



## Violation of the right to private life of a transsexual of male appearance whose request for gender reassignment was dismissed without reasons

In today's **Chamber judgment**<sup>1</sup> in the case of [Y.T. v. Bulgaria](#) (application no. 41701/16) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned a transsexual (Y.T.) who had taken steps to change his physical appearance and whose request for (female to male) gender reassignment had been refused by the Bulgarian courts. He claimed that he had become aware of his male gender identity during adolescence and that he had lived in society as a man.

The Court found that the judicial authorities had established that Y.T. 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 a long time. Nonetheless, they had considered that the public interest required that the legal change of sex should not be permitted, without specifying the exact nature of this public interest, and had not balanced this interest against Y.T.'s right to legal recognition of his gender identity.

The Court identified this as rigidity in the domestic courts' reasoning, which had placed Y.T. – for an unreasonable and continuous period – in a troubling position, in which he was liable to experience feelings of vulnerability, humiliation and anxiety. The domestic authorities' refusal to grant legal recognition to Y.T.'s gender reassignment, without giving relevant and sufficient reasons, and without explaining why it had been possible to recognise identical gender reassignment in other cases, had thus constituted an unjustified interference with Y.T.'s right to respect for his private life.

### Principal facts

The applicant, Y.T., is a Bulgarian national who was born in 1970 and lives in Stara Zagora (Bulgaria).

At his birth, Y.T. was recorded in the civil-status registers as female, with a corresponding female forename. However, he claims that he became aware of his male gender identity during adolescence and that he has lived in society as a man with a male forename and surname.

Y.T. has been co-habiting since 2008 with a woman, who gave birth to a child in 2010 via donor insemination. Y.T. and the child consider each other as father and son. In the photograph on his identity card, issued in 2011, Y.T.'s appearance was that of a man.

In 2014, in the context of his gender transition process, Y.T. voluntarily underwent surgery to remove his mammary glands and parenchymal tissue.

In 2015 he applied to the district court, asking that his forenames, patronymic and family name be changed in the electronic civil-status registers, together with the indication of his sex and his civil

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

identification number; he considered that the data recorded in the register did not correspond to reality. His request was rejected by the district court and Y.T. lodged an appeal.

In 2016 the regional court upheld the first-instance judgment. It considered, among other points, that surgical operations did not change a person's true sex but only his or her appearance and the morphology of sex.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Y.T. complained about the refusal by the Bulgarian courts to change the entries for his sex, forename, patronymic and surname in the civil-status registers.

The application was lodged with the European Court of Human Rights on 12 July 2016.

The non-governmental organisations *ADF International* and the Bulgarian Helsinki Committee, and also *Transgender Europe*, *ILGA-Europe* and *Bilitis Resource Center Foundation* were granted leave to intervene in the written proceedings (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,  
Ganna Yudkivska (Ukraine),  
Mārtiņš Mits (Latvia),  
Lətif Hüseynov (Azerbaijan),  
Lado Chanturia (Georgia),  
Anja Seibert-Fohr (Germany) and,  
Mira Raycheva (Bulgaria), *ad hoc Judge*,

and also Victor Soloveytschik, *Deputy Section Registrar*.

## Decision of the Court

### [Article 8 \(right to respect for private and family life\)](#)

The Court noted, firstly, that the legal framework applied in the present case had enabled Y.T. to lodge and have examined the merits of his request concerning his gender reassignment. The applicant wished to undergo an operation to complete the process of gender reassignment but this could only take place following prior recognition of this reassignment by a judicial decision. Y.T. did not claim that he had been required to undergo the surgery against his will or solely in order to obtain legal recognition of his gender identity. On the contrary, he sought to have surgery in order for his physical appearance to match his gender identity. The case did not therefore concern interference with his right to respect for his physical integrity.

The Court then found that it was required to determine whether the courts' refusal to grant the applicant's requests for an amendment to the entry concerning his sex in the civil-status registers had amounted to a disproportionate interference with his right to respect for his private life.

It held, in the present case, that the domestic courts had noted that Y.T. was transsexual on the basis of detailed information concerning his psychological and medical state, together with his family and social lifestyle. However, the courts had refused to authorise a change to the "sex" entry in the civil-status registers. The reasoning for their decisions referred to various arguments and was based on three essential elements. Firstly, the courts expressed the conviction that gender reassignment was not possible where the individual had been born with opposing sexual physiological characteristics.

Secondly, they held that an individual's socio-psychological aspiration could not in itself be sufficient to grant a request for gender reassignment. Lastly, the domestic law did not provide for any criteria that would allow for such reassignment for legal purposes. With regard to this last point, the regional court had expressly stated that it attached no importance to the case-law trend to the effect that it was appropriate to recognise gender reassignment independently of whether medical treatment had been followed in advance.

Thus, the judicial authorities had established that Y.T. 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, in essence, that the public interest required that the legal change of sex should not be permitted, and had then rejected his request. However, the courts had given no explanation of their reasoning as to the exact nature of this public interest, and had not balanced it against the applicant's right to legal recognition of his gender identity.

In those circumstances, the Court failed to identify what public-interest grounds could have justified the refusal to ensure that Y.T.'s male condition corresponded with the relevant entry referring to that condition in the civil-status registers. The Court identified this as rigidity in the reasoning with regard to recognition of Y.T.'s gender identity, which 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.

In consequence, the Court concluded that the domestic authorities' refusal to grant legal recognition to Y.T.'s gender reassignment, without giving relevant and sufficient reasons, and without explaining why it had been possible to recognise the same gender reassignment in other cases, had constituted an unjustified interference with the applicant's right to respect for his private life. **There had therefore been a violation of Article 8 of the Convention.**

#### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 4,150 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.