Hungary must allow trans refugee to change gender marker in official records, says EU Court's top legal advisor

article, legal gender recognition, asylum, health & depathologisation, self-determination

Today, the Advocate General of the Court of Justice of the European Union said that Hungarian immigration authorities must correct a trans person's gender marker in national registries when requested.

The case concerns a trans refugee in Hungary who has been denied legal gender recognition (LGR) since 2021. In Hungary, LGR has been banned for citizens since 2020, and refugees have had no pathway to LGR whatsoever. Represented by Háttér Society and the Hungarian Helsinki Committee, the trans man in the case requested a correction to his gender marker and name in the national registry under Article 16 of the EU's GDPR to reflect his male gender identity.

This case is a key moment in the fight for trans rights in Hungary and has the potential to secure recognition for trans people across the EU.

Our Expert Advisor, Richard Köhler, said: "Respect and recognition matter for everyone. For many trans people, it's a significant step to living fulfilling lives. The Advocate General's opinion is a substantial move towards EU Member States finally recognising their responsibility to introduce proper legal gender recognition procedures for all trans people."

The Advocate General at the Court of Justice of the European Union offers independent, expert legal opinions on cases to guide the judges in making their final decisions. Read a more detailed statement, prepared by Háttér Society, ILGA-Europe and TGEU, below.

Joint statement: EU Court of Justice Advocate General calls on Hungary to correct trans refugee's gender marker in national registries

Háttér Society, ILGA-Europe and TGEU welcome an opinion from the Advocate General of the Court of Justice of the European Union stating that Hungarian immigration authorities must correct the gender marker of a trans person in its national immigration registries upon request.

Today, the Advocate General of the Court of Justice of the European Union (CJEU) has issued an opinion on the case of *Deldits* (C-247/23) calling on Hungary to correct the gender marker of the applicant in the national immigration registry upon request.

The opinion specifically relates to the case of a trans refugee in Hungary who has been denied legal gender recognition (LGR) in the asylum register since 2021. Represented by Háttér Society and the Hungarian Helsinki Committee, the complainant, who was granted refugee status in Hungary in 2014, has sought the rectification of his gender marker and name (as it reflected his sex at birth) on the national registry under Article 16 of the EU's General Data Protection Regulation (GDPR).

This case raises crucial questions for the CJEU: whether the GDPR mandates the rectification of the gender marker on national registries upon request, and if so, does this request require evidence? If so, does it need to include proof of surgical intervention?

Advocate General Collins stated that following Article 16 GDPR in conjunction with Article 5(1)(d) GDPR Hungarian authorities need to rectify the gender of the applicant, whose data they recorded inaccurately in the first place. He also pronounced that while evidence might be requested, proof of surgical intervention cannot be required.

This case marks a pivotal moment in the ongoing battle for the rights of trans people in Hungary. The 2018 Constitutional Court decision and the 2020 European Court of Human Rights judgment affirmed the right of trans refugees to legal gender recognition. Nonetheless, the Hungarian legislature has not implemented the necessary changes. Hungarian citizens have not had access to LGR since May 2020, whilst refugees never had access to such recognition.

Eszter Polgári, Director of the Legal Program at Háttér Society, emphasised the potential implications of a ruling in line with the opinion: “The preliminary ruling reflecting the Advocate General’s opinion might have an impact beyond the specific case, as a positive decision of the Court of Justice of the European Union will hopefully force the legislator to reconsider the procedure on legal gender recognition also for Hungarian citizens, and bring it in line with international human rights and EU law, including the relevant provisions of the GDPR.”

TGEU Expert Advisor, Richard Köhler, adds: “Respect and recognition matter for everyone. For many trans people, it is a significant step to living fulfilling lives. The Advocate General’s opinion is a substantial move towards EU Member States finally recognising their responsibility to introduce proper legal gender recognition procedures for all trans people.”

ILGA-Europe Senior Strategic Litigation Officer, Marie-Hélène Ludwig, said: “This opinion is a significant development for the rights of trans people in the EU, including refugees, particularly in countries still deprived of any legal framework for legal gender recognition, in breach of their international obligations. We are looking forward to the judgment confirming Member States’ obligation to record correct gender markers in all national registries.”

The Advocate General at the Court of Justice of the European Union offers independent, expert legal opinions on cases to guide the judges in making their final decisions.

The CJEU’s decision is expected at the beginning of 2025. It holds significant potential to influence the legal protections for trans people within Hungary and across the EU.

ILGA-Europe and TGEU – Trans Europe and Central Asia are providing support to Háttér Society in this case.