balanced the private interest of the applicant with the public interests, namely ensuring the inalienability of civil status, maintaining the reliability and consistency of civil status records, and ensuring legal certainty. In conclusion, the Court considered that the protection of public order prevailed. The Court found that Member States had a broad margin of appreciation in the legal recognition of intersex people, due to the lack of European consensus on recognising a third gender. The majority of Member States still rely on a binary recognition system of gender as 'male' or 'female'. The ECtHR also considered the principle of the separation of powers in a democratic society, stating that creating a legislative framework for the recognition of intersex people falls under the national legislature's competencies.

The Court recognised the significant weight given to the national decision-maker's broad margin of appreciation in matters of general policy, especially on debated societal issues. However, the Court reiterated that a person's gender identity forms an essential aspect of an individual's intimate identity and is protected by Article 8 ECHR. The right to self-determination and personal development are fundamental aspects of the right to privacy. Both the French and European judges emphasised that assigning one of the binary genders to a newborn whose sex cannot be determined creates a conflict between the decision to assign a gender and the person's gender identity. This leads to difficulties regarding the right to private life due to the mismatch between the legal gender marker and biological reality.

France - French Council of State – (No. 452850), 21 June 2023 and CJEU, Mousse – (C-394/23) – pending

The National Society for French Railways (SNCF) collects and records gendered courtesy titles of customers when they purchase train tickets, subscriptions, and discounts on the railway company's website or application. Customers are only given the option of 'Mr' or 'Mrs', therefore excluding non-binary people. Sixty-four people, supported by two NGOs, filed a complaint against SNCF with the national data protection authority, the National Commission on Informatics and Liberty (CNIL). The applicants argued that SNCF violated the principle of minimising the collection of personal data by requesting customers to provide their civil status data, contrary to the EU GDPR (General Data Protection Regulation). Additionally, the applicants asserted that SNCF should not collect information about the civil status and offered alternative solutions for non-

binary customers, such as 'neutral' or 'other', when purchasing online tickets.

The data protection authority rejected the applicants' request, stating that SNCF collected civil status data to execute contracts between the parties, as well for civil, commercial, and administrative communication purposes. CNIL considered that collecting civil status data served a legitimate interest and that individuals could exercise their rights to object under Article 21 of the GDPR.

The applicants challenged CNIL's decision before the French Council of State, seeking:

- An annulment of the administrative authority decision
- Submission of a preliminary question to the CJEU for the interpretation of EU data protection rules
- The imposition of an administrative fine on SNCF.

The Court granted the applicants' request for preliminary questions to the CJEU. The French Council asked the EU judges about the compliance with the principle of minimising personal data collection related to civil status in common practices of civil, commercial and administrative communication, as specified in Article 5 of the EU GDPR. The French judges also asked for an explanation of the right to object (Article 21 GDPR) to the use and storage of civil status data for individuals not identified as 'Mr' or 'Mrs', allowing them to access services provided by the personal data operator, SNCF.

While the case is still pending before the CJEU at the time of writing, CJEU Advocate General Maciej Szpunar advised the EU top judges that it is not "necessary" under GDPR and that it is therefore unlawful for the SNCF to collect passengers' civil titles. The Advocate General dismissed the SNCF's arguments that the data collection in question is necessary to adapt its commercial communication or transport services depending on the passengers' civil titles. The Advocate

General also agreed with the applicants that processing data on civil titles creates a risk of discrimination on the grounds of gender identity for trans and non-binary people notably as other States legally recognise non-binary identities.

Germany - Frankfurt am Main Regional Court – (No. 2-13 O 131/20), 13 December 2020

This case is similar to the French SNCF case. The plaintiff, a non-binary person, sued Deutsche Bahn, the German national railway company, as they had to choose between 'Mr' or 'Ms' when registering as a customer on the company's website and when purchasing train tickets online. Deutsche Bahn online services did not offer a gender-neutral title option, and the title selection was mandatory. While the plaintiff had not obtained a non-binary gender marker, the court accepted that they presented in society and professional communication using gender neutral pronouns and a first name without exclusively male or female connotations.

The court ruled that in a contract for an online service, such as the online sale of train tickets, there is an obligation to respect the general right to personal identity of individuals with a non-binary identity. They cannot be forced to choose between the titles "Mr." or "Ms.". The court left it to the defendant to determine how to fulfil this obligation, either by introducing a gender-neutral title or by not requiring such titles to be mandatory. While the judge found no direct or indirect discrimination in this case, it prioritised the plaintiff's constitutional right to personal identity. The decision was based on the fact that the title options provided by Deutsche Bahn were associated exclusively with either a 'male' or 'female' gender, which did not align with the plaintiff's identity.

The defendant's claimed that the applicant had not changed their official documents to match their gender identity. This was rejected by the court. The judge emphasised that gender identity is crucial for an individual's identity and that a person's individual decision about their gender identity should be respected. The court highlighted that the right to be addressed according to one's gender identity is not limited to the relationship between a citizen and the State. The right to self-determination of personality is a general right, including in the application of civil law norms and in contractual relationships between private parties. The Court did not accept the defendant's arguments regarding the cost of implementing these changes or the claim that other public or private entities also only offered the titles 'Mr' or 'Ms', rejecting the defendant's attempt to invoke the principle of 'equality in injustice'.

