



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 242

July 2020

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***Y.T. v. Bulgaria* - 41701/16**

Judgment 9.7.2020 [Section V]

**Article 8**

**Article 8-1**

**Respect for private life**

Unjustified refusal to allow a transsexual to have his change of sex recorded in the civil-status register, although his physical appearance and social and family identity had been altered for a long time: *violation*

*Facts* – The applicant, a transsexual, was refused authorisation by the Bulgarian courts to have the indication of sex in the civil-status registers amended, and thus to obtain legal recognition of his identity as a male.

*Law* – Article 8: The main question to be decided was whether the existing regulatory provisions and the decisions taken with regard to the applicant allowed the Court to establish that the State had complied with its positive obligation to respect the applicant's private life, particularly as it concerned sexual identity.

Although Bulgarian law did not contain a specific procedure solely for requests concerning gender reassignment, the possibility of a procedure enabling a person to request an amendment to the indication of sex in the civil-status registers could be inferred from the Civil Registers Act. This explicitly stated that only a judicial remedy, not an administrative one, could be used to obtain recognition of a change in sex. Other domestic-law provisions also deal with the consequences of a change of gender, which likewise confirmed the possibility of officially recognising this change. Thus, the legal framework had enabled the applicant to bring an action and have examined the substance of his request concerning gender reassignment.

The applicant wished to undergo surgery to complete the gender reassignment process, but he could not proceed with this step until prior recognition of the gender reassignment had been obtained through a judicial decision. He did not allege that he had been forced to submit to such surgery against his will and for the sole purpose of obtaining legal recognition of his gender identity. On the contrary, he wished to resort to surgery in order to bring his physical appearance into line with his gender identity. Accordingly, in contrast to the case of *A.P., Garçon and Nicot v. France*, no interference with respect for the applicant's physical integrity, in breach of Article 8, was at stake in the present case.

The Court was therefore called upon to determine whether the courts' refusal to grant the applicant's request for an amendment to the indication of his sex in the civil-status register had constituted a disproportionate interference with the right to respect for his private life.

The domestic courts had found that the applicant was a transsexual on the basis of detailed information about his psychological and medical state, and his social and family way of life. However, they had refused to authorise a change to the entry regarding sex in the civil-status register. Safeguarding the principle of the inalienability of civil status, ensuring the reliability and consistency of civil-status records and, more generally, ensuring legal certainty, were in the general interest and justified putting in place stringent procedures aimed, in particular, at verifying the underlying motivation for requests for a change of legal identity.

Nonetheless, the reasoning in the courts' decisions in refusing the applicant's request referred to disparate arguments; it was essentially based on three key elements. Firstly, the courts had expressed their belief that gender reassignment was not possible where the individual concerned had been born with the opposite sexual physiological characteristics. Secondly, they had considered that the individual's socio-psychological aspiration was not on its own sufficient justification to grant a request for gender reassignment. Lastly and in any event, the domestic law did not stipulate the criteria that would permit gender reassignment from a legal point of view. With regard to the latter point, the regional court had expressly stated that it accorded no importance to the case-law trend indicating that it was appropriate to recognise gender reassignment irrespective of any prior medical treatment. Thus, the judicial authorities had established that the applicant had begun a process of gender transition, changing his physical appearance, and that his social and family identity had already been that of a male for some time. Nonetheless, they had considered that the general interest required that the legal change of sex should not be permitted, and had then rejected his request. The courts had given no detailed explanation of their reasoning as to the exact nature of this general interest and had not, within the margin of appreciation granted to them, balanced this interest against the applicant's right to recognition of his gender identity. In those circumstances, the Court was unable to identify the public-interest reasons which had led to the refusal to harmonise the applicant's situation as a male and the relevant entry in the civil-status registers.

Rigid reasoning with regard to recognition of the applicant's gender identity had placed him, for an unreasonable and continuous period, in a troubling position, in which he was liable to experience feelings of vulnerability, humiliation and anxiety.

The judicial decisions in question dated back to 2015 and 2016. The Court noted with interest a decision issued by the Supreme Court of Cassation in January 2017, confirming the existing practice to the effect that, although no unique specific procedure existed with regard to gender reassignment, under Bulgarian law such reassignment could be recognised in the course of an individual's life. With regard to the criteria for gender reassignment reviewed in that decision, the Court did not have jurisdiction, in the context of the present case, to analyse their compatibility with the Convention *in abstracto*. It also noted the recent request to the plenum of the Supreme Court of Cassation for an interpretive decision in this area. In this context, the Court considered it necessary to refer to the recommendations issued by international organisations, in particular the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, and also the United Nations High Commissioner for Human Rights, on measures to combat discrimination on grounds of sexual orientation or gender identity, which included the recommendation that States make possible the change of name and gender in official documents in a quick, transparent and accessible way.

In the light of these considerations, the domestic authorities' refusal to grant legal recognition to the applicant's gender reassignment, without providing relevant and sufficient reasons, and without explaining why it had been possible to recognise identical gender reassignment in other cases, had constituted an unjustified interference with the applicant's right to respect for his private life.

*Conclusion:* violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage.

(See also *Christine Goodwin v. the United Kingdom* [GC], 28957/95, 11 July 2002, [Information Note 44](#); *Hämäläinen v. Finland* [GC], 37359/09, 16 July 2014, [Information Note 176](#); *A.P., Garçon and Nicot v. France*, 79885/12 et al., 6 April 2017, [Information Note 206](#); *S.V. v. Italy*, 55216/08, 11 October 2018, [Information Note 222](#); [Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers of the Council of Europe to member States on measures to combat discrimination on grounds of sexual orientation or gender identity, of 31 March 2010; [Resolution 1728 \(2010\)](#) of the Parliamentary Assembly on “Discrimination on the basis of sexual orientation and gender identity” of 29 April 2010; Report by the United Nations High Commissioner for Human Rights on “discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” ([A/HRC/19/41](#)), of 17 November 2011; [Resolution 2048 \(2015\)](#) on “Discrimination against transgender people in Europe”, of 22 April 2015)

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