Legal developments on trans-specific healthcare

A review of national case law in the EU



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TGEU is an umbrella organisation that represents
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Introduction

Litigation and the use of legal tools has been central to the movement to advance the rights of trans people in Europe. Since the earliest decision of the European Court of Human Rights in Christine Goodwin v. United Kingdom, major progress on the rights of trans people, notably on legal gender recognition, have been a result of litigation and the application of international and regional human rights law. More recently, decisions of the Court of Justice of the European Union have significantly advanced the right to legal gender recognition and non-discrimination based on gender identity under EU law. TGEU's own analysis of **legal developments** in Europe and Central Asia in the 2026 Trans Rights Map also observed that national court decisions were key drivers of positive change on issues like the removal of sterilisation requirements for legal gender recognition and non-binary recognition.

A notable exception to this phenomenon has been trans-specific healthcare, where the use of litigation to advance access is less common, barring a handful of cases from the European Court of Human Rights such as *Van Kuck v. Germany*[1], *Schlump v. Switzerland*[2], *and WW v. Poland*[3]. At the same time, there is growing interest among trans people and activists to use litigation as a tool to assert their right to an adequate standard of healthcare and cost coverage. Scope for litigation on healthcare access at regional human rights courts is limited as healthcare is a matter of national competence and decision-making. Therefore, we turned our attention to national court decisions to better understand the kind of cases courts in the EU have decided and the legal advancements achieved through litigation on trans-specific healthcare.

The aim of this resource is simple: to develop a stronger understanding of how litigation can advance access to trans-specific healthcare, through a review of case law from national courts in EU Member States. This resource presents summaries of significant decisions based on case law review in nearly all 27 EU Member States and covers critical areas of trans-specific healthcare including cost-coverage for procedures, cross-border access, age-based restrictions, and anti-discrimination. This resource presents cases where trans applicants were successful as well as cases where decisions did not advance coverage, with a view to demonstrating the kinds of considerations that drive court decisions.

Court judgments have great potential and impact beyond the singular case to which they apply. In addition to expanding the horizon of rights claims that are possible and recognised, court decisions can advance non-discriminatory and rights-respecting language, even in areas as technical and complex as healthcare and health insurance law. We hope this resource encourages activists and lawyers to explore the avenues and opportunities that exist at the national level for litigation to advance access to trans-specific healthcare, drawing inspiration and arguments from similar efforts in the region.

1 Application no. 35968/97, decided on 12 September 2003

2 Application No. 29002/06, decided on January 8, 2009

3 Application no. 31842/20, decided on 11 July 2024

How to read this resource

This resource presents a summary of key case law from national courts of EU Member States from the last 15 years – with only a few exceptions dating earlier – on access to trans-specific healthcare. Although a review of case law was undertaken in nearly all Member States, relevant cases on trans-specific healthcare were found only in a handful of countries like Austria, Belgium, Croatia, Denmark, France, Germany, Spain, the Netherlands.

It focuses on recent developments rather than settled or foundational case law. Equally, it does not cover all cases on trans-specific healthcare in the EU but only decisions that are significant, addressing important legal issues. That is why, for example, we excluded a number of cases from Germany, France, and the Netherlands which were standard and dated cost-coverage decisions without significant value for future litigation.

This is a technical document, aimed at trans activists who are interested in using legal tools and litigation to advance access to trans-specific healthcare and at legal professionals who wish to support trans people and activists in this endeavour. It summarises the legal argumentation and logic of the court's decision to provide an idea of the kinds of cases that courts have decided (both in favour of and against the trans applicant) and through that, indicate possible avenues for litigation to advance access to trans-specific healthcare. However, it is important to note that this resource does not provide legal advice and should not be read as such.

The cases are categorised by the broad legal issue they pertain to and are organised alphabetically by country and by date. Each case summary is structured along similar lines, containing the following information:

a. Case title (or citation) and the year of the decision, and where possible, the case number

b. Court / Tribunal which delivered the decision as well as the level (such as first instance or court of appeal)

c. The key legal issue(s) of the case

d. The key facts of the case[4]

e. The court's decision and the reasons for it

f. Possible implications for future similar cases

The court or tribunal that decided the decision is important information when reading the summaries. Not all decisions were delivered by courts. Some decisions, such as on

4 The case summaries may use plaintiff, applicant, or complainant. They all refer to the same status i.e. the person who filed the claim or the case and the terminology may depend on the type of proceeding in the case. The defendant is the other party against whom the claim was made.

anti-discrimination, are delivered by bodies with quasi-judicial authority while other decisions, such as on cross-border access were delivered by administrative tribunals with specific powers to decide on such matters.

Therefore, this information indicates whether the case was decided by a court or tribunal. It also indicates the level of the court or tribunal, such as whether the decision was given by the lowest court i.e. the court where an applicant first goes when they have a claim or to an appeal court at the next level or the highest court in the country. This matters for the weight that the decision carries and whether other courts in the country will follow the logic of the decision when presented with similar facts.

It is important to note that decisions delivered by one court are not automatically binding on another court in the same country. It depends on the legal structure of the country, the specific facts of the case, and the applicable laws. Nevertheless, older decisions can persuade courts to deliver similar decisions.

List of abbreviations

CPAM	The local social security organisation which manages reimbursement of healthcare in France.
EU	European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights

Case law summaries

Cost coverage and reimbursement

Germany

1

3 Ws 173/99 (2000)

Court / Tribunal: Court of appeals Karlsruhe – Court of appeal

ISSUE:

Whether a trans woman in prison has the right to trans-specific medical treatment, including surgery, under **Sections 56 et seq. of the German Prison Act** and whether any constitutional limits apply to this.

FACTS:

The complainant, a trans woman in prison serving a life sentence for murder and sexual assault, sought trans-specific healthcare treatment while incarcerated in a men's prison. Although legally recognised with name change and identifying as female, prison authorities refused to provide or fund the treatment, arguing that proper preparation for gender-reassignment, including testing everyday life in the female role, was impossible in prison. The complainant challenged the prison authorities' decision but was unsuccessful at the lower court. The legal basis for the dispute was Section 56 et seq. of the German Prison Act, which governs prisoners' entitlement to necessary medical care, and the fundamental right to free development of personality under Article 2(1) read with Article 1 of the German Constitution.

COURT'S DECISION:
The complainant was partially successful.

The complainant was granted the right to receive psychotherapeutic treatment, but not the right to immediate surgery. The court held that prisoners are entitled to necessary

medical care under Sections 56 et seq. of the German Prison Act. Prison authorities owe a special duty of care because of the prisoner's relationship of dependence on them. 'Transsexuality' may be considered a medical condition if it causes significant psychological distress, which was found to be present in this case. Therefore, there is a right to treatment that may not be denied on cost grounds.

The court qualified its decision by noting that the principle of proportionality also applies, and treatment may not be available in every case, such as where the prison term is short. On the other hand, where the treatment is crucial for the prisoner's rehabilitation and future life, the prison authorities must facilitate care under the German Prisons Act. Security and order concerns in men's prisons do not justify denying medically indicated treatment. Rather, ways must be found to uphold the constitutional rights of trans prisoners. Even the daily life test required for the therapy can be conducted within the prison system if prison authorities make use of their discretion, for example by providing special housing arrangements and permitting the wearing of women's clothing.

As for the complainant's request for permission to undergo surgery at the prison authority's expense, the court said this can be decided only after psychotherapy and hormone therapy has been administered. If the treatment is medically necessary due to the continuing severe psychological distress, the complainant must be allowed to access it.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This decision held that trans-specific healthcare must be available in prison if the person is found to be in significant psychological distress and if the prison physician determines that the treatment is necessary. Access to care must be granted if medical transition is important for the individual's future and rehabilitation and no other equally effective alternative is available.

2 L 4 KR 34/12 (2013)

Court / Tribunal: Higher Social Court Sachsen-Anhalt – Court of appeal

ISSUE:

Whether the plaintiff is entitled to coverage of the costs of hormone therapy pursuant to **Section 27(1) of the German Social Code, Book V** and whether she is capable of giving informed consent.

FACTS:

The plaintiff, a trans woman with an intellectual disability, sought cost coverage for hormone therapy. Although the defendant, the statutory health insurer, initially rejected the request due to doubts about her ability to understand the long-term consequences, several experts confirmed both the diagnosis of 'Transsexualism' and her capacity for informed consent. The Medical Service later revised its earlier position and supported hormone treatment. The Social Court in Halle ultimately ordered the defendant to approve the therapy, against which the defendant appealed. The legal basis for the dispute is Section 27(1) of the German Social Code, Book V, which governs entitlements under the statutory health insurance system to medical treatment in the event of an illness.

COURT'S DECISION:

The plaintiff was successful.

The insurer was ordered to approve the hormone therapy. Under Section 27(1) of the German Social Code, Book V, trans persons who are insured may be entitled to trans-specific procedures if the procedures can alleviate psychological distress. The court held that although mental illnesses are generally not treated through physical interventions, 'Transsexualism' is a recognised exception. In this case, the plaintiff's diagnosis was undisputed and medically confirmed. The court held that psychotherapy is not the only required treatment in every case, as transsexuality is not a temporary medical condition and hormone therapy is considered to be an effective treatment.

The court also found that the plaintiff was fully capable of giving informed consent, based on the expert opinions. She was able to understand the advantages and disadvantages of hormone therapy and make a reasonable assessment of the risks. Both the experts and the Medical Service confirmed that she was able to reflect on her development, life situation, and the challenges with the treatment clearly and without contradiction.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case held that successful treatment for 'Transsexualism' cannot be achieved through psychotherapy alone and physical interventions can be justified. Moreover, a person with an intellectual disability can be considered as capable of giving informed consent and this must be determined on a case-by-case basis.