German activists triumphant after winning their case against the German railway company. Photo credits: TIN Legal Aid.

Italy - Constitutional Court of Italy - (Case 143/2024) - 3 July, 2024

The Italian Constitutional Court ruled that while non-binary people's rights are protected under the Italian Constitution, there is no right to be officially registered as non-binary. The Court recognized that not having a third gender option could lead to unequal treatment and harm wellbeing but stated that adding such an option would require extensive legal changes. However, the Court did rule that trans people no longer need court approval for transition-related surgeries, making access to such healthcare easier and faster.

V. MEDICAL OR DIAGNOSIS REQUIREMENT

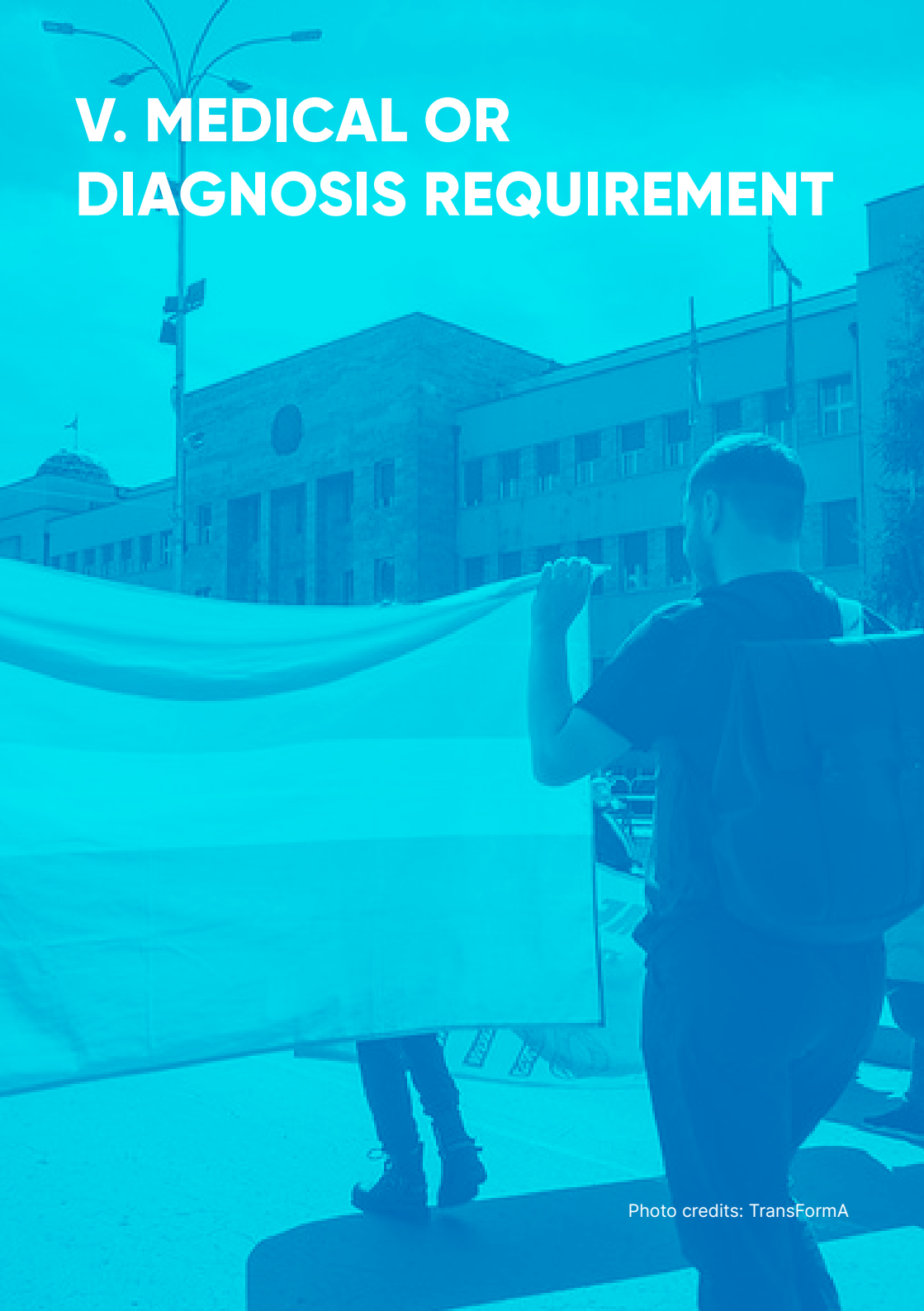

Photo credits: TransFormA

The ECtHR judgment in A.P., Garçon and Nicot v. France, condemning forced sterilisation, was the breakthrough case during the time period covered in this publication. At the same time, the ECtHR accepted the requirement for physical examinations as well as a mental health diagnosis.

ECtHR – A.P., Garçon and Nicot v. France (Application nos. 79885/12, 52596/13, 52471/13), 6 April 2017

At the time of events, trans people seeking to amend their civil status documents to match their gender identity had to meet two conditions under the French legal system: they needed to provide proof of a diagnosis of 'gender identity disorder' and of a 'physical transformation', which included irreversible medical treatments, such as sterilisation. This left the three applicants with an impossible choice to either undergo surgery against their will or to remain unable to change their civil status documents.

