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This Factsheet does not bind the Court and is not exhaustive

# Gender identity issues

See also the factsheet on ["Sexual orientation issues"](#).

## From the *Rees* case to the *Christine Goodwin* case

### Rees v. the United Kingdom

17 October 1986

In this case a female-to-male transsexual complained that United Kingdom law did not confer on him a legal status corresponding to his actual condition.

The European Court of Human Rights held that there had been **no violation of Article 8** (right to respect for private and family life) of the [European Convention on Human Rights](#). The changes demanded by the applicant would have involved fundamentally modifying the system for keeping the register of births, which would have had important administrative consequences and imposed new duties on the rest of the population. Furthermore, the Court attached importance to the fact that the United Kingdom had borne the costs of the applicant's medical treatment.

However, the Court was conscious "of the seriousness of the problems affecting transsexuals and of their distress" and recommended "keeping the need for appropriate measures under review, having regard particularly to scientific and societal developments" (§ 47 of the judgment).

The Court also held that there had been **no violation of Article 12** (right to marry and found a family) of the Convention. It found that the traditional concept of marriage was based on union between persons of opposite biological sex. States had the power to regulate the right to marry.

### Cossey v. the United Kingdom

27 September 1990

The Court came to similar conclusions as in *Rees v. the United Kingdom* (see above) and did not find new facts or particular circumstances that would lead it to depart from the earlier judgment.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It reiterated that "gender reassignment surgery did not result in the acquisition of all the biological characteristics of the other sex" (§ 40 of the judgment). It also noted that an annotation in the birth register would not be an appropriate solution.

The Court also held that there had been **no violation of Article 12** (right to marry and found a family). Attachment to the traditional concept of marriage provided "sufficient reason for the continued adoption of biological criteria for determining a person's sex for the purposes of marriage" and it was for the States to regulate by national law the exercise of the right to marry.

### B. v. France (application no. 13343/87)

25 March 1992

In this case **the Court concluded for the first time that there had been a violation of Article 8** (right to respect for private and family life) of the Convention **in a case concerning the recognition of transsexuals**.

A male-to-female transsexual complained of the refusal of the French authorities to

amend the civil-status register in accordance with her wishes.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, taking into consideration factors distinguishing the case of *B.* from *Rees v. the United Kingdom* and *Cossey v. the United Kingdom* (see above, page 1), particularly the differences between the United Kingdom and the French civil status systems. Whilst there were major obstacles in the United Kingdom preventing birth certificates from being amended, in France these were intended to be updated throughout the life of the person concerned. The Court observed that in France many official documents revealed “a discrepancy between [the] legal sex and [the] apparent sex of a transsexual” (§ 59 of the judgment), which also appeared on social-security documents and payslips. The Court accordingly held that the refusal to amend the civil status register in her regard had placed the applicant “in a daily situation which was not compatible with the respect due to her private life”.

### **X, Y and Z v. the United Kingdom (no. 21830/93)**

22 April 1997

The first applicant, X, a female-to-male transsexual, was living in a permanent and stable union with the second applicant, Y, a woman. The third applicant, Z, was born to the second applicant as a result of artificial insemination by donor. The applicants submitted that the lack of legal recognition of the relationship between X and Z amounted to a violation of Article 8 of the Convention.

Whilst the Court concluded that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, it did nonetheless acknowledge the **existence of family life between a transsexual and his partner’s child**: “X has acted as Z’s “father” in every respect” since the birth. In these circumstances the Court considers that the [*de facto*] family ties link the three applicants.” (§ 37 of the judgment).

### **Sheffield and Horsham v. the United Kingdom**

30 July 1998

In this case the Court was not persuaded that it should depart from its *Rees* and *Cossey* judgments (see above, page 1): transsexualism continues to raise complex scientific, legal, moral and social issues in respect of which there is no generally shared approach among the Contracting States” (§ 58 of the judgment).