3 S 11 KR 260/17 (2019)

Court / Tribunal: Social Court Würzburg – Court of first instance

ISSUE:

Whether the plaintiff was entitled to cost coverage for surgical reduction of the Adam's apple, correction of the vocal chords or pitch, and facial feminisation procedures, and whether the plaintiff was entitled to reimbursement of costs for breast augmentation and hair removal treatment.

FACTS:

The plaintiff, a trans woman undergoing hormone therapy since 2015, applied for coverage of several procedures, including genital surgery, breast augmentation, facial feminisation, and beard hair removal. The defendant insurer initially rejected the application because the required real-life test period had not been completed. Later, coverage for genital surgery was approved, but facial feminisation and breast augmentation were classified as cosmetic procedures rather than medically necessary treatments. The defendant also denied coverage for electrolysis hair removal because the cosmetologist providing the treatment was not an authorised healthcare provider. Breast augmentation and bottom surgery were nevertheless performed privately in 2017. The legal basis for the dispute is the German Social Code, Book V, specifically Section 27(1), sentence 1, which governs entitlements to medical treatment, Section 13(3) on the reimbursement of costs for self-procured services, and Section 15(1) which establishes the requirement for treatment to be provided by a physician.

COURT'S DECISION:

The plaintiff was partially successful.

The court ordered that the plaintiff's costs for the Adam's apple reduction and correction of the vocal chord could be covered but the costs for breast augmentation reimbursement, facial feminisation, and hair removal by a cosmetologist could not be covered. Specifically on the surgeries on the Adam's apple and vocal chords, the court found that the current appearance and pitch levels were inconsistent with

a female appearance and voice, and were medically indicated. However, on breast augmentation, the court held that a decision on whether surgery is justified depends on overall appearance and further, the plaintiff had not completed the minimum period of hormone therapy (24 months). On the facial feminisation procedures, the court found that they were cosmetic in nature.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case held that trans people can access surgery with cost coverage for reduction of the Adam's apple and vocal chord correction where this is medically indicated. However, facial feminisation surgery may still be considered as cosmetic by courts.

4 S 21 KR 183/17 (2019)

Court / Tribunal: Social Court Dessau-Roßlau - Court of first instance

ISSUE:

Whether the plaintiff has a medical condition requiring treatment under **Section 27(1) of the German Social Code, Book V** and whether the absence of psychotherapy means that the plaintiff cannot access surgery, even if the goals of psychotherapy have been achieved by other means.

FACTS:

The plaintiff, a trans woman undergoing hormone therapy since 2014 and legally recognised as female, applied for coverage of trans-specific surgery at a non-contracted clinic. The defendant insurer rejected the request after Medical Service reviews found that not all socio-medical requirements had been met, particularly the required duration of psychotherapy. Although later reports confirmed sufficient hormone therapy and stated that psychotherapy goals had already been achieved, the defendant ultimately upheld its rejection of the application. The legal basis for the dispute involved Section 27(1), sentence 1 of the German Social Code, Book V, which governs entitlements to medical treatment in the event of an illness under the statutory health insurance system.

COURT'S DECISION:

The plaintiff was successful.

The plaintiff was awarded reimbursement of costs for the surgery. The plaintiff's

diagnosis of 'Transsexualism' falls under Section 27(1) and has long been recognised as such. It also held that the requirements for surgery were met. Based on the endocrinologist's expert testimony, the goals of psychotherapy had been achieved by other means. The court held that the absence of formal psychotherapy alone is not enough to block cost coverage.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

The case effectively holds that the assessment of treatment guidelines must focus on substance rather than form. The decisive factor is whether the underlying goals have been substantively met, and not whether the insured person has formally completed each procedural step prescribed by the guidelines.

5 4 O 373/21 (2022)[1]

Court / Tribunal: Regional Court of Wuppertal – Court of first instance

ISSUE:

Whether a trans man who lost fertility after trans-specific healthcare treatment can be considered to have 'organically caused infertility', whether the entitlement to cost coverage for artificial insemination is excluded on the ground that the insured event was intentionally caused, and whether there is discrimination under the **German General Equal Treatment Act** due to denial of cost coverage.

FACTS:

The plaintiff, a trans man with private health insurance, sought reimbursement for fertility treatment after losing reproductive capacity because of trans-specific healthcare treatment. The insurer refused coverage, arguing that trans identity does not constitute 'organically caused infertility' and that artificial insemination was not medically necessary treatment. Two inseminations were nevertheless carried out which the plaintiff paid for, resulting in the birth of a son, and the couple intended to have a second child. The plaintiff contended that the refusal of coverage amounted to gender discrimination under the German General Equal Treatment Act.

The legal basis for the dispute involved the insurance policy terms and conditions governing coverage for 'organically caused infertility' as well as Section 201 of the German Insurance Contract Act which governs when insurers may be excluded from

1 An appeal is pending before the Higher Regional Court of Düsseldorf (I-13 U 18/23). The ruling by the Regional Court Wuppertal is therefore not yet final.

otherwise entitled benefits, such as in the event of causing an insured event. Section 19(1) of the German General Equal Treatment Act which governs civil law prohibitions on discrimination also applied in this case.

COURT'S DECISION:

The plaintiff was successful.

The plaintiff was awarded reimbursement of costs in relation to the first child and was awarded a declaratory judgment that the defendant insurer has an obligation to cover the costs of further fertility treatment. The court also found a violation of the equal treatment law and ordered compensation.

The court held that 'organic infertility', meaning the inability to conceive naturally, exists in trans people and reproductive capacity depends not only on anatomy but also on gender identity. Further, hormone therapy undertaken as part of trans-specific healthcare treatment is socially acceptable conduct and cannot be considered as intentionally causing infertility. As an expression of the constitutional right to gender identity and personal autonomy, gender identity cannot be used to reduce benefits. Otherwise, transgender insured persons would be forced to choose between affirming their gender identity and preserving insurance coverage for fertility treatment.

Therefore, the court found that the plaintiff had been indirectly discriminated against on the basis of 'sex' under the German General Equal Treatment Act. The distinction drawn by the insurer between 'biological' and 'organic' infertility unlawfully relied on the plaintiff's trans identity.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case is significant for recognising that trans people in Germany can access assisted reproductive measures on an equal basis and that infertility due to hormone therapy cannot preclude cost coverage for such measures. Insurers who deny coverage on this basis risk violating the prohibition on discrimination.

6 S 28 KR 63/22 (2022)

Court / Tribunal: Social court of Berlin – Court of first instance

ISSUE:

Whether transition treatment can be considered 'germ cell-damaging therapy' even if infertility is an inevitable consequence of the treatment, whether the requirements for artificial insemination must be met already at the time of starting cryopreservation and whether an age limit applies to cryopreservation.

FACTS:

The plaintiff, a trans woman, had been undergoing transition, the costs of which were covered by the defendant insurer. Hormone replacement therapy was interrupted in 2016 to enable the cryopreservation of sperm cells and surgery took place afterwards in 2018 onwards. The plaintiff applied for coverage of the costs of annual cryopreservation (EUR 240 per year). The defendant rejected the application on the grounds that infertility was a known and accepted consequence of undergoing trans-specific healthcare treatment and therefore did not constitute germ cell-damaging therapy. The legal basis for the dispute involved Section 27a(4) of the German Social Code, Book V, which governs entitlements to cryopreservation in the context of germ cell-damaging therapy.

COURT'S DECISION:

The plaintiff was successful.

The defendant insurer was ordered to reimburse costs, as well as to cover any costs of cryopreservation until the age of 50 years. The court held that under Section 3 of the Cryopreservation Directive, a therapy that damages germ cells also includes the surgical removal of the gonads and hormone treatments that impair fertility. The court did not agree with the defendant's argument that the infertility, which was consciously accepted, made the claim invalid. The decisive factor was that the treatment was medically necessary under Section 27 of the German Social Code, Book V. The intent of the law was specifically to protect individuals for whom artificial insemination might be an option in the future. The court also held that the requirements for artificial insemination do not need to be met at the time of cryopreservation and the possibility of future implementation is enough as the law does not require a commitment to a specific life path.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case held that the entitlement to cryopreservation of germ cells includes cryopreservation following transition. Trans people who have undergone trans-specific healthcare procedures are entitled to this procedure even if they were aware that it could impact their fertility.

7 B 1 KR 16/22 (2023)

Court / Tribunal: Federal Social Court - Highest court on social matters

ISSUE:

The case turned on two questions. First, whether treating psychological distress from gender incongruence in a non-binary person is a 'new examination and treatment method' under **Section 135 German Social Code, Book V[2],** which requires prior approval from the Joint Federal Committee. Second, whether any recognised exception exists because of which the claim can be successful without that approval.

FACTS:

The case concerns a dispute over whether a statutory health insurance was obligated to cover the costs of a bilateral mastectomy for a non-binary insured person. The defendant insurer rejected the application to cover costs because no diagnosis of manifest 'transsexuality' had been established, and the Medical Service concluded that surgery was only justified in cases of 'transsexuality'. The plaintiff underwent mastectomy at their own expense. The legal basis for the dispute involved Section 27(1), sentence 1 of the German Social Code, Book V which governs entitlements to medical treatment, the question of whether the previous case law of the Federal Social Court must be upheld, and Section 135 of the German Social Code, Book V, which governs the evaluation of new diagnostic and treatment methods.