A.P. told the court that she had been diagnosed with 'gender identity disorder', presented publicly as a woman, and was undergoing hormonal treatment. Although she did not want to undergo gender reassignment surgery, she knew it was the only chance to modify her legal documents according to French judicial practice. Consequently, she obtained surgery in Thailand. In 2008, A.P. asked the Paris Tribunal to amend her documents to reflect her gender identity, providing various medical evidence. At the request of the Public Prosecutor, the Tribunal ordered A.P. to undergo a multi-

disciplinary examination to confirm her "psychological, biological, and psychological state" and to investigate "the persistence of her alleged syndrome in time." A.P. refused the examination, arguing that it violated her physical and medical integrity and her right to privacy, especially since she had already provided multiple pieces of medical evidence, and considering the high cost of examination (1,524 euros). The Paris Tribunal rejected A.P.'s request for legal gender recognition. The Court of Appeal granted A.P's request to change her first name from a masculine to feminine name but denied the modification of gender markers in civil status documents. The Court of Cassation upheld the court of Appeal's decision.

The third applicant, Mrs Nicot, submitted a request to the Nancy Tribunal to have her identity documents reflect her female gender identity. She argued that, based on the right to self-determination, legal gender recognition should not be dependent on any medical treatment and refused to provide any medical evidence. The second applicant, Mrs Garçon filed a request for legal gender recognition at the Créteil Tribunal, providing evidence of hormonal treatment and publicly identifying as a woman. Both requests were denied by the French jurisdictions on the grounds that they had not undergone irreversible gender reassignment procedures. In Garçon's case, the judges said that she failed to demonstrate "the existence and persistence of the transsexual syndrome".

In this judgment, the ECtHR found France had violated Article 8 ECHR. Regarding the requirement to demonstrate an irreversible change in appearance invoked by Mrs Nicot and Mrs Garçon the Court ruled that: "*Making the recognition of transgender persons' gender identity conditional on sterilisation surgery or treatment - or surgery or treatment very likely to result in sterilisation - which they do not wish to undergo therefore amounts to making the full exercise of their right to respect for their private life under Article*

8 of the Convention condition on their relinquishing full exercise of their right to respect for their physical integrity as protected by the provision and also by Article 3 of the Convention" (the Article 3 was not invoked by the plaintiff). Similar to its watershed case in Christine Goodwin v the UK, the Court justified its decision, despite the lack of a uniform European consensus, citing a recognisable international trend condemning forced sterilisation in legal gender recognition.

Regarding the obligation to demonstrate the existence of a gender identity disorder, the Court pointed out that this condition is present in the overwhelming majority of the Convention's signatory states. The Court was also of the opinion that it does not directly impact individuals' physical integrity, unlike the requirement for medical procedures leading to sterility. The Court observed that the requirement to demonstrate the existence of a 'gender identity disorder' did not constitute a violation of the positive obligations to ensure the right to respect for private life.

Regarding the obligation to undergo a medical examination, invoked by A.P., the Court indicated that there was no violation of Article 8 ECHR in this context either, considering that it is the responsibility of national courts to assess the probative value of the evidence presented and that "there is nothing to suggest that this decision was taken in an arbitrary manner."

The judges did not analyse the violation of Article 14 in conjunction with Article 8 or the Article 6 of the Convention.

The ECtHR repeated its rejection of surgical and sterilisation requirements in several cases in the years after. For more details you may want to see in the above section II. The Right to Legal Gender Recognition X. and Y. v. Romania (Application no. 2145/16), January 19, 2021, X. v. the former Yugoslav Republic of Macedonia (Application no. 29683/16), January 17, 2019, D. and Others v. Georgia

(Application no. 57864/17, 79087/17, 55353/19), 1 December, 2022 and the original decision in Y.T. v. Bulgaria (Application no. 41701/16), 9 July 2020.

European Committee of Social Rights, Transgender Europe and ILGA-Europe v. The Czech Republic (Complaint No. 117/2015), 15 May 2018

In 2015, TGEU and ILGA-Europe filed a complaint against the Czech Republic under Article 11 of the European Social Charter, the right to the protection of health. They contested the legal requirement for mandatory sterilisation in the legal recognition procedure. The complaint was based on Article 11 of the 1961 European Social Charter, alone or in the light of the non-discrimination clause of the Preamble. The Committee concluded that the requirement of mandatory sterilisation violated the right to access healthcare and the respect for human dignity and physical and psychological integrity. The Committee highlighted that mandatory sterilisation posed serious risks and complications, impacting a person's health and ability to provide free consent, a basic principle in access to medical services. The Committee did not follow the applicants' argument that the case constituted gender identity discrimination since cisgender people whose gender identity is recognised from birth are not obliged to undergo sterilisation. The Committee did not examine the complaint on this ground, however it acknowledged that there might be discriminatory aspects.