The Court held that there had been **no violation of Articles 8** (right to respect of private and family life), **12** (right to marry and found a family) **and 14** (prohibition of discrimination) of the Convention. However, it reaffirmed “that the area needs to be kept under permanent review by the Contracting States” (§ 60 of the judgment), in the context of “increased social acceptance of the phenomenon and increased recognition of the problems which post-operative transsexuals encounter”.

## **The Christine Goodwin case**

### **Christine Goodwin v. the United Kingdom**

11 July 2002 (Grand Chamber)

The applicant complained of the lack of legal recognition of her changed gender and in particular of her treatment in terms of employment and her social security and pension rights and of her inability to marry.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, owing to a clear and continuing international trend towards increased social acceptance of transsexuals and towards legal recognition of the new sexual identity of post-operative transsexuals. “Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, the Court reaches the conclusion that the notion of fair balance inherent in the Convention now tilts decisively in favour of the applicant” (§ 93 of the judgment).

The Court also held that there had been a **violation of Article 12** (right to marry and found a family) of the Convention. It was “not persuaded that it [could] still be assumed that [the terms of Article 12] must refer to a determination of gender by purely biological criteria” (§ 100). The Court held that it was for the State to determine the conditions and formalities of transsexual marriages but that it “finds no justification for barring the transsexual from enjoying the right to marry under any circumstances” (§ 103).

See also the **I. v. the United Kingdom (no. 25680/94)** judgment delivered by the Grand Chamber on the same day, in which the Court, similarly, found a violation of Article 8 and a violation of Article 12 of the Convention.

Following the Grand Chamber judgment in the case of *Christine Goodwin*, the United Kingdom introduced a system whereby transsexuals could apply for a gender recognition certificate. The two cases below both concerned a transsexual who was married before the sex reassignment surgery and who wanted to make use of this gender recognition procedure.

### **Parry v. the United Kingdom (no. 42971/05) and R. and F. v. the United Kingdom (no. 35748/05)**

28 November 2006 (decisions on the admissibility)

The applicants were respectively married and had children. In each case, one of them underwent gender reassignment surgery and remained with his/her spouse as a married couple. Following the introduction of the Gender Recognition Act 2004, the applicants who had undergone gender reassignment surgery made an application for the issue of a Gender Recognition Certificate, which could not be obtained unless they terminated their marriage. The applicants complained in particular under Articles 8 (right for respect to private and family life) and 12 (right to marry) of the Convention that they had been unable to obtain legal recognition of their acquired gender without terminating their marriage.

The Court declared the applications **inadmissible** (manifestly ill-founded). The applicants were requested to annul their marriage because same-sex marriages were not permitted under English law. The United Kingdom had not failed to give legal recognition to gender re-assignment and the applicants could continue their relationship through a civil partnership which carried almost all the same legal rights and obligations. The Court observed that, when the new system was introduced following the *Christine Goodwin* judgment (see above), the legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. The Court found that it could not be required to make allowances for that small number of marriages.

## Recent judgments and decisions of the Court

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### **Van Kück v. Germany**

12 June 2003

The applicant complained about the alleged unfairness of German court proceedings concerning her claims for reimbursement of gender reassignment measures against a private health insurance company. She further considered that the impugned court decisions had infringed her right to respect for her private life.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair hearing) of the Convention. The German courts should have requested further clarification from a medical expert. With regard to the Court of Appeal’s reference to the causes of the applicant’s condition, it could not be said that there was anything arbitrary or capricious in a decision to undergo gender re-assignment surgery and the applicant had in fact

already undergone such surgery by the time the Court of Appeal gave its judgment. The proceedings, taken as a whole, had not satisfied the requirements of a fair hearing.

The Court also held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Since gender identity was one of the most intimate aspects of a person's private life, it appeared disproportionate to require the applicant to prove the medical necessity of the treatment. No fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.

### **Grant v. the United Kingdom**

23 May 2006

The applicant, a 68-year-old post-operative male-to-female transsexual, complained about the lack of legal recognition of her change of gender and the refusal to pay her a retirement pension at the age applicable to other women (60).