COURT'S DECISION:

The applicant was not successful.

The court dismissed the claim and held that there is no entitlement to reimbursement of the costs of the mastectomy. The court held that the diagnosis and treatment of 'gender incongruence' constitutes a new examination and treatment method that requires the procedure under Section 135 of the German Social Code, Book V to be followed whereby there is a general prior recommendation by a Joint Federal Committee. The court pointed to several factors for this: the absence of objective diagnostic criteria, the participatory decision-making model, and the irreversible nature of some interventions that requires enhanced quality assurance. It also held that none of the exceptions (such as system failure or rare care) to skipping the requirement for a prior recommendation apply. Specifically, the court held that there is no system failure merely because the formal procedure under Section 135 has not been initiated.

2 Section 135(1) one states: "New examination and treatment methods may only be provided in contract healthcare and contract dental care at the expense of the health insurance funds if the Federal Joint Committee has – on application by a non-partisan person in accordance with section 91 subsection (2) section 1, by a National Association of Statutory Health Insurance Doctors, or by the National Association of Statutory Health Insurance Funds – submitted recommendations in guidelines in accordance with section 92 subsection (1) sentence 2 No. 5 regarding: (1) the recognition of the diagnostic and therapeutic benefit of the new method as well as its medical necessity and viability – including in comparison with methods already being provided at the expense of the health insurance funds – according to the respective state of scientific knowledge in the respective therapy system".

Equally, the court considered that the previous case law is no longer applicable due to developments such as the recent cases on civil status change for non-binary persons and growing scientific evidence displacing the assumption of the binary sex model.

However, even though rulings of higher courts in Germany are not statutory law and do not create a legal obligation, the court applied the principle of legitimate expectations and held that statutory health insurers must continue to cover the costs of treatment for trans people who have already begun treatment.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This decision found that the diagnosis and treatment of psychological distress caused by gender incongruence constitutes a new method of examination and treatment that is subject to authorisation according to the law. Cost coverage for procedures for trans and non-binary persons is no longer guaranteed and depends on the existence of a medical condition requiring treatment and the recommendation of the Joint Committee.

8 S 12 KR 462/21 (2023)

Court / Tribunal: Social Court of Augsburg – Court of first instance

ISSUE:

Whether voice is one of the characteristics that can be treated under **Section 27 of the German Social Code**, Book V and whether voice raising surgery can be considered medically necessary.

FACTS:

The plaintiff, a trans woman with an otherwise feminine appearance after hormone treatment and surgeries, sought coverage for voice-raising surgery because her naturally very low voice repeatedly led to involuntary outing and discrimination. The defendant health insurer rejected the request, relying on a Medical Service opinion that the procedure was not an established treatment supported by sufficient scientific evidence. The legal basis for the dispute involved Section 27(1), sentence 1 of the German Social Code, Book V, which governs entitlements to medical treatment.

COURT'S DECISION:

The plaintiff was successful.

The defendant was ordered to cover the costs. In this case, the court found that voice raising surgery was a necessary component of the treatment. Even though the plaintiff has achieved a feminine appearance, the same was not true for the voice and the higher voice learned in speech therapy could not be maintained consistently at a stable vocal pitch. The sustained pitch elevation through speech therapy caused a strain and risked long-term damage to the plaintiff. The court also acknowledged the significant distress that she experienced due to repeated unwanted disclosures about her gender identity.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case recognizes that voice raising surgery can be necessary even when the physical appearance of the person is otherwise congruent with their gender identity.

9 B 1 KR 28/23 (2024)

Court / Tribunal: Federal Social Court – Highest court on social matters

ISSUE:

Whether gender-reassignment from male to female that results in infertility constitutes “germ cell-damaging therapy” and whether a claim for reimbursement of costs can be made based on the principle of legitimate expectations, even if a procedure is not otherwise covered.

FACTS:

The plaintiff applied for cost coverage for sperm cryopreservation before planned surgery. The insurer denied coverage, so the plaintiff arranged cryopreservation independently. The lower social court ordered reimbursement. On appeal, this was overturned: the appellate court held that trans-specific surgery was not a ‘germ-cell-damaging therapy’ under the statute, so the coverage requirements were not met. The legal basis for the dispute involved Section 27a(4) of the German Social Code, Book V, which governs entitlements to cryopreservation of germ cells prior to germ cell-damaging therapy, and Section 27a(1) of the German Social Code, Book V, which governs the conditions under which medical treatment also includes procedures to induce pregnancy.

NOTE:

This case has not been decided on its facts and was sent back to the lower courts for decision. This decision of the Federal Social Court only answered larger questions around the possibility of cost coverage.

COURT'S DECISION:

The plaintiff was successful.

The court held that gender reassignment can be considered as therapy that damages germ cells and causes infertility under Section 27. The court rejected the argument that infertility is merely a therapeutic consequence of the surgery, and emphasised that cryopreservation serves to address a real medical condition experienced by an individual.

It further held that cryopreservation is only covered by the insurer if it is ancillary to a treatment which the person is entitled to under law. Even if cost coverage for trans-specific healthcare procedures is not possible pending further guidance from the Joint Federal Committee under Section 135(1) of the German Social Code, Book V, it does not bar reimbursement for prior cryopreservation if the insured person can show that there was a legitimate expectation that the costs would be covered. This could be established based on a treatment plan having already started that includes cryopreservation.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This decision establishes that trans-specific surgery that results in infertility can be considered as germ cell-damaging therapy because of which a person is entitled to cost coverage for cryopreservation, particularly when there is a legitimate expectation for coverage. This applies even as further guidelines by the Joint Federal Committee are awaited on cost coverage for gender incongruence under Section 135(1).

10 S 11 KR 335/23 (2024)

Court / Tribunal: Social Court, Koblenz – Court of first instance

ISSUE:

The court addressed several issues. The most significant ones were whether the psychotherapeutic treatment required by the Medical Service to demonstrate a stable gender identity was absolutely necessary if the person has undergone legal gender recognition and the person has been assessed under the then German Transsexuals Act and if the insured person has a legitimate expectation that statutory health insurances will continue to cover the costs of treatments for transgender individuals that have already begun, as they have done previously.

FACTS:

The plaintiff, a trans man legally recognised as male who had been undergoing hormone treatment since adolescence, sought coverage for trans-specific surgeries, including mastectomy, hysterectomy, and oophorectomy. The defendant rejected the application, relying on a Medical Service opinion that further psychotherapeutic treatment was required before surgery could be considered medically necessary. The plaintiff argued that his gender incongruence severely impaired daily life and social participation.

COURT'S DECISION:

The plaintiff was successful.

The court held that the requested treatment (bilateral mastectomy, hysterectomy, and oophorectomy) must be provided at the expense of the statutory health insurance.

The court held that the plaintiff had acquired nearly all male secondary sex characteristics through hormone therapy, and his legal gender had been changed to male. The court held that further psychotherapy to question the need for surgical removal of female reproductive organs served no purpose, as the plaintiff had already consistently affirmed his male gender identity through puberty blockers, testosterone therapy, and legal gender recognition, which was all further supported by expert evidence.

The court held that the plaintiff was protected by the principle of legitimate expectations. The statutory health insurance had supported his transition for over seven years, including through puberty blockers and testosterone, which had resulted in certain irreversible physical changes. Having legally transitioned to male and undergone substantial medical treatment, it would be inconsistent to deny completion of the transition process under the legal framework that had previously governed the treatment.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case has confirmed that according to recent case law of the Federal Social Court (judgment in B 1 KR 16/22 R described above), there is currently no independent legal basis for statutory health insurance plans to cover trans-specific surgeries. Nevertheless, if the transition process initiated under the German Transsexuals Act has already led to irreversible physical changes, the insured person is entitled to further treatments at the expense of statutory health insurance funds. Further, psychotherapeutic treatment to demonstrate a stable gender identity is not necessary if a change in civil status has already been carried out and the insured person has been evaluated in court proceedings under the German Transsexuals Act.

France

11 Tribunal judiciaire de Strasbourg (pôle social) (2025)

Court / Tribunal: Judicial Court of Strasbourg, Social Security Chamber – Court of first instance

ISSUE:

Whether the CPAM's conditions for reimbursement were contrary to Articles 8 and 14 of the European Convention on Human Rights (ECHR).

FACTS:

A trans man sought reimbursement for a mastectomy from CPAM du Bas-Rhin. Under French social security law, local CPAMs may impose conditions on the reimbursement of trans-specific surgical procedures. The CPAM refused to reimburse the procedure. The claim formed part of a coordinated litigation led by a group of five associations, which also represented other trans persons challenging various CPAMs before the courts in Lyon, Cahors, Bobigny, Toulouse and Grenoble.[3]

COURT'S DECISION:

The applicant was successful.

The court ordered CPAM du Bas-Rhin to reimburse the mastectomy. The court held that the conditions imposed by the CPAM were 'contrary to Articles 8 and 14 ECHR' as they created inequality based on gender identity.

3 Other cases to follow include: Tribunal judiciaire de Bobigny (pôle social), 23 June 2025; Tribunal judiciaire de Lyon (pôle social), 29 April 2025.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This decision adds to the growing body of first-instance case law condemning CPAMs for discriminatory refusal for cost coverage for trans-specific healthcare. It confirms the direct applicability of Articles 8 and 14 of the ECHR in social security disputes concerning trans-specific healthcare and demonstrates that courts across France have consistently held that such refusals are invalid.