United Kingdom - High Court of Justice in Northern Ireland in JR111 (No.20/032488/01), 21 May 2021

Over the course of several years, the plaintiff, a trans woman, consulted multiple medical specialists and underwent hormone replacement treatments. She wanted to access the legal gender recognition procedure but faced several obstacles in obtaining the necessary medical evidence to meet the criteria set out by the UK Gender Recognition Act: finding an expert in Northern Ireland to confirm a diagnosis of 'gender dysphoria' and the high costs of this procedure relative to the financial situation of the plaintiff, who had been receiving Employment and Support Allowance for 10 years and could not afford to obtain a private medical report nor travel outside Northern Ireland.

Although recognising that, pursuant to the margin of appreciation left to national authorities by the ECtHR regarding the medical evidence imposed in the legal gender recognition procedure, the High Court found that national legislation requiring medical proof of 'gender dysphoria' diagnosis was contrary to the right to private life established in Article 8 of the Convention. The judge emphasised that language matters in this situation. They emphasised that the World Health Organisation replaced the diagnosis of 'gender identity disorder' in the 'Mental and Behavioral Disorders' chapter with 'gender incongruence' in chapter in the International Catalogue of Diseases version 11 (ICD-11) 'Condition related to sexual health'. Therefore, according to WHO, the situation of trans people can no longer be viewed through the lens of a diagnosis or medical disorder. The judge considered that people undergoing gender recognition procedure face a dilemma, as they must obtain a 'diagnosis' and the State could not denigrate trans people by characterising their

experience as 'disorder'. Therefore, it remains the responsibility of the Parliament to adopt the necessary measures to resolve this incompatibility identified by the Court.

Turkey - Constitutional Court of Turkey – (No.2018/34342), 22 April, 2021

A trans woman requested the Ankara Court to change her civil status documents to align with her female gender identity. The Court rejected the applicant's request on the grounds of not undergoing gender reassignment surgery, which could cause confusion in society. The Constitutional Court decided that requiring surgery for legal gender recognition was unconstitutional because it infringed on the applicant's right to privacy and the right to a name. Additionally, the Court emphasised that the decision of the Ankara Court was discriminatory based on gender identity, as the applicant was obligated to have a name "related to a gender she did not feel she spiritually and emotionally belonged to".

VI. MUTUAL GENDER RECOGNITION

CJEU Mirin (C-4/23)

In this case, the plaintiff, a trans man, holds dual Romanian-British citizenship. While the UK was still part of the EU, he successfully completed the UK legal gender recognition procedure and British authorities issued a new civil status document reflecting his male gender identity. With his UK gender recognition certificate, he requested that Romanian civil authorities recognise the documents issued by British authorities and to administratively amend his civil status documents to reflect his male gender and name. Romanian authorities rejected his request, requesting him to start a new judicial gender recognition procedure in Romania – a procedure, which the ECtHR had found to breach fundamental human rights due to its lack of clarity, accessibility and predictability. This left the plaintiff with two different sets of documents: one issued by British authorities corresponding to his gender identity, and another set issued by Romanian authorities contrary to his gender identity.

The plaintiff challenged the administrative authorities' response before the Cluj-Napoca court, asking the judge to refer a preliminary question to the CJEU. The EU judges were asked to determine whether requiring the plaintiff to undergo a new separate judicial procedure in Romania, which could lead to a different decision from one made in another Member State, violates the right to EU citizenship, the right to free movement and residence, and the principles of equality before the law and non-discrimination. Additionally, the CJEU was

Arian Mirzarafie-Ahi (he/him) with his legal team inside the EU Court of Justice. Photo credits: TGEU.

asked to rule on the Brexit effects in this situation, considering that the plaintiff can exercise his EU rights only with Romanian documents that do not correspond to reality.

The CJEU ruled in favour of the applicant, stating that Romania must recognise the legal gender recognition granted in the UK. The Court emphasised that the refusal to acknowledge changes of forename and gender acquired in another Member State is contrary to the fundamental rights of EU citizens, particularly the principles of free movement and non-discrimination. The Court highlighted that mutual recognition of legal decisions among Member States is essential for

upholding the rights of individuals within the EU, and that personal identity, including gender, is a fundamental element of one's identity, protected under Article 7 of the Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights. This landmark ruling reinforces the obligation of Member States to respect and recognise the legal gender identity of individuals as granted by other EU countries. The Court recognised the significant weight given to the national decision-maker's broad margin of appreciation in matters of general policy, especially on debated societal issues. However, the Court reiterated that a person's gender identity forms an essential aspect of an individual's intimate identity and is protected by Article 8 ECHR. The right to self-determination and personal development are fundamental aspects of the right to privacy.

Switzerland - Swiss Federal Supreme Court, 08 June 2023

In 2019, the plaintiff changed their legal documents to reflect their non-binary gender identity in Berlin, Germany. A year later, they sought recognition of their German documents in Switzerland through the Swiss Embassy in Berlin, aiming to remove gender information and adjust their first name in Swiss civil records. The Swiss administrative authority rejected the request to eliminate gender information, but approved the first name change. Dissatisfied with the decision, the plaintiff appealed to the Aargau Court to annul the administrative ruling on gender removal from their Swiss civil records solution.

