ECtHR rules Polish prison authorities violated trans woman's rights by denying access to hormone therapy

Last Thursday (11 July), the European Court of Human Rights found that Polish prison authorities violated a trans woman's right to private and family life (Article 8) by denying her access to hormone replacement therapy while imprisoned. The Court ordered that the applicant be awarded EUR 8,000 as damages. TGEU welcomes the decision as it strengthens trans prisoners' rights to access life-saving treatment.

The applicant argued that refusing her access to hormone replacement therapy was a violation of Article 3 (right against inhuman and degrading treatment) and Article 8 (right to private and family life) of the European Convention on Human Rights. However, the Court ultimately chose to focus only on the violation of Article 8.

The Court observed that Article 8 has two elements: it aims to protect the individual against arbitrary interference by the state and places positive obligations on the state to respect the individual's private life.

The Polish prison authorities denied the applicant access to hormone replacement therapy even though she had been prescribed hormones for almost two years. The Court concluded that this denial is the relevant aspect here, which interferes with the right to respect for private life. The Court also noted that the Polish prison authorities did not justify their refusal on any reasonable legal grounds nor did they set out why the treatment might have been detrimental to the applicant's health.

Significantly, the Court set out clearly that hormone replacement therapy was beneficial for the applicant's physical and mental health and that the doctors who prescribed it considered it to be necessary and urgent for the applicant to receive care. The burden placed on the applicant to prove once again to the Siedlce prison authorities that the treatment was necessary by undergoing additional consultations was disproportionate in this case.

Considering these facts, the Court held that the authorities failed to strike a fair balance between the competing interests at stake, including the protection of the applicant's health and her interest in continuing hormone replacement therapy in line with her self-determined gender identity.

Although the applicant had alleged violations of other rights under the Convention such as Articles 2, 13 (read with Article 3 and 8), and 14 (read with Article 8), the Court did not look into these issues.

Our intervention

TGEU intervened in the case in 2021. We brought the attention of the Court to relevant case law on the rights of trans people under Articles 3, 8 and 14 of the Convention. TGEU emphasised the vulnerability of trans people in prison and specifically highlighted the unique healthcare issues faced by trans people, including the importance of hormone replacement therapy for the physical and mental wellbeing of trans people. The intervention also provided a comparative perspective with trans people in custody in the United States.

This decision follows a growing set of standards on the rights of trans people in prison. In 2010, the Council of Europe Committee of Ministers (CoM) in their CM Rec (2010)/5 had noted that "Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty…; measures should be taken so as to adequately protect and respect the gender identity of transgender

persons.” Further, the most recent General Report of the Council of Europe’s Committee for the Prevention of Torture dedicated a special section to trans people in prison and noted that all trans people must be able to access hormone treatment and surgery if they wish, at the same cost as the rest of the trans community in the country.

Background

The applicant W.W. is a trans woman from Poland, and has been legally recognised as a woman since March 2023. In 2018, while serving a sentence for various crimes, W.W. attempted a medical procedure on herself. Her actions were motivated by distress resulting from differences between her gender identity and sex characteristics. After consulting a series of medical professionals, W.W. received a recommendation that she should start hormone replacement therapy immediately and the lack of this treatment posed a serious risk to her health. In 2019, W.W. was allowed to undergo the therapy. She covered the cost of this herself.

In 2020, W.W. wanted to continue hormone replacement therapy when she was transferred to the Siedlce Prison. However, her request was denied. She was asked to once again go through a series of medical consultations but the prison authorities did not set up these consultations promptly. During this time, and anticipating a shortfall of medication, W.W. took half the prescribed dosage, to make the medication last longer. Soon after, W.W. ran out of hormone medication and approached the ECtHR seeking relief. The Court ordered that she be administered hormones prescribed by her endocrinologists as an interim measure.

More info

- TGEU TPI
- WW v Poland case at the Court
- TGEU report on trans people in prison
- CPT report on trans prisoners
- Council of Europe Committee of Ministers CM Rec (2010)5