The Netherlands

12 ECLI:NL:RBGEL:2020:4279 (2020)

Court / Tribunal: District Court of Gelderland — Court of first instance

ISSUE:

Whether the insurer could override the assessment of the treating physician and multiple medical professionals who confirmed a passability disorder, and whether the insurer's own assessment procedure was sufficiently objective and sound.

FACTS:

A trans woman sought reimbursement from the health insurer for facial surgical corrections related to a 'passability disorder'. The insurer denied the request, arguing there was no 'mutilation' and no objectively verifiable passability problem. The applicant provided the clinical opinion of her treating physician and 'appearance characteristic' lists completed by eight different doctors and psychologists, all confirming a passability problem.

Under the Health Insurance Law (Zvw) in the Netherlands, cosmetic surgery is generally excluded from the basic insurance package. An exception applies in cases of 'mutilation' or 'disfigurement', including passability disorders, which includes situations where a trans person's appearance is incongruent with their identified gender, and this causes significant distress. This is typically a very high standard to meet set by the National Health Institute (Zorginstituut), and is stricter than the medical indication for facial feminisation surgery.[4]

COURT'S DECISION:

The applicant was successful.

4 In other cases, such as Rb. Midden-Nederland, 8 February 2023, ECLI:NL:RBMNE:2023:397, reimbursement of facial feminisation surgery sought privately was denied on the basis that the applicant did not meet the very strict 'passability' criteria for cost coverage. The courts have acknowledged the disconnect between medical indications and insurance reimbursement criteria, which can support advocacy efforts to lower the reimbursement threshold for facial feminization surgeries.

The court decided in favor of the applicant and ordered reimbursement. The court held that the primary assessment of whether a patient requires treatment lies with the treating doctor, and the insurer cannot rely on its own medical advisors' judgment. The insurer's assessment procedure was found insufficiently objective: its five medical advisors had assessed the applicant jointly (rather than independently), without using the standard appearance characteristic lists, and without contacting the applicant or her treating physician.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case establishes important procedural safeguards for passability assessments: insurers must follow objective procedures, use standardised assessment tools, and cannot overrule the treating physician's clinical judgment. It strengthens the position of the individual in disputes about facial surgery coverage.

13 ECLI:NL:RBGEL:2022:6906 (2022)

Court / Tribunal: District Court of Gelderland — Court of first instance

ISSUE:

Whether a hair transplant for a trans woman with a diagnosed 'passability problem' which was worsened by scarring from a prior procedure is reimbursable under the Health Insurance Act (Zvw), and whether the availability of a cheaper alternative like a wig, defeats the claim.

FACTS:

A trans woman sought reimbursement from her insurer for a hair transplant. A previous hairline correction had failed and caused scarring, worsening her 'passability' problem. The insurer refused, arguing the care was not covered and there was no 'passability problem. The applicant contended that the scarring from the previous procedure should be considered 'mutilation' and that a hair transplant was medically necessary.

COURT'S DECISION:

The applicant was partially successful.

On the one hand, the court accepted that there was a passability problem and the scarring constituted 'mutilation' from a prior medical procedure. However, it used a principle of 'efficient use of healthcare resources' and held that the applicant was not 'reasonably dependent' on a hair transplant. In other words, even where a passability

problem exists, the insured person must be 'reasonably dependent' on the specific treatment claimed. The court found that a wig is a cheaper and sufficiently equivalent alternative and there was no medical reason against wearing one.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This case introduces a significant limitation on cost coverage for procedures aimed at addressing 'passability disorders'. Even where a passability problem is proven, insurers may argue that cheaper alternatives are sufficient, thereby denying coverage for more permanent or preferred solutions.

Spain

14 STSJ M 1956/2023, Appeal No. 869/2022, (2023)

Court / Tribunal: Superior Court of Justice of Madrid, Social Chamber – Court of appeal

ISSUE:

Whether the applicant has the right to reimbursement of medical expenses for surgery performed in a private clinic, given that the planned public intervention was suspended, and the subsequent 11-year delay.

FACTS:

The applicant, a trans woman included in the Programme at Ramón y Cajal Hospital since 2005, had her scheduled surgery suspended in 2008 due to lack of recent HIV viral load controls. In 2010, a coordinator report advised against surgery due to her HIV status. In October 2012, a clinical psychologist reported that the applicant had severe anxiety and depression from being unable to access surgery. In 2019, 11 years after the suspension, she underwent mammoplasty at a private clinic. The reimbursement request for the mammoplasty was later denied by the Madrid Health Service (SERMAS).

The legal framework applicable to this case are the rules of the National Health System regarding access to healthcare benefits, reimbursement for privately obtained care, and the concept of "vital urgency".

COURT'S DECISION:

The applicant was not successful.

The court acknowledged the vulnerability of trans people and the need for legislative reform regarding healthcare for trans people. However, the SERMAS did not deny or unjustifiably delay healthcare as the surgery was suspended for a justified medical reason, with a recommendation to carry out those controls and return. The court found that the applicant voluntarily departed from these medical indications and accessed private healthcare on her own initiative without SERMAS authorisation. This does not constitute vital urgency as there was neither imminent danger of death nor loss of organ functionality.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This ruling establishes that where the public health service makes surgery dependent on legitimate medical safety requirements, the patient's voluntary decision to bypass those requirements and seek private care does not create a right to reimbursement. The case suggests that courts will side with the administration where it considers that the conditions imposed are clinically justified.

15 STSJ M 1956/2023, Appeal No. 869/2022, (2023)

Court / Tribunal: Superior Court of Justice of Madrid, Social Chamber – Court of appeal

ISSUE:

Whether the patient is entitled to reimbursement for the two trans-specific surgical procedures performed at a private clinic: mastectomy, which was denied for not completing one year of hormonal treatment and phalloplasty, which was denied because no public reference centre was available.

The court relied on Article 4.3 of Royal Decree 1030/2006 on the common services portfolio of the National Health System, the reimbursement rules for healthcare obtained privately when the public system fails to provide care, and the concept of "vital urgency". The court also considered Canary Islands Law 8/2014 on non-discrimination based on gender identity and case law of the ECtHR.

FACTS:

The applicant, a trans man, experienced the following sequence of events:

2017: Referred to the Mental Health Unit for gender-identity-related distress; began hormonal treatment via the Catalan Health Service.

2018: Mastectomy request rejected — one year of hormonal treatment not yet completed.

2018: Phalloplasty request denied — no reference centre available.

2018: Underwent private mastectomy (€7,445) and private phalloplasty (€20,737.10).

June 2018: Underwent two further procedures at a public hospital.

A total reimbursement claim of €35,213.96 which was filed by the applicant was denied.

The applicant challenged this and the court of first instance partially granted the claim, ordering reimbursement only for the phalloplasty (€20,737.10).

COURT'S DECISION:

The applicant was successful.

The court confirmed reimbursement only for the phalloplasty as it was an unjustified denial of healthcare. Although the phalloplasty request was rejected because no reference centre was available, the service did not effectively arrange for the reference to another centre. The court found the applicant's decision to use a private clinic was the only viable route to access a service the public system could not provide. The court additionally applied a broad interpretation of 'vital urgency' to include psychological distress, noting that the patient had presented suicidal ideation and was experiencing growing anxiety.

The court also referenced case law of the European Convention on Human Rights (*Goodwin v. United Kingdom, Van Kück v. Germany*) on states' positive obligation to facilitate and finance trans-specific healthcare, and Canary Islands Law 8/2014 (Article 8.2.c) which guarantees that trans-specific healthcare procedures 'shall not be denied or delayed unnecessarily'.

On the reimbursement for the mastectomy, the court held that the denial was based on a justified clinical decision, as the applicant had not completed one year of hormonal treatment.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This ruling establishes an important precedent regarding the broad interpretation of 'vital urgency' in the context of trans healthcare. It recognises that psychological deterioration caused by the inability to access surgery can constitute a vital urgency. However, as with similar cases described above, it also confirms that where a clinical protocol requirement exists, the patient's voluntary decision to bypass it does not entitle them to reimbursement.

Employment

The Netherlands

1 ECLI:NL:RBOBR:2014:2417 (2014)

Court/Tribunal: Subdistrict Court of East Brabant — Court of first instance

ISSUE:

Whether absence from work following trans-specific healthcare surgery can be considered an 'illness' during which time an employer is required to continue paying salary.

FACTS:

A trans person (referred to as the employee hereafter) underwent surgery as part of a medical transition process. Following the surgery, the employee was absent from work during the recovery period. The employer refused to continue paying the salary, arguing that the surgery was 'cosmetic' in nature and that the resulting absence was due to a surgery that the employee opted for rather than being an unavoidable illness.

COURT'S DECISION:

The applicant was successful.

The court decided in favour of the employee and employer was ordered to pay the outstanding salary as well as dues for delayed payment.

The court held that trans-specific healthcare procedures, including surgery, can be medically necessary in the overall transition process and cannot be considered as merely 'cosmetic'. Because the surgery was medically necessary, the recovery period following the surgery and inability to work would be considered as illness under the relevant Dutch employment law (Article 7:629 BW — Burgerlijk Wetboek).

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This decision is significant because it addresses an important legal issue that many trans people face when they undergo trans-specific healthcare while being employed. Often, trans people do not receive the necessary support in the workplace during the transition process. This decision reinforces the broader consensus in Dutch case law that transition related care is not merely cosmetic or elective, but is considered medically necessary and part of the recognised medical care. It can be used to counter arguments that trans-specific healthcare is purely aesthetic or elective and can also be cited in cases of workplace discrimination against trans employees.