The Aargau Court granted the plaintiff's request for full recognition of their German civil documents. The Swiss civil registry operates exclusively on a binary male/female system. The court's decision rested on the premise that a foreign ruling is recognised in Switzerland

if such recognition is not fundamentally incompatible with Swiss public order. The binary gender order no longer represented a fundamental and publicly accepted belief in Swiss law, considering ongoing political and legal debates about recognising a third gender. Additionally, the court invoked the evolutive argument considering the legislation in neighbouring countries like Belgium, Germany, Austria, where legal recognition procedures for non-binary people are available. The adjustments made in the residents' local registry for recognising non-binary people were also highlighted.

However, the Swiss Supreme Court overturned the Aargau Court's judgment, invoking the principle of the separation of powers. The judges argued that there was no legislative framework for legally recognising non-binary people and that such modifications fall within the competencies of the legislator. However, the Court did not provide any clarification regarding the creation of a legal relationship in limbo, nor did they address the lower court's arguments concerning the recognition of foreign decision.

Spain - High Court of Justice of Andalusia – 23 January 2023

The claimant is a non-binary German citizen residing and resident in Spain. They obtained an 'X' gender marker in their German passport. They went to the National Police in Seville to correct the gender information in the Central Register of Resident Foreigners. The register applies to European Union citizens residing in Spain. However, the Seville Police ignored the claimant's request and continued to register them as 'male', contradicting their gender identity and the information in the German passport. The claimant filed two appeals against this refusal; both were rejected by administrative authorities. In response to the rejection, the claimant

appealed to the Administrative court in Seville. The court dismissed the appeal, stating that neither EU legislation, Spanish legislation, nor CJEU judgments recognised the right of EU citizens residing in an EU Member States to change their gender marker in the public registers with 'X' or 'indeterminate' mentions.

The Andalusian Supreme Court overturned the decision of the Administrative court of Seville and upheld the claimant's request to change the gender entry in the Central Register of Foreigners to 'indeterminate' or 'X'. The main reason the judge granted the claimant's request was based on the principle of legal certainty and ensuring uniformity in the information extracted from the data provided by EU citizens residing in Spain. A contrary solution would have led to discrepancies between the information held by the country of origin's authority and that provided to the Spanish authorities. As a passport is a mandatory document required for registration in the Central Register of Foreigners, the Court believes there would be a significant legal discrepancy between the claimant's passport indicating 'indeterminate' gender and the Central Register of Foreigners showing the 'male' gender.

VII. FAULTY PROCEDURES

United Kingdom - High Court of Justice - Jay v. Secretary of State for Justice (Case no. 2018/0033), 08 October 2018

The claimant was registered 'male' at birth. Before she was sentenced to eight years in prison for a crime, she was married and divorced three times as a man. During her time in prison, she lived as much as possible as a woman. However, her mental health suffered with several suicide and self-harm attempts; she was also subjected to sexual assaults. Over time, she filed several requests for legal gender recognition to the Gender Recognition Committee, citing difficulties in obtaining all the necessary documents, given that prison doctors were not qualified for the required assessments. The Committee rejected her requests for a lack of medical reports confirming a 'gender dysphoria' diagnosis, the medical specialists were of the wrong kind, because the medical reports failed to mention that she was in prison, or that she had not made complete references to her marital status. The Committee rejected her requests despite the provision of medical evidence and other documents showing that the claimant lived in accordance with her gender identity, including a passport with a female name.

The Court allowed the claimant's appeal and ordered a certificate recognising the claimant's female gender to be issued. The Court found the Committee had excessively focused on procedural rather than substantive reasons, had failed to account for the claimant's

particular situation as an inmate, and had ignored convincing evidence provided that proved compliance with the legal requirements. Additionally, the Court noted that national legislation should be applied to facilitate legal gender recognition and not in a restrictive manner. If there were ambiguities, the Committee's experts should have called the claimant for a hearing, which did not happen in this case.

VIII. DIVORCE REQUIREMENT

UN Human Rights Committee G. v. Australia (C/119/D/2172/2012), June 28 2017

While the facts of the case are fairly similar to *Hämäläinen v Finland*, the UN Committee comes to a different conclusion than the European Court of Human Rights.

The author of the complaint was a trans woman originally registered 'male' at birth. She had legally changed her first name on her birth certificate to align with her gender identity. Subsequently, she entered into a marriage and underwent gender reassignment surgery. She applied to the civil status authorities to change the gender marker on her birth certificate. The authorities repeatedly

denied her request, arguing that the applicant must have been unmarried at the time of application, even though she already had a passport with a female gender marker.

The Human Rights Committee concluded that there had been a violation of the right to privacy and discrimination based on marital status and gender identity under the International Covenant on Civil and Political Rights (ICCPR). Australian authorities had failed to provide convincing reasons for refusing to issue a new birth certificate, while the passport actually had a female gender marker. At the same time, the authorities failed to justify why the state's interest required issuing of contradictory official documents. Additionally, according to Australian legislation, if a couple of different legal gender married abroad and one of the individuals subsequently changed their gender marker in the officials' documents, the marriage would still be valid in Australia. Thus, the Committee highlighted the inconsistency of national legislation, indicating that the requirement imposed on the applicant to divorce in order to amend her birth certificate constituted an interface with her privacy right, which was neither necessary nor proportional to a legitimate interest. This measure was considered arbitrary and discriminatory compared to unmarried trans women or married cisgender women, contravening Article 26 ICCPR.

