Third Party Intervention in Rana v. Hungary

Transgender Europe, ILGA Europe, and Transvanilla Transgender Association submitted observations in the case Rana v. Hungary (Application no. 40888/17).

The present case concerns a trans person with Iranian citizenship and refugee status in Hungary. The Hungarian authorities summarily rejected their request for legal gender recognition, invoking the absence of a specific legal procedure regulating the situation of foreigners in this context. The present case is illustrative of the obstacles facing trans refugees or other legally settled migrants applying for legal gender recognition in the country of settlement, particularly if their country of origin is hostile to such claims. This disagreement may potentially result in a permanent state of limbo for the person concerned, condemning them to living on the margins in their adoptive countries. More specifically in relation to Hungary, this case takes place against the background of a wider legal vacuum in relation to legal gender recognition that also affects Hungarian citizens in addition to foreigners.

The submission

The first section outlines the factors pushing trans persons to emigrate and apply for asylum, the recognition of "a well-founded fear of persecution based on gender identity" as valid grounds for granting refugee status and the difficulties facing trans asylum seekers and refugees in their countries of settlement, with a particular focus on LGR. The second section looks more closely at the rights of refugees under European law, with a particular focus on the obligation to provide legal status and suitable documentation, to ensure access to social rights and not to discriminate. It then proceeds to identify the possible rationales supporting the claims made by trans refugees in this respect, with LGR being seen as an element of legal status, as a gateway to social rights and as a breach of the prohibition to discriminate. This section concludes with a review of national regulations in the area of LGR that shows a lack of consensus, although the number of states that provide recognised refugees with the possibility to access LGR appears to be higher. At the same time, this review proves that the inability to provide a birth certificate from countries that are hostile to trans rights should not constitute an insuperable obstacle to LGR in the country of settlement. Finally, the last section reviews recent developments in Hungary revealing a wider legal vacuum in relation to LGR.

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(RANA v. HUNGARY)

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Third Party Intervention