Legal Victory for Trans People – European Human Rights Body Slams Forced Sterilisation in the Czech Republic

article, legal gender recognition

The Czech Republic violates the human rights of transgender people as guaranteed by the European Social Charter, found a decision that was made public this Monday. The case had been brought jointly by Transgender Europe and ILGA-Europe in 2015 in cooperation with local activists using the collective complaint mechanism. It is the first transgender discrimination case decided under that procedure.

“We are greatly relieved about the Committee’s decision. Forced sterilisation of trans people is still happening in the Czech Republic. This is inhumane and has to stop!” comment the two networks.

The Committee of the Social Charter found that legal requirement for transgender persons in the Czech Republic to undergo medical sterilization in order to have their gender identity recognized seriously impacts a person’s health, physical and psychological integrity, and dignity. The Committee emphasised the importance of the right to give free consent when accessing medical treatment:

“Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health.” (paragraph 82)

The Committee reiterated that gender recognition in itself is a right recognised under international human rights law. Echoing the European Court of Human Rights, the Committee stated that trans people should not be forced to choose between their gender identity and physical integrity. The World Health Organisation stated in July 2018 that transgender people should not be longer regarded as having a mental disorder.

“We call upon the Czech Republic to immediately take steps and implement a gender recognition procedure that is quick, transparent and accessible and based on self-determination. Such a reform needs to centre on those whose lives are directly affected.” comment TGEU and ILGA-Europe:

Conversely, in a recent statement the Czech Association of Sexologists said that castration should remain a requirement in legal gender recognition. According to the current proposal from the Czech Ministry of Justice it would be a sexologist who assesses a trans person applying for gender recognition.

“We remain concerned that doctors who call for the forced sterilisation of trans people are considered experts and will remain gate keepers. While trans people in the Czech Republic remain shut-out in a hasty and non-transparent process.”

Background

Article 11 of the European Social Charter inter alia guarantees the right to the highest possible standard of health and the right of access to health care. The European Social Charter is the Social Constitution of Europe – a Council of Europe treaty that guarantees fundamental social and economic rights. The Charter differs from the European Convention on Human Rights, which refers to civil and political rights. The Social Charter guarantees a broad range

of everyday human rights related to employment, housing, health, education, social protection and welfare. Nearly all European states have signed up to the Social Charter.

The decision in the case Transgender Europe and ILGA-Europe v. Czech Republic follows the judgment of the European Court of Human Rights in the case A.P., Garçon and Nicot v. France in April 2017, finding that the forced sterilisation requirement was in breach of the right to respect for private life. Currently, fourteen European countries still require forced sterilisation in legal gender recognition. The World Health Organisation stated in July 2018 that transgender people should not be longer regarded as having a mental disorder.

Download the decision (EN)