Anti-discrimination

Austria

1 GBK I/914/19 (2021)

Court / Tribunal: Senate I of the Equal Treatment Commission5 at the Federal Chancellery –Quasi-judicial equality body

ISSUE:

Whether sexual harassment and gender-based harassment occurs when an employer asks a trans employee intimate questions about trans-specific healthcare and surgeries and makes derogatory remarks about gender identity.

The Austrian Equal Treatment Act prohibits discrimination on the ground of 'sex' in employment, including sexual harassment and gender-based harassment. The prohibition of discrimination on the ground of sex encompasses discrimination against trans people.

FACTS:

The applicant, a trans woman, was employed from 2015 to 2019 as a programmer at the respondent company (Z GmbH). In 2018, she began her transition at the workplace. The managing director asked her intimate questions about her surgeries and called her belittling and derogatory names. The applicant expressed her displeasure, but the behaviour did not change. The psychological burden led to increased sick leave, which led to her working hours being reduced. Eventually, the applicant was dismissed.

COURT'S DECISION:
The applicant was successful.

The Commission held that the applicant was sexually harassed and had experienced gender-based harassment. It found that intimate questions about her trans-specific healthcare surgery constituted conduct pertaining to the sexual sphere that violated the applicant's dignity and created an intimidating working environment. The language used by the employer constituted gender-related conduct targeting gender identity.

5 The findings are advisory in nature and are not administrative decisions.

POSSIBLE IMPLICATION FOR FUTURE CASES:

The case expressly confirms that the prohibition of discrimination on the ground of sex also covers trans people. It establishes that questions and comments about trans-specific healthcare in the workplace can be classified as sexual and gender-based harassment. Employers are required to ensure a discrimination-free environment during transition.

2 OGH 7 Ob 58/25t (2025)

Court / Tribunal: Supreme Court of Justice – Highest court in civil matters and court of appeal in social law matters

ISSUE:

Whether a risk exclusion of trans-specific healthcare from a private health insurance contract, including situations where there is clinical significance and medical treatment is necessary, violates the prohibition of discrimination under the Equal Treatment Act.

FACTS:

The applicant is Verein für Konsumenteninformation, an association authorised to bring representative actions. They filed a claim against an insurance company seeking a prohibition on the use of clauses that exclude coverage for trans-specific healthcare even where it is medically necessary.

Under Austrian private insurance law, the insurer is obligated to reimburse the costs of medically necessary treatments. This law prohibits different premiums being charged or different benefits based on sex. The EU Directive 2004/113/EC on the prohibition of discrimination in access to goods and services, which insurance, also applies.

COURT'S DECISION:

The applicant was successful.

The Supreme Court decided in favour of the applicant and held that such clauses violate the insurance law as well as equal treatment law in Austria. The Supreme Court first clarified that being trans is not in itself an illness, but that clinically relevant suffering can have the character of illness. It found that though the clause seemed like a neutral risk exclusion, in reality it amounts to indirect discrimination as it was directly relevant only to trans and intersex people. The insurance law must be applied to trans and intersex persons, in light of EU law and fundamental rights requirements (Article 8 ECHR, CJEU C-13/94 P v S) where 'sex' has been interpreted to include 'gender reassignment'.[6] The insurer's argument that the exclusion applied equally to those trans men and trans women was rejected.

6 Note: With the CJEU's decision in *Mousse, C-394/23*, the term 'sex' must be interpreted more broadly not only limited to "gender reassignment" but "gender identity".

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

Private health insurers in Austria cannot categorically exclude trans-specific health procedures from coverage even where a medical necessity exists. The decision could serve as a precedent for similar claims in other EU Member States, particularly as it relies on the EU Directive 2004/113/EC and CJEU case law which clarifies that the prohibition of discrimination based on 'sex' must be read to include gender identity.

Belgium

3 DKV Belgium NV v. P.I. and Institute for the Equality of Women and Men, Case No. 2016/AB/1090 (2018)

Court / Tribunal: Brussels Labour Court of Appeal – Court of appeal

ISSUE:

Whether DKV's exclusion clause constituted direct discrimination on grounds of sex change and/or gender identity under the Gender Act and whether the exclusion can be justified under the Insurance Act on the grounds that it relates to a pre-existing chronic condition.

The applicable law is the Belgian Gender Act which prohibits direct and indirect discrimination on the grounds of sex, sex change, gender identity, and gender expression, also in the context of supplementary social security schemes including employer-provided hospitalisation insurance. Direct discrimination based on sex change or gender identity is treated as equivalent to direct discrimination based on sex.

FACTS:

The applicant is a trans woman. She was diagnosed with gender identity disorder at the end of 1995 and in 1997 she underwent gender reassignment surgery. By 2015, her treating physician confirmed she no longer suffered from gender dysphoria and was in excellent physical and psychological health.

On getting a job, the applicant's employer offered her a hospitalisation insurance policy with DKV Belgium NV. When she disclosed her trans status on a medical questionnaire, DKV requested further information. She confirmed no further

procedures were anticipated, as the transition had taken place over 15 years earlier. DKV proposed an insurance contract with a broad exclusion clause covering all costs related to gender dysphoria, including consultations, tissue examinations, medical and paramedical treatments, medication, psychiatric stays, follow-up examinations, and genetic investigations, classifying gender dysphoria as a 'chronic illness'. The applicant challenged this contract.

COURT'S DECISION:

The applicant was successful.

The court found that DKV had discriminated against the applicant based on her gender identity and ordered DKV to stop applying the exclusion clause. She was also granted a provisional award of €1,300 for the moral harm she suffered.

The court rejected DKV's comparison of the applicant with a person suffering from a chronic illness. It held that a sex change and/or gender identity should be treated as a difference in sex and not a chronic disease. The appropriate comparison was with a cisgender person for whom no such exclusion would have been proposed; the exclusion was directly linked to sex change and gender identity, which are prohibited criteria.

The court also rejected DKV's reliance on the Insurance Act, noting that the parliamentary history expressly emphasised that it must be read with the anti-discrimination legislation. An exclusion based solely on prohibited criteria like sex change or gender identity has no legitimate aim and was disproportionate in scope, and covered a wide range of medical costs without adequate specification of their connection to gender dysphoria.

POSSIBLE IMPLICATION FOR FUTURE CASES:

This case establishes that insurers providing supplementary health insurance through employment cannot use a person's history of gender transition as a basis for excluding coverage. The Gender Act applies fully to such insurance, and gender dysphoria cannot be characterized as a "chronic illness" to justify exclusion.

4 Allianz Benelux NV v. C.S. and Institute for the Equality of Women and Men, Case No. S.22.0021.N (2025)

Court / Tribunal: Belgian Court of Cassation – Highest court in civil and criminal matters

ISSUE:

Whether refusal of insurance coverage for trans-specific surgery constituted direct discrimination on grounds of sex change and whether gender dysphoria constituted an 'illness' within the meaning of the insurance policies.

FACTS:

The case concerns a collective hospitalisation and disability insurance policy provided through employment, covering costs 'due to illness, accident, pregnancy, or childbirth'. In 2015, the applicant, C.S. underwent trans-specific surgery. She was unable to work for more than two months thereafter and claimed coverage under both the hospitalisation and disability insurance policies. The insurance company refused coverage unless the applicant demonstrated that the procedure was due to an 'illness' within the meaning of the policies. The applicant submitted a psychiatric certificate confirming gender dysphoria and that the treatment was appropriate and necessary, which the insurer did not accept.

COURT'S DECISION:

The applicant was successful.

The Court found that the applicant was discriminated against and ordered the insurance company to stop the discriminatory practice. It confirmed that the medical certificates showed that gender dysphoria in the applicant's case constituted an 'illness' and that surgery was the appropriate therapeutic treatment. It also found that the applicant was treated less favourably because of their medical transition, compared to a cisgender person.

POSSIBLE IMPLICATION FOR FUTURE CASES:

This decision confirms that gender dysphoria can be considered an "illness" for purposes of hospitalisation and disability insurance and refusal to cover surgery constitutes direct discrimination on grounds of sex change.

5 Transgender Asylum Seeker from Kosovo, Order No. 16197 (2025)

Court / Tribunal: Council of State, Administrative Cassation – Highest administrative court

ISSUE:

Whether the unavailability of transition treatment could constitute persecution or serious harm for international protection purposes.

FACTS:

This case concerns a trans person from Kosovo who experienced family violence and street harassment due to their gender identity. After arriving in Belgium, the applicant began trans-specific healthcare treatment, which was unavailable in Kosovo. They sought international protection in Belgium, arguing that the unavailability of treatment in Kosovo and the general situation for LGBTI persons there warranted refugee status or subsidiary protection. Belgian asylum authorities refused international protection, finding that the lack of transition treatment did not amount to 'persecution' or 'serious harm' within the meaning of the Geneva Convention or the Aliens Act, and directed the applicant to apply for a medical residence permit instead.

COURT'S DECISION:

The applicant was not successful.

The court assessed both the general situation in Kosovo and the applicant's personal circumstances and found that the absence of transition treatment in the home country of Kosovo did not amount to an intentional threat and did not require the applicant to conceal her identity.

POSSIBLE IMPLICATION FOR FUTURE CASES:

This decision indicates that under Belgian asylum law, the mere unavailability of trans-specific healthcare in the country of origin, without an 'intentional threat' element, is not in itself grounds for refugee status or subsidiary protection. However, it makes clear that trans people who need to stay in Belgium to access transition-related healthcare should apply through the medical residence permit procedure.