CJEU - MB v. Secretary of State for Work and Pensions (C-451/16), 26 June 2018

This case concerned the right of a British trans woman to access her pension benefits under EU law. While the applicant underwent gender reassignment treatment out of her own will, she did not complete legal gender recognition procedure because national legislation conditioned the amendment of civil status document on

the annulment of marriage. However, the two women did not want to divorce for religious reasons. When the plaintiff reached the age of 60, at which, according to national law, she could retire, her pension application was rejected because she had not fully obtained the modification of official documents showing a 'female' gender marker, thus failing to meet the specific conditions for women's retirement.

The CJEU held that while Member States have competence in matters of civil status and legal gender recognition, they must apply the principle of non-discrimination. In this case, the judges established that national legislation created less favourable treatment based on the sex of a married person who transitioned compared to a married person who retained their gender marker entry. Consequently, the Court concluded that EU law opposed national legislation that compels trans people, who live in accordance with their gender identity socially, psychologically and physically, to be of single status in order to benefit from pension rights at the statutory age limit.

IX. PARENTAL RIGHTS

ECtHR – A.M. and Others v. Russia (Application no. 47220/19), 6 July 2021

The applicant was a trans woman whose gender identity had been recognised in 2015 by national authorities. Before undergoing medical and legal transition, the applicant got married in 2009 when still recognised as 'male' in civil status documents. The couple had two children. When they eventually divorced in 2015, the applicant agreed to pay alimony. Starting from December 2016, the applicant's ex-wife claimed potential psychological harm to the children due to the applicant's transition and opposed her visiting her children. In January 2017, she initiated legal proceedings to restrict the applicant's access to the children, arguing potential irreparable harm to their mental and moral health, distortion of their perception of family, and exposure to information about 'non-traditional sexual relations'.

During the proceedings an expert confirmed the applicant's 'diagnosis of transsexualism', stating it could create long-term psycho-traumatic circumstances for minors without substantiating this conclusion. Based on the expert's report, the national court granted the request to restrict the applicant's parental rights. Later, the ex-wife changed residence with the children, leaving the applicant without information about their whereabouts.

The ECtHR condemned Russia in this judgment for violating the applicant's right to private life (Article 8), both separately and in

conjunction with her right to non-discrimination (Article 14 of the Convention). Although the Strasbourg judges acknowledged that the national court decisions were in line with national law and aimed at protecting a legitimate purpose, the rights and freedoms of children, they deemed this solution unnecessary in a democratic society. The Court emphasised that the national judge had based their decision on an expert's report that failed to demonstrate how the applicant's gender identity affected the children, lacking reliable scientific evidence. Such a serious measure, as restricting parental rights, should be made only in the most severe situations, which were not demonstrated in this case. Additionally, the Court ruled that gender identity is covered by the provisions of Article 14 of the Convention, prohibiting discrimination. In this case, there was biassed treatment toward the applicant due to her gender identity.

ECtHR - Savinovskikh v. Russia (Application no. 16206/19) – 9 July 2024

The applicant is a trans man, registered 'female' at birth. He has four children, and in 2014 and 2016, he took custody of two minors who had been living in public care facilities since birth. The children had multiple medical conditions. In 2017, the applicant was recognised as trans and approved for several trans-specific surgical, cosmetic, and hormonal procedures. Social services learned about these approvals and, in August 2017, visited the applicant's apartment, requesting him to agree to an amicable termination of the foster-care agreement. The applicant refused, and the authorities removed the two children from his care and placed them in foster care centres. Social services then initiated criminal proceedings against the applicant, alleging he had failed in his duties as a guardian and sought to end the foster-care agreement, citing his trans identity as

the reason. After investigations, the authorities found that both the applicant and his wife had fulfilled their guardian duties in accordance with legal conditions. However, the court ordered the termination of the foster-care agreement, claiming that the foster family had "*not done enough for the children's intellectual development and had not informed social services of significant circumstances affecting the children's physical, spiritual, and moral development*." Subsequent national courts upheld the District Court's decision.

The European Court condemned Russia for violating Article 8 ECHR, stating that the decision to remove custody was not based on any scientific evidence or minimal examination of the impact of the applicant's gender identity on the children's mental health or development. The Court also noted that the national judge had not considered the findings of the investigating authorities, which showed that the applicant had fulfilled his guardian duties according to the law and that the children were living in good conditions. Thus, the national authorities failed to conduct a thorough examination of the children's situation and the conditions in which they lived with the applicant. The Court also found that the applicant had standing to represent the foster children in the proceedings, as the social services had been the initiator of the rights violation. The Court, however, failed to examine the case under Article 14 (prohibition of discrimination), even though the measures by domestic authorities were entirely motivated by the applicant's gender identity, as judge Serghides observed in a partially dissenting opinion.