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed that the applicant had been in a situation identical to that of Christine Goodwin (see above, pages 2-3). While it was true that the Government had had to take steps to comply with the *Christine Goodwin* judgment, which had involved passing new legislation, it was not the case that that process could be regarded as in any way suspending the applicant's victim status. Following the *Christine Goodwin* judgment there was no longer any justification for failing to recognise the change of gender of post-operative transsexuals. The applicant did not have at that time any possibility of obtaining such recognition and could claim to be prejudiced from that moment. The applicant's victim status had ceased when the Gender Recognition Act 2004 had entered into force, thereby providing her with the means on a domestic level to obtain legal recognition. Consequently, she could claim to be a victim of the lack of legal recognition from the moment, after the *Christine Goodwin* judgment, when the authorities had refused to give effect to her claim, namely from 5 September 2002. This lack of recognition had breached her right to respect for her private life.

### **L. v. Lithuania (no. 27527/03)**

11 September 2007

This case concerned the failure to introduce implementing legislation to enable a transsexual to undergo gender-reassignment surgery and change his gender identification in official documents.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention. While the applicant had suffered understandable distress and frustration the circumstances were not of such an intense degree, involving exceptional, life-threatening conditions, as to fall within the scope of this provision.

The Court further held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Lithuanian law recognised transsexuals' right to change not only their gender but also their civil status. However, there was a gap in the legislation in that there was no law regulating full gender-reassignment surgery. This legislative gap had left the applicant in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity. Budgetary restraints in the public-health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years. Given the limited number of people involved, the budgetary burden would not have been unduly heavy. The State had therefore failed to strike a fair balance between the public interest and the applicant's rights.

### **Schlumpf v. Switzerland**

8 January 2009

This case concerned the refusal by the applicant's health insurers to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting

period before gender reassignment surgery, as required by the case-law as a condition for payment of the costs of such operations.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. The waiting period had been applied mechanically without having regard to the age (67) of the applicant, whose decision to undergo an operation was likely to be affected by that delay, thus impairing her freedom to determine her gender identity.

### **P.V. v. Spain (no. 35159/09)**

30 November 2010

This case concerned a male-to-female transsexual who, prior to her gender reassignment, had had a son with his wife in 1998. They separated in 2002 and the applicant complained of the restrictions that had been imposed by the court on the contact arrangements with her son on the ground that her emotional instability after her change of sex entailed a risk of disturbing the child, then aged six.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) **in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found that the restriction on contact had not resulted from discrimination on the ground of the applicant's transsexualism. The decisive ground for the restriction imposed by the Spanish courts, having regard to the applicant's temporary emotional instability, had been the child's well-being. They had therefore made a gradual arrangement that would allow the child to become progressively accustomed to his father's gender reassignment.

### **P. v. Portugal (no. 56027/09)**

6 September 2011 (strike out decision)

At birth, the applicant was registered as male. On reaching adulthood, she underwent gender reassignment treatment followed by surgery. She complained of the lack of legal recognition of her situation, coupled with the alleged absence of any legislation on the matter.

The Court **struck** the application **out of its list of cases** (pursuant to Article 37 of the Convention): the matter had been resolved in that the applicant's request for legal recognition to the domestic courts had finally been successful.

### **Cassar v. Malta**

9 July 2013 (strike out decision)

The applicant complained of the fact that Maltese law did not recognise transsexuals as persons of the acquired sex for all intents and purposes, including that of contracting marriage. She complained that she was not granted an effective remedy (Article 13 of the Convention) in respect of the breach of her rights and therefore that she was still a victim of a violation of Articles 8 (rights to respect for private and family life) and 12 (right to marry) of the Convention.

The Court, noting that an out-of-court settlement had been reached between the Government and the applicant, **struck** the application **out of its list of cases** (pursuant to Article 37 of the Convention).