6 Rev 376/2022-2 (2024)

Court / Tribunal: Supreme Court of the Republic of Croatia – Highest appellate court

ISSUE:

Whether the defendants should be held liable for discrimination and harassment of the complainant, and the appropriate amount of damages.

FACTS:

The complainant, a trans person, claimed that the Croatian state health insurance fund discriminated against them in violation of the Anti-Discrimination Act (Zakon o suzbijanju diskriminacije) by denying coverage for mastectomy. The state health insurance fund began charging trans persons for mastectomy procedures that had previously been covered by it, despite the Ministry of Health's Professional Guidelines (Stručne smjernice, OG 7/2016) that listed mastectomy as a necessary medical procedure in the context of gender affirmation. The complainant had received the necessary referrals for the procedure from a general practitioner based on medical findings of a psychologist, psychiatrist and endocrinologist. Mastectomy was acknowledged as being crucial for the complainant's health and not an aesthetic procedure. The court of first instance did not find a claim of discrimination and on appeal to the county court, the complainant was successful. The case was further appealed to the Supreme Court.

COURT'S DECISION:

The complainant was successful.

The Supreme found that the state health insurance fund did not discriminate against the complaint and sent the case back to the lower court for retrial.[7] The Supreme Court held that the lower courts did not find, as a matter of fact, that the mastectomy was medically necessary because the state health insurance fund was told by the hospital that the procedure was aesthetic and was performed only at the request of the complainant. Aesthetic procedures are not covered by mandatory public health insurance pursuant to local law (specifically, Article 34 of the Mandatory Health Insurance Act). The court also found that testimony of the psychologist that the mastectomy was crucial for the complainant's health cannot be interpreted to mean that the state health insurance fund had knowledge that the procedure was medically necessary. The Supreme Court specifically noted that not all differences in treatment

7 This decision is not available online and it has since been appealed again.

constitute discrimination if they can be justified objectively and rationally, follow legitimate goals and the means used to achieve those goals are proportionate.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

The decision of the Supreme Court is a setback to complaints about lack of cost coverage for certain trans-specific healthcare procedures but the developments in the retrial and further appeal need monitoring for a complete understanding of the impact of the case.

However, the county court's decision represents an important development and offers avenues for future advocacy and litigation. Its core holding –that a state hospital and health insurer must provide coverage for a procedure designated as medically necessary by the Ministry of Health provides a template for challenging other coverage denials. Combined with Croatia's comparatively strong anti-discrimination legislative framework and supportive ECtHR jurisprudence, it creates a potential basis for future judicial claims.

France

7 Tribunal judiciaire de Lille (pôle social) (2022)

Court / Tribunal: Judicial court of Lille, Social security chamber – Court of first instance

ISSUE:

Whether the CPAM's refusal to reimburse mammoplasty for a trans woman constituted discrimination on the basis of gender identity, in violation of Article 8 of the ECHR (right to respect for private life) and the principle of equal treatment.

FACTS:

A trans woman sought reimbursement from the local CPAM for a mammoplasty or breast augmentation performed as part of her gender transition. The CPAM refused reimbursement. Under French social security law, mammoplasty may be reimbursed when performed for reconstructive or therapeutic purposes. The applicant argued that the refusal by CPAM was discriminatory and violated her rights under Article 8 ECHR, as cisgender women could obtain reimbursement for the same procedure under certain conditions.

COURT'S DECISION:

The applicant was successful.

The court found the CPAM liable for discrimination and held that the therapeutic nature of the procedure was fully justified. CPAM's decision amounted to depriving trans people of necessary care and would constitute discrimination under Article 8 ECHR as it created an inequality of treatment in access to healthcare based on gender identity.

POSSIBLE IMPLICATION FOR FUTURE CASES:

This decision established a precedent for applying Article 8 ECHR directly to social security reimbursement disputes and opened the door for the subsequent wave of similar decisions across multiple jurisdictions in France.

8 Décision No. 2023-136 (2023)

Court / Tribunal: Défenseur des droits – Constitutional equality body[8]

ISSUE:

Whether the refusal by CPAM to reimburse a trans-specific surgical procedure is valid.

FACTS:

A trans person sought reimbursement from the CPAM for a surgical procedure, which the CPAM refused. The applicant filed a complaint with the Défenseur des droits who examined it in light of the principles of non-discrimination and case law of the European Court of Human Rights, including *Goodwin v. United Kingdom and A.P. Garçon and Nicot v. France*.

COURT'S DECISION:

The applicant was successful.

The Défenseur des droits found that the CPAM's refusal to reimburse the surgery is discrimination and recommended that the CPAM reimburse the procedure.

POSSIBLE IMPLICATION FOR FUTURE CASES:

The decision reinforces the line of national jurisprudence and equality-body practice condemning CPAMs that add administrative obstacles to a person's transition and refuse reimbursement of costs on a discriminatory basis. It provided an authoritative human-rights framing later relied upon in the 2025 tribunal judgments.

8 Decision issued are not legally binding but have significant persuasive authority.

Age-based restrictions

Spain

1 STSJ M 9946/2023, Appeal No. 1668/2022, Resolution No. 635/2023 (2023)

Court/Tribunal: Madrid Superior Court ruling (Administrative) – Appellate court

ISSUE:

Whether the court should stop or suspend the masculinising cross-hormonal treatment of a 16-year-old trans person in a public hospital, where one parent (the mother) opposes the treatment while the other parent and the minor consent to it.

FACTS:

The mother of a trans minor brought an administrative law challenge alleging that the Gender Identity Unit at a public hospital and its Endocrinology Service undertook a factual administrative action without legal basis by pursuing masculinising cross-hormonal treatment for her minor child (16 years old, who identifies as male), without properly informing the mother or obtaining her consent. The father and the minor consented to the treatment. The mother sought an interim measure to suspend the hormonal treatment. The hospital reported that the hormonal treatment had not actually been initiated due to difficulties with obtaining consent from both parents, and that only psychological support/accompaniment was being provided at the minor's request.

COURT'S DECISION:

The applicant was successful.

The court decided not to suspend the treatment. The Spanish Constitutional Court's recent ruling in STC 5/2023 and the regulation of parental authority in healthcare decision-making were relevant to this decision.

The court emphasised the importance of and need to take into account the minor's own desires, feelings, and opinions, relying on the Constitutional Court STC 5/2023

which was about children's participatory rights. In this case, the hormonal treatment and the accompanied psychological care had both been requested by the minor. Suspending even the psychological care (as the hormone replacement therapy had not yet been commenced) would contradict the minor's expressed wishes and could harm the minor's interests. Granting the mother's request for suspending the treatment would disturb the minor's expressed wishes without sufficient evidence of harm from the current approach.

The court also noted that the case is essentially a private dispute between the parents about the exercise of parental authority. The hospital was providing healthcare services requested by the minor and one parent and had not administered any treatment without the patient's or parents' permission.

FUTURE IMPLICATIONS OF THE CASE:

This ruling is significant for the rights of trans minors in Spain. It affirms that a minor's expressed wishes regarding their gender identity and access to psychological support must be respected by the courts, even where one parent opposes treatment. At the same time, this particular decision did not comment on the diagnosis, medications prescribed and other issues raised by the mother, which the court held would need to be answered in the main case.

2 Judgment No. 133/2026 (2026)

Court/Tribunal: Social court of Zaragoza – Court of first instance

ISSUE:

The case concerns the denial of reimbursement for expenses related to a mastectomy performed in private healthcare. There were two main issues in this case. First, whether the mastectomy – covered by the public health system – is available for minors under 18 and second, whether there was a vital urgency justifying the use of private healthcare.

FACTS:

The applicant, a trans minor at the time, approached a hospital for a mastectomy. Initially, he was placed on a waiting list but later the doctor informed the patient's family that the centre only performed mastectomies funded by the Aragón public health service for patients over 18. The applicant then went to a private clinic for the

procedure and subsequently requested reimbursement. The Government of Aragón denied the request on the grounds that mastectomies are only available to adults and the case did not constitute a vital urgency.

The Government relied on Article 4.3 of Royal Decree 1030/2006, which establishes the portfolio of common services of the National Health System, arguing that the Common Services Portfolio does not provide for mastectomies under 18 and that no vital urgency existed that would justify accessing this procedure privately.

The criteria followed by Aragón health professionals state that 'Mastectomy may be considered in adolescents from age 16 only in exceptional cases, always after prolonged multidisciplinary evaluation, with informed consent from both the minor and their legal guardians, a persistent history of years of gender incongruence, and continued psychological support.'

COURT'S DECISION:

The applicant was successful.

The court ruled there was no legal basis to deny the mastectomy and that the applicant's decision not to wait until age 18 and to resort to private healthcare was justified. It ordered the administration to reimburse the expenses incurred (€6,190).

First, the court concluded that the law makes no distinction between adults and a minor regarding cost coverage under the public health system for a mastectomy for gender dysphoria. The court also noted that the Aragón health department's clinical protocols do not include any strict age-based restriction and provides for mastectomies from age 16 in exceptional cases – in this case, the applicant had identified as male since a young age, had family support, and had already completed the administrative gender change years earlier.

The judge did not go into the second issue of whether vital urgency existed, since the public-system denial was without legal basis. The applicant had been placed on a waiting list before turning 18, from which it can be inferred that the medical requirements for the intervention were already met. According to the hospital reports, the intervention would have brought benefits, avoiding harm that further delay would have caused to the applicant's development.

FUTURE IMPLICATIONS OF THE CASE:

This ruling establishes that age-based restrictions on mastectomies lack legal basis where applicable protocols allow for the procedure where clinical criteria are met. It reinforces that administrative denials must be grounded in specific legal provisions.