ECtHR – O.H. and G.H. v. Germany (Application nos. 53568/18, 54741/18) and A.H. v. Germany (Application no. 7246/20), 4 April 2023

The first case involves O.H. and G.H.. The first applicant, O.H., was initially registered as 'female' at birth and later obtained male documents through legal gender recognition. Subsequently, he gave birth to a child, G.H. Following German law, O.H. was registered as 'mother' in the child's birth certificate. The second case pertains to A.H., initially registered as male at birth, but later recognised as 'female' in civil status documents. A.H.'s partner gave birth to a child, and A.H. was recorded as 'father' in the child's birth certificate. The applicants in both cases complained that German authorities and national courts refused to recognise O.H. as the child's father and A.H. as the mother respectively, even though the changes in civil status documents reflected their gender identity.

The ECtHR noted the absence of a consensus among European states regarding the registration of trans parents on their children's birth certificates, considering various competing rights. It weighed the right of the trans people not to disclose their gender identity against the child's right to know their origins and the public interest in maintaining legal system's coherence and accurate civil registration. The ECtHR prioritised the child's right to know their origins, despite the fact that, at least in O.H., G.H. was fully aware of his family situation. The Court also favoured the public interest argument, stating that Member States have a wide margin of appreciation in fulfilling positive obligations to respect the right to private life in this situation. The Court emphasised that the national courts had indicated the possibility of obtaining a birth certificate without mentioning parents, which could be used in interactions with third parties. Additionally, the Court was satisfied that the parent-

child relation between the applicants and their children was not questioned, which is a guaranteed right for the parents. The ECtHR concluded that there was no violation of Article 8 or Article 14 of the Convention in these cases.

France - Court of Appeal Toulouse – (No. 20/03128), 9 February 2022 and ECtHR - C.V. and Others v. France (Application nos 13948/21, 14333/21) - struck out

The plaintiff, C.D., is a trans woman who obtained legal gender recognition and was officially recognised as a woman. She got married. The couple had two children before, and a third child, M.E.D., after the applicant changed her civil status documents. The plaintiff acknowledged during pregnancy the child as a non-biological mother, through 'a non-gestational maternal' status. The civil registry officer refused to include this acknowledgment in the official records, leading the plaintiff to take the refusal to court. Different court instances up to the Court of Cassation upheld the civil registry's refusal and presented two options to the plaintiff: either renounce the gender identity change in civil status documents to establish the paternity or adopt the child despite being its biological parent.

The Appellate Court of Toulouse ruled that recognising paternity would force the plaintiff to deny her gender identity, violating the right to privacy established by Articles 8 and 14 ECHR. The judge interpreted that national legislation on filiation had been enacted before trans people had the option to change their legal documents without mandatory surgical interventions, which would eventually enable them to procreate in their acquired gender identity. In light of

legal developments in this field, the court concluded that different legal and biological realities could coexist. In the absence of a legislative framework regulating the situation of children born after legal gender recognition of a trans parent, it was thus up to the judge to decide based on the specific circumstance of the case. Thus, considering the child's best interest and the right to respect for their private life, the court ruled for dual filiation with both parents and transcription in the birth certificate with the mention of the plaintiff as 'mother'.

C.V. and M.E.D. also complained to the ECtHR for a violation of their right to private life and family life and prohibition of discrimination, Articles 8 and 14 ECHR. In regard to C.V., she alleged that the refusal to mention her in the civil status registers as M.E.D.'s mother prevented her from defining her gender identity and from deriving the legal consequences thereof, and risked revealing her trans identity to third parties. In view of the possibility that, since 2013, in France two married women could be named 'mother' on the birth certificate of their common child, they also alleged a violation of the prohibition of discrimination on grounds of the sex and gender identity of C.V. The ECtHR removed the case from its list of cases, since it considered the Appellate Court had addressed the grievances sufficiently. The applicants however were dissatisfied that the ECtHR had not examined the alleged human rights violations related to the denial of registration.

Italy - Court of Trento – 12 March 2018

The plaintiff, a trans woman, was married and had two children. Following Italian LGR procedures, she requested the court to align her civil status documents with her gender identity by changing the

mentions related to sex and first name, as well as modifying how she was referred to in the birth certificates of her children.

The court granted all the plaintiff's requests, aligning with the Italian constitutional and ECtHR jurisprudence saying that an individual's gender identity is a constitutive element of their right to personal identity. In accordance with the right to gender self-determination, the judge acknowledged that the plaintiff had definitively undergone "psychological, behavioural and physical transition". Consequently, the court deemed it appropriate to correct the applicant's data both in the children's civil registry entries and subsequently their birth certificates.

X. MIGRATION STATUS

ECtHR - Rana v. Hungary (Application no. 40888/17), July 16 2020

In this judgment, the ECtHR condemned Hungary for violating Article 8 ECHR by denying legal recognition procedure for trans people without a Hungarian birth certificate. In this case, the claimant was an Iranian trans man registered female at birth. In 2015, he successfully applied for asylum in Hungary, due to persecution in his country of origin based on his gender identity. In 2016, the claimant applied for a change of name and gender marker to the Hungarian Immigration

and Citizenship Office. His request was rejected without a review on merits. Further, the claimant's request was rejected by both the Budapest Administrative and Labour Court and the Constitutional Court, which stated that Hungarian law does not allow for changing gender and name in official documents for individuals without Hungarian birth certificates. However, the Constitutional Court found this legislative gap to be unconstitutional and contrary to the right to human dignity. The judge urged the legislator to find a solution for individuals in the claimant's situation to access legal gender recognition, but no progress had been made by the Parliament in adopting the necessary legislation.