### **Hämäläinen v. Finland**

16 July 2014 (Grand Chamber)

The applicant was born a male and married a woman in 1996. The couple had a child in 2002. In September 2009 the applicant underwent male-to-female gender reassignment surgery. Although she changed her first names in June 2006, she could not have her identity number changed to indicate her female gender in her official documents unless her wife consented to the marriage being turned into a civil partnership, which she refused to do, or unless the couple divorced. Her request to be registered as female at the local registry office was therefore refused. The applicant complained that she could only obtain full official recognition of her new gender by having her marriage turned into a civil partnership.



The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that it was not disproportionate to require the conversion of a marriage into a registered partnership as a precondition to legal recognition of an acquired gender as that was a genuine option which provided legal protection for same-sex couples that was almost identical to that of marriage. The minor differences between these two legal concepts were not capable of rendering the current Finnish system deficient from the point of view of the State's positive obligation under Article 8 of the Convention. In addition, such a conversion would not have any implications for the applicant's family life as it would not affect the paternity of the applicant's daughter or the responsibility for the care, custody, or maintenance of the child. The Court further considered that **no separate issue arose under Article 12** (right to marry) of the Convention and found that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Articles 8 and 12** of the Convention.

### **Y.Y. v. Turkey (no.14793/08)**

10 March 2015

This case concerned the refusal by the Turkish authorities to grant authorisation for gender reassignment surgery on the grounds that the person requesting it, a transsexual, was not permanently unable to procreate. The applicant – who was registered at the time of the application as being of the female sex – complained, in particular, of an infringement of his right to respect for his private life. He notably submitted that the discrepancy between his perception of himself as a man and his physical constitution had been established by medical reports and complained of the refusal by the domestic authorities to put an end to that discrepancy on the grounds that he was able to conceive. Ultimately, in May 2013, the Turkish courts granted the application and authorised the surgery.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention finding that, in denying the applicant, for many years, the possibility of undergoing such an operation, the Turkish State had breached his right to respect for his private life. The Court reiterated in particular that the possibility for transsexuals to have full enjoyment of the right to personal development and physical and moral integrity could not be regarded as a controversial question. It considered that, even supposing that the denial of the applicant's initial request for access to such surgery had been based on a relevant ground, it was not based on a sufficient ground. The resulting interference with the applicant's right to respect for his private life could not be considered "necessary" in a democratic society.

## Pending applications

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### **D.C. v. Turkey (no. 10684/13)**

Application communicated to the Turkish Government on 15 November 2013

The applicant, a transsexual whose gender reassignment has not yet been carried out, is currently serving a prison sentence. He complains of the refusal of the authorities of the Ministry of Justice to bear the cost of his gender reassignment despite medical evidence which clearly shows that he urgently needs treatment.

The Court gave notice of the application to the Turkish Government and put questions to the parties under Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) of the Convention.

### **A.P. v. France (no. 79885/12), Garçon v. France (no. 52471/13) and Nicot v. France (no. 52596/13)**

Applications communicated to the French Government on 18 March 2015

The applicants in these cases complain in particular of the fact that people who, like them, are transgender cannot have their civil status changed unless they provide

evidence of their transsexualism and of having undergone an irreversible process of gender reassignment.

The Court gave notice of these applications to the French Government and put questions to the parties under Article 8 (right to respect for private and family life) of the Convention and, in the case of *A.P.*, under Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

### **Vivaldo v. Italy (no. 55216/08)**

Application communicated to the Italian Government on 20 March 2016

This case concerns the inability for the applicant to have her name changed in the absence of gender reassignment surgery.

The Court gave notice of the application to the Italian Government and put questions to the parties under Article 8 (right to respect for private and family life) of the Convention.

## Texts and documents

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See in particular:

- the Council of Europe [webpage](#) on Combating discrimination on the grounds of sexual orientation or gender identity
  - [Handbook on European non-discrimination law](#), European Union Fundamental Rights Agency / Council of Europe, 2010
  - [Handbook on European non-discrimination law: Case-law update July 2010-December 2011](#), European Union Fundamental Rights Agency / Council of Europe, 2012
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