



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 183

March 2015

Y.Y. v. Turkey - 14793/08

Judgment 10.3.2015 [Section II]

Article 8

Article 8-1

Respect for private life

Gender reassignment surgery made conditional on proof that the person concerned was no longer able to procreate: *violation*

Facts – The applicant, Y.Y., was registered at the time of the application as being of the female sex. Early on in life Y.Y. became aware of feeling more like a boy than a girl, regardless of anatomical features. Y.Y. thus applied for authorisation to undergo gender reassignment surgery, but in 2006 it was denied by a domestic court, applying Article 40 of the Civil Code, on the sole ground that Y.Y. was not permanently unable to procreate.

The applicant ultimately obtained authorisation to undergo the operation in 2013, five years and seven months after the first request was denied. The domestic courts then granted the request without considering whether or not the applicant was permanently unable to procreate.

Law – Article 8: The possibility for transsexuals to undergo gender reassignment surgery existed in many member States of the Council of Europe, like the legal recognition of their new sexual identity. In some States the legal recognition of the new gender remained subject to surgical reassignment and/or an incapacity to procreate. In a number of States the sterility or infertility was assessed after the medical or surgical gender reassignment process.

In the present case, it was established that inability to procreate was a requirement that had to be met prior to the process of gender reassignment and was thus a prerequisite for the relevant surgery. The domestic court had relied on that condition in refusing to allow the applicant to undergo the physical change requested, despite the fact that the applicant had already been in a process of gender conversion, as could be seen from the on-going psychological support and masculine social behaviour.

The Court could not understand why the inability to procreate of a person wishing gender reassignment surgery had to be established even before the physical sex change process had begun.

The Government, while defending the conformity of the domestic courts' decisions with the law, argued that neither the legislation in question nor the conditions of its implementation required the applicant to undergo prior medical procedures of sterilisation or hormonal therapy. The Court did not see how, except by undergoing sterilisation, the applicant could have satisfied the requirement of permanent infertility while having the biological capacity to procreate.

In any event, the Court did not find it necessary to rule on the question of the applicant's access to medical treatment which would have enabled him to satisfy that requirement. The Court took the view that, in any event, the principle of respect for the applicant's physical integrity precluded any obligation for him to undergo treatment aimed at such permanent sterilisation.

In the circumstances of the case and having regard to the wording of the applicant's complaint, it sufficed for the Court to observe that the applicant had challenged, before both the domestic courts and this Court, the indication in the legislation that a permanent inability to procreate was a requisite for authorisation to undergo gender reassignment.

That prerequisite did not appear necessary, as the Government had argued, for the protection of the general interest and the interests of the individual, to justify the regulation of gender reassignment operations. Consequently, even supposing that the rejection of the initial request for access to such surgery was 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 therefore be considered "necessary" in a democratic society.

The change of approach of the domestic court which, in May 2013, had granted the applicant authorisation to undertake gender reassignment surgery, even though he still had the ability to procreate, supported that finding.

In denying the applicant, for many years, the possibility of undergoing such an operation, the State had thus breached the applicant's right to respect for his private life.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage.

(The present case concerns the compatibility with Article 8 of the conditions imposed on a person wishing to change sex. For previous cases, where the Court had been asked to ascertain whether or not restrictions imposed on operated transsexuals on the exercise of their Article 8 rights were justified, see, for example, *Christine Goodwin v. the United Kingdom* [GC], 28957/95, 11 July 2002, [Information Note 44](#); *Van Kück v. Germany*, 35968/97, 12 June 2003, [Information Note 54](#); and *Hämäläinen v. Finland* [GC], 37359/09, 16 July 2014, [Information Note 176](#).)

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