European Court Slams Hungary Again Over Lack of Legal Gender Recognition

article, legal gender recognition

Today, the European Court of Human Rights ruled on a case challenging the lack of legal gender recognition procedures in Hungary. This case was brought by a trans man, against Hungary.

What happened?

The Court found that Hungarian authorities violated the applicant's right to private life by denying his application. This is protected by Article 8 ECHR. The Court established that the legislative gaps and serious deficiencies at the time had left the applicant in distress, uncertainty and with long-term negative consequences mental health. The Court also ordered the government to pay the applicant compensation (10.000EUR) and reimburse him all costs related to the legal procedure.

The applicant is a Hungarian trans man who applied for an administrative change of his gender marker. The Hungarian authorities refused his request. The domestic court stood with the authorities, saying that there was no legal basis for legal gender recognition.

The case started before the ban on legal gender recognition was adopted in June 2020. This ban states 'the sex at birth' in the registries of a person cannot be changed. The Court did not rule on the ban in the present case.

The European Court of Human Rights initially asked whether there was a violation of the applicant's right to private life under Article 8 of the Convention. The Court investigated the alleged deficiencies of the legislative framework regulating the conditions and procedure for registering the new identity of a transgender person (see X v. the former Yugoslav Republic of Macedonia, no. 29683/16, §§ 63?71, 17 January 2019).

'Congratulations to the applicant and those who made his win possible. Trans people in Hungary have been under crusade from their own government for years now. We call on the Hungarian authorities to immediately implement the judgement, repeal the ban on legal gender recognition, and adopt quick, transparent, and accessible legal gender recognition procedures,' comments Lenny Emson, TGEU Executive Director.

What's next?

There are more cases challenging the ban on legal gender recognition by Hungary before the European Court of Human Rights. The Court held in July 2020 that Hungary violated the rights of a trans man refugee (Rana v Hungary). Authorities denied the right to change his documents. Hungary still has not implemented this judgement.

"Unfortunately, anti-trans terror is state policy in Hungary. Today's judgement is important as it recalls human rights standards and explains what is right and what is wrong. That is key when no moral compass exists any longer in the Hungarian legal framework," adds Richard Köhler, TGEU expert on strategic litigation.

The judgement is relevant beyond Hungary. Bulgarian courts similarly argued that legal gender recognition is not possible in their country. There are on-going legislative processes in Russia and Slovakia trying to ban legal gender recognition, following Hungary's model.

“We see a dangerous trend across conservative governments in Eastern Europe, aimed at banning legal gender recognition. Bulgaria, Hungary, and Slovakia openly challenge the European Court of Human Rights. The Court already established 20 years ago that biological factors cannot be used to determine a person’s gender marker in *Christine Goodwin v the UK*. We are concerned over this overt disregard for the highest authority on human rights in the region. It is a clear breach of the European cannon and the rule of law,” adds Köhler.

The European Court of Justice of the European Union will hear a case of a recognised refugee in Hungary. His complaint states national authorities have not rectified his Hungarian documents and thus violate his rights under the EU General Data Protection Regulation (GDPR). Article 16 GDPR ensures everyone has the right to accurate data sets.

The European Union is different from the Council of Europe. The CJEU judgements are directly relevant only for the 27 EU member states. Hungary is a member of the EU.