Waiting times

Spain

1 STSJ GAL 4169/2018, Appeal No. 4570/2017 (2018)

Court/Tribunal: Galicia Superior Court – Court of appeal

ISSUE:

Whether the applicant has the right to immediate trans-specific surgical care (feminising genitoplasty) given the excessive waiting time of over 2 years on the list, either at a public reference centre or at a private clinic at public expense.

The legal framework involves the common services portfolio of the National Health System (Royal Decree 1030/2006), the Galician Healthcare Ordinance Law 7/2003 (Article 133.u, establishing maximum surgical waiting times of 180 days)

FACTS:

The applicant, a trans woman, had been on the surgical waiting list at the national reference centre in Málaga for over two years, with no reasonable prospect of receiving an appointment for the surgery in the near future.

The applicant had been on hormonal treatment funded by the Galician Health Service since age 15. After a long wait, in 2012, she was finally referred to a hospital in Málaga, which was the only national reference centre for trans-specific surgery at the time. She had only two medical appointments there: in 2013 and in 2015, following which she was placed on the surgical waiting list. In 2016, she underwent mammoplasty at her reference centre however, for feminising genitoplasty, she remained on the Málaga waiting list. In between, she was referred to mental health services for depression and suicidal ideation. In 2017, the hospital was still performing genitoplasty operations for patients on the waiting list since late 2012, which meant several more years of waiting ahead for the surgery.

NOTE:

Unlike other cases, the applicant was not asking for reimbursement for expenses that they already paid but was rather asking for a decision requiring the health service to provide or fund the surgery immediately.

COURT'S DECISION:

The applicant was successful.

The court declared the applicant's right to be operated immediately at a public reference centre of the National Health System, or, if that is not possible, at a private institute for plastic surgery with full cost coverage. This procedure was already recognised in the list of possible procedures by the health service for cost coverage and this was confirmed through their actions of referring the applicant to the centres and putting her on the waiting list.

The court applied the Galician Healthcare Ordinance Law 7/2003 (art. 133.u) and Decree 104/2005, which establish maximum waiting times of 180 days for surgical interventions in general. After more than 2 years on the waiting list, the court found that the wait was unreasonable. It also noted that the applicant's deteriorating mental health was related to the delay in receiving care.

The court also recognised that not granting immediate surgery with cost coverage would be discriminatory as anyone else who had been waiting for another surgery would have already received treatment. The court relied on decisions of the ECtHR in *Goodwin v. United Kingdom and Van Kück v. Germany*, which recognised that States have a positive obligation to facilitate and finance gender reassignment.

FUTURE IMPLICATIONS OF THE CASE:

This is a landmark ruling establishing that trans people cannot be subjected to indefinite waiting times for trans-specific surgical care when maximum waiting time limits exist for other surgical procedures. This case is a strong precedent as it applied anti-discrimination principles and case law from the ECtHR and recognised the psychological harm resulting from delay in providing care.

Cross-border healthcare

Austria

1 OGH 10 ObS 49/12x (2012)

Court / Tribunal: Supreme Court of Justice – Highest court in civil matters and court of appeal in social law matters

ISSUE:

Whether a trans person who travels to another EU Member State for trans-specific surgery without prior permission can claim full reimbursement of costs of treatment of complications that arose after the surgery.

The relevant applicable law is Regulation (EEC) 1408/71. Article 22(1)(c) of this Regulation gives an entitlement to benefits in kind in another Member State where the competent institution has granted prior authorisation. Article 22(1)(a) covers benefits in kind during a temporary stay, such as due to a medical emergency during a short trip.

FACTS:

The applicant, a trans man, underwent phalloplasty in 2008 in Munich, without prior authorisation from the Austrian social security institution. In fact, the Austrian social security institution had refused authorisation for the surgery abroad on the ground that adequate treatment was available domestically. During the hospital stay, complications arose which prolonged the admission. The applicant sought full reimbursement of costs (EUR 630 per day), at least for the days of complication treatment, but the Vorarlberg Regional Health Insurance Fund granted only a hospital cost subsidy of EUR 161.28 per day.

COURT'S DECISION:
The applicant was successful.

The Supreme Court confirmed that the applicant had no entitlement to full cost reimbursement. The Court's reason was that Article 22(1)(a) of Regulation 1408/71

does not apply where an insured person travels to another Member State specifically for planned surgery. Complications arising during a single hospital admission do not constitute a separate "medical emergency." An insured person can receive at most the amount to which they would be entitled for equivalent domestic treatment. A person who obtains treatment abroad without authorisation would need to pay any additional amounts themselves.

FUTURE IMPLICATIONS OF THE CASE: The case illustrates the significant financial risks for trans people who undergo surgery in another EU Member State without prior authorisation. Without such authorisation, there is no entitlement to full cost coverage abroad, even if the surgery could be performed to a higher standard there.

Denmark

2 Transgender person had the right to treatment abroad, Case 23SFP33 9 (2023)

Court / Tribunal: Danish Patient Complaints Agency – Tribunal of first instance

ISSUE:

Whether a regional offer of treatment with a waiting time of up to six years constitutes "timely treatment" within the meaning of Danish health law and EU law, which could justify denying prior authorisation for equivalent treatment abroad. The tribunal also dealt with the question of whether such a waiting time is compatible with Article 8 of the European Convention of Human Rights (the right to respect for private and family life).

The legal framework involves the Danish Health Act (sundhedsloven), the Hospital Services Order (sygehusbekendtgørelsen), and the EU Patient Mobility Directive, as implemented in Danish law.

FACTS:

This case concerns the right of a patient to obtain prior authorisation for hospital treatment in another EU/EEA country under Danish health law. In 2021, the applicant, a

trans man, was approved for lower surgery, having already undergone chest surgery in 2013. He applied to the region for prior authorisation to receive treatment in Germany which was refused on the basis that the region could offer timely treatment in Denmark within approximately one year and a second operation two to five years after that. Therefore, the total potential waiting time was up to six years. The applicant argued that the German treatment would involve a single operation rather than two and that the extended waiting time was not 'timely' in light of the significant negative impact on daily life and mental health.

COURT'S DECISION:

The complainant was successful.

The tribunal decided that the complainant had the right to prior authorisation for treatment in Germany. It found that the treatment in German was comparable, and though the region was justified in asking the applicant to get prior authorisation, the waiting time of six years was not justifiable. Resource constraints are irrelevant to the assessment of whether timely treatment can be offered, rather the impact on the patient's quality of life, including severe daily limitations and impairment to mental health, must be taken into account.

In L. v. Lithuania, the European Court of Human Rights found that a four-year delay in providing access to surgery violated Article 8. Because the Convention is implemented in Danish law and Danish rules must be interpreted in conformity with it, a waiting time of up to six years cannot constitute timely treatment. Accordingly, the region could not rely on an ability to offer domestic treatment as a reason to refuse prior authorization.

FUTURE IMPLICATIONS OF THE CASE:

The decision explicitly uses ECHR case law (L. v. Lithuania) as a ceiling for acceptable waiting times under the Danish prior-authorisation regime. The Board confirmed that 'timely' treatment is not assessed solely on objective medical urgency but must account for the patient's subjective quality of life, psychosocial impact, and daily functional limitations during the waiting period. Further, a region cannot defend lengthy waiting times by reference to limited domestic capacity or resources.

3 STSJ NA 16/2025, Appeal No. 440/2024, Resolution No. 9/2025 (2025)

Court / Tribunal: Superior Court of Justice of Navarra, Social Chamber – Court of appeal

ISSUE:

Whether the applicant is entitled to reimbursement of expenses for sex reassignment surgery performed at a private clinic abroad without prior authorisation from the public health service.

FACTS:

The applicant, a trans woman, went to a private clinic in Bangkok for trans-specific surgery without having previously requested authorisation from the Navarra Health Service. The surgery is not performed in Navarra public health centres but is available in other public centres of the Spanish National Health System. She had previously received facial feminisation surgery at a private clinic in Marbella (reimbursed for €36,330.21). The surgery abroad cost €11,297.14. Her reimbursement request was denied by the Navarra Health Service.

The relevant law is Foral Law 8/2017, which grants trans people the right to be referred for treatment to public or private hospitals. It clarifies when access to healthcare benefits outside the public system requires prior authorisation and, in exceptional cases, evidence of vital urgency.

COURT'S DECISION:

The applicant was successful.

The court rejected the claim for reimbursement and held that the applicant should have obtained prior authorisation. Article 15.4(h) of Foral Law 8/2017 grants trans persons the right to "be referred for certain treatments and interventions specified in this law to public or private hospitals that offer the service and adequate quality standards", with the Navarra Health Service bearing the cost. However, this right requires a formal request for referral, which the applicant never made. Notably, the court rejected the applicant´s argument that she should have been informed by the administration that she had to request prior authorisation to get surgery abroad, because the obligation to request prior authorisation flows directly from the law (and is not something the Navarra service decided on their own through an administrative decision).

The court also held that the surgery cannot be considered 'vital urgency' as there was no imminent danger to the life or body parts or essential organs of the applicant. The court cited the Supreme Court's ruling of 8 May 2024, which clarified that reimbursement for care obtained outside the public system requires: (a) urgent, immediate, and vital healthcare need; (b) proof that public services could not be used in time; and (c) non-abusive use of this exception.