The ECtHR reiterated that States have a limited margin of appreciation in restricting the right to private life and essential aspects of personal identity, such as gender identity. The Court highlighted that the national authorities had not assessed the claimant's request on its merits but solely on procedural grounds. In particular, Hungarian authorities had ignored that the reason for granting asylum to the claimant was the persecution faced in his country of origin related to his gender identity. Therefore, the Hungarian authorities could not reasonably expect the claimant to modify his civil status documents in Iran.

ECtHR – L.B. v. France (Application no. 67839/17) – 28 September 2023

In this case, the plaintiff was intersex and had applied for asylum in France. They underwent gender reassignment treatment in France and were later deported to Morocco. The plaintiff accused a violation of Article 3 and Article 8 ECHR because the decision to deport them to their country of origin resulted in the interruption of the medical treatment they were undergoing to affirm their gender

identity. Additionally, they stated that intersexuality is prohibited in Morocco, being perceived as 'homosexuality'. This could lead to social rejection and criminal proceedings against the applicant.

The Court dismissed the application as inadmissible due to the applicant's failure to exhaust domestic remedies. At the time of the ECtHR's decision there was an ongoing cassation appeal before the Council of State. The Court emphasised that the applicant must exhaust all available domestic remedies, both for the complaint based on Article 8 and for the one based on Article 3 ECHR, including those remedies that do not have a suspension effect, in this case, the lack of suspension of the expulsion decision.

Greece - Court of Thessaloniki – (No.44E/2018), June 2018

Greek national legislation regarding legal gender recognition lacked provisions for changing gender or name for individuals not registered in the Greek Registry Office, such as refugees. In this case, the Court of Thessaloniki agreed to the trans woman's request to modify identification documents issued by Greek authorities because she faced particular difficulties when interacting with the authorities or other private entities. The court viewed these aspects as sources of psychological tension, in addition to those already experienced in her country of origin, hindering the claimant's full adaptation to Greek social life.

Greece - Court of Mytilene (No. 136/2018) – December 31, 2018

A trans woman of Bangladeshi nationality had been granted refugee status in Greece. She requested the Court of Mytilene to amend the gender markers, name and surname on the decision granting her refugee status, the residency permit, and travel documents to align with her gender identity. The court approved the request based on the right to respect of personal identity. It emphasised that, according to the 1951 Refugee Convention, the claimant had the right to assistance from the host country to exercise her rights. Moreover, according to the International Covenant on Civil and Political Rights, as well as the right to human dignity, legal gender recognition must be granted to asylum seekers and refugees. Additionally, the judge accepted the claimant's request to protect her health, social life and personal well-being.

CJEU - Deldits (C-247/23) – pending case

The plaintiff, a trans man, is an Iranian citizen who had been granted refugee status in Hungary based on his gender identity. He submitted a series of medical documents in support of his asylum claims but remained registered in the national asylum register as female. The plaintiff requested a change in the gender entry and the first name in the asylum register to align with his gender identity. He submitted medical documents, supporting his request. National authorities rejected his request on the grounds that he failed to prove that he had undergone gender reassignment surgery.

The EU Court is called upon to interpret whether the Regulation on the protection of personal data obliges national authorities to rectify

personal data regarding a person's gender already recorded in state registers based on the rights of the data subjects and the accuracy principle provided in the EU Regulation. Additionally, the referring court is seeking clarification whether evidence can be requested for such a data rectification, and if gender reassignment surgery can be legitimately requested for this.

In his opinion, Advocate General Collins stated that following Article 16 GDPR in conjunction with Article 5(1)(d) GDPR Hungarian authorities need to rectify the gender of the applicant, whose data they recorded inaccurately in the first place. He also pronounced that while evidence might be requested, proof of surgical intervention cannot be required.

XI. AGE LIMITS

Spain - Constitutional Court of Spain – (Judgment no.99/2019), 18 July 2019

The Constitutional Court ruled that the Spanish law regulating legal gender recognition procedure at the time was unconstitutional as it imposed on a minor to be of legal age as a mandatory prerequisite. The Court determined that the age restriction was disproportionate, since it excluded minors who, despite their sufficient maturity and stable adherence to their gender identity, were denied access to the legal gender recognition. In its analysis, the Court considered the Convention on the Rights of the Child, which binds the signatory states to respect the child's right to maintain their identity. The total exclusion from legal gender recognition procedure, without considering the minor's specific situation and maturity, would lead to a violation of the fundamental right to personal privacy and the constitutional principle of self-development of personality.

United Kingdom - High Court of Justice – W, F, C and D (minors), 12 February 2020

In this judgment, the British Court analysed the situation of trans minors who wished to change their name through the Deed Poll procedure. According to national legislation, to change the name of a person under the age of 18, the applicant must undergo a notarial registration and obtain the consent of all persons with

parental responsibility or a court order. Both the old and new names must undergo a publicity procedure and be published in the London Gazette. Considering that the notarial registration for the modification of the name is public and this procedure would signal a gender change, the Court considered it to be a disproportionate interference with the right to private life as stipulated by Article 8 ECHR. Thus, the Court decided that only the child's surname should be made public, while the notarial registration should be retained by the court.

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