POSSIBLE IMPLICATIONS FOR FUTURE CASES:

This ruling reinforces the principle that, even where a trans person has a recognised right to surgery under legislation, the procedural requirement of prior authorisation before seeking private healthcare (domestically or abroad) is mandatory. Without such authorisation, reimbursement will be denied regardless of medical eligibility.

The Netherlands

4 STSJ M 1956/2023, Appeal No. 869/2022, (2023)

Court / Tribunal: Superior Court of Justice of Madrid, Social Chamber – Court of appeal

ISSUE:

Whether the insurer could limit reimbursement for a vaginoplasty performed abroad to an arbitrarily set "market-rate" Dutch tariff, particularly when only two Dutch hospitals perform the procedure and there is no competitive market for it.

FACTS:

A trans woman sought full reimbursement from the insurer (ASR) for a vaginoplasty performed in Thailand (approximately EUR 13,000). The insurer approved reimbursement only at what it considered the "market-rate" Dutch tariff, which amounted to approximately half the cost. The applicant argued that the insurer had not transparently established the market rate and that only two hospitals perform such surgeries in the Netherlands at much higher tariffs, meaning there was no real competitive market.

Under the applicable law, the Healthcare Insurance Act (Zvw), health insurers must reimburse medically necessary care. When an insured person obtains care from a non-contracted provider, including from abroad, the insurer must reimburse a 'market-conforming' tariff.

COURT'S DECISION:
The applicant was successful.

The court decided against the insurer and ordered further reimbursement to the applicant. It held that it was not free to set an arbitrary market rate and must reimburse a reasonable, market-conforming tariff. Since the insurer had not clarified what its lower tariff would be and had no discount to justify it. The court also held that the insurer's method to determine the market-conforming tariff was not transparent enough and not substantiated. As only two Dutch hospitals performed the surgery, there was no genuine market from which the insurer could derive a competitive tariff.

POSSIBLE IMPLICATIONS FOR FUTURE CASES: This case is significant for trans people seeking care abroad, as it limits insurers' ability to reduce reimbursement by relying on opaque tariff-setting methods. It also noted the structural problem of limited domestic supply of trans-specific surgeries in the Netherlands.

5 ECLI:NL:RBGEL:2021:1046 (2021)

Court / Tribunal: District Court of Gelderland — Court of first instance

ISSUE:

Whether an insurer may deny reimbursement for trans-specific surgery performed abroad when the insured did not obtain prior authorisation and the treatment did not meet the requirements of the Kwaliteitsstandaard Transgenderzorg (multidisciplinary team involvement and collaborative care).

FACTS:

A trans woman requested authorisation from insurer VGZ for a trans-specific surgery in Thailand. The insurer asked for additional documentation, but before supplying it, the applicant underwent the surgery abroad. VGZ subsequently denied reimbursement because the Kwaliteitsstandaard Transgenderzorg had not been met. Under the relevant law, insured care must meet the Kwaliteitsstandaard Transgenderzorg, which requires multidisciplinary team involvement and prior authorisation for complex surgeries.

COURT'S DECISION:
The applicant was not successful.

The court agreed with the insurer and dismissed the claim. The applicant had not satisfied the prior authorisation requirement, and the treatment could be considered as insured without the multidisciplinary oversight. The court held that the Kwaliteitsstandaard Transgenderzorg sets legitimate quality requirements for surgery and the prior authorisation procedure exists to ensure patient safety and appropriate care.

POSSIBLE IMPLICATIONS FOR FUTURE CASES: This case underscores the importance of following the proper authorisation pathway in the Netherlands before seeking surgery abroad. It confirms that insurers may lawfully deny reimbursement when quality and procedural requirements are not met, even if the patient acted in good faith.

6 ECLI:NL:RBAMS:2023:3776 (2023)

Court / Tribunal: District Court of Amsterdam — Court of first instance

ISSUE:

Whether a trans person is entitled to reimbursement for trans-specific healthcare treatments obtained abroad in Poland and the United States without a referral from a specialised Dutch multidisciplinary gender team, and whether the WPATH SOC-8 standards justify departing from the Dutch guidelines.

FACTS:

A trans woman with an in-kind insurance policy at Zilveren Kruis, a Dutch health insurance company, sought reimbursement for trans-specific healthcare treatments obtained in Poland and the United States. Zilveren Kruis refused, citing the absence of required referrals from a multidisciplinary gender team and non-compliance with policy conditions. The applicant approached the court and argued that her general practitioner (GP) had provided referrals and invoked the WPATH Standards of Care, 8th edition (SOC-8), which emphasise patient autonomy and informed consent.

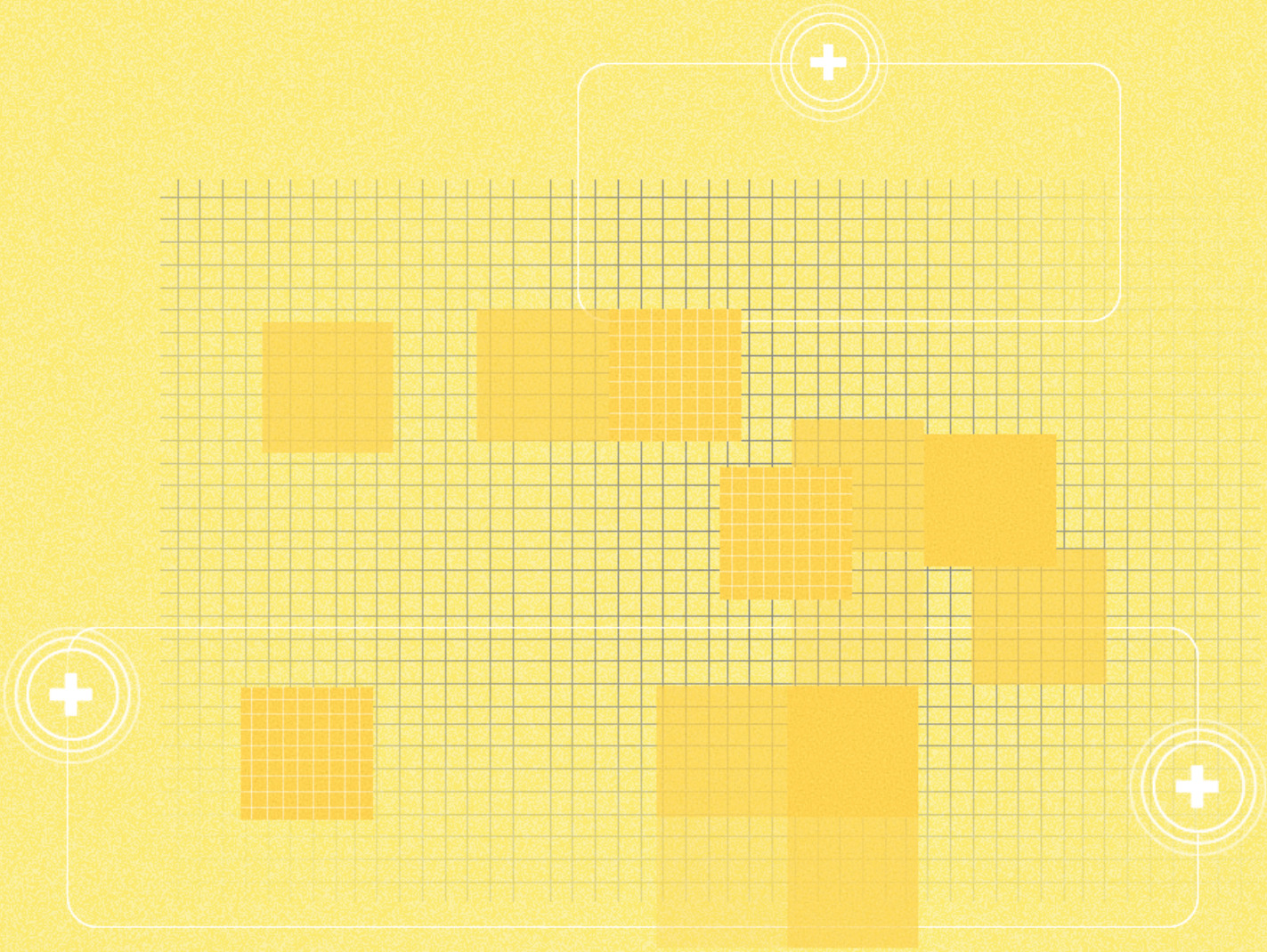
Under the Healthcare Insurance Act (Zvw), insured care must meet three cumulative conditions: (1) it must meet the state of medical science and practice, (2) it must constitute care ‘as the profession customarily provides’, and (3) the insured must reasonably require the treatment.

COURT’S DECISION:

The applicant was not successful.

The court dismissed the claim and held that neither the Dutch guidelines nor the SOC-8 standards were satisfied, since the diagnosis of ‘gender dysphoria’ had not been made by a specialised professional and there was no evidence of a multidisciplinary approach. The court applied the three cumulative conditions for insured care and found that none were fully met. Regarding the WPATH SOC-8, the court acknowledged their relevance but noted that the SOC-8 also requires competent healthcare professionals to make the diagnosis and recommendation, which had not taken place in this case. The court further held that long waiting lists, while regrettable, do not justify bypassing clinical safeguards designed to protect the patient’s health. A GP referral alone was insufficient to replace the multidisciplinary assessment required under Dutch standards.

POSSIBLE IMPLICATIONS FOR FUTURE CASES: This case is important because it addresses the tension between the evolving frameworks that emphasise patient autonomy and the Dutch model that mandates multidisciplinary team assessment. It confirms that, for now, Dutch courts continue to require compliance with the Kwaliteitsstandaard Transgenderzorg.



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