

Press release issued by the Registrar

CHAMBER JUDGMENT
L. v. LITHUANIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *L. v. Lithuania* (application no. 27527/03).

The Court held:

- by six votes to one, that there had been **no violation of Article 3** (prohibition of degrading treatment) of the European Convention on Human Rights;
- by six votes to one, that there had been a **violation of Article 8** (right to respect for private life) of the Convention.

Under Article 41 (just satisfaction), the Court held, by five votes to two, that Lithuania, in order to meet Mr L.'s claim for pecuniary damage, was to adopt the required subsidiary legislation to Article 2.27 of its Civil Code on gender-reassignment of transsexuals, within three months of the present judgment becoming final.

The Court further held, by six votes to one, that should those legislative measures prove impossible to adopt within three months of the judgment becoming final, it would award Mr L. 40,000 euros (EUR) in respect of pecuniary damage. He was also awarded EUR 5,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The case concerned an application brought by a Lithuanian national, Mr L. who was born in 1978 and lives in Klaipėda (Lithuania). At birth he was registered as a girl, with a name clearly identifiable as female. However, from an early age, he submits that he felt his gender was male rather than female. He has been in a stable relationship with a woman since 1998.

On 18 May 1997 the applicant consulted a micro-surgeon about gender reassignment, who recommended that he consult a psychologist. He therefore went to Vilnius Psychiatric Hospital for tests in November 1997, where (it was later confirmed) he was diagnosed as a transsexual. On 16 December 1997 a doctor at Vilnius University Santariškės Hospital also diagnosed the applicant as a transsexual and advised that he consult a psychologist.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

An entry in the applicant's medical file of 28 January 1998 included a recommendation that he pursue hormone treatment with a view to eventual gender reassignment surgery, following which he was officially prescribed hormone treatment for two months.

The applicant submits that in 1999 his doctor refused to prescribe hormone therapy, in view of the legal uncertainty as to whether or not full gender reassignment could be legally carried out. Thereafter the applicant continued the hormone treatment "unofficially".

In 1999 the applicant went to Vilnius University, where his request to be registered under his chosen male name was accepted on compassionate grounds. However, his request the same year – that his name on all official documents be changed to reflect his male identity – was refused.

From 3 to 9 May 2000 the applicant underwent "partial gender reassignment surgery", namely a breast removal procedure, in the light of the new Civil Code which was due to be adopted. Article 2.27 § 1 of the Code, which entered into force on 1 July 2003, provides that "an unmarried adult has the right to gender reassignment (*pakeisti lytį*) in a medical way, if that is medically possible". The second paragraph of the provision stipulates that "the conditions and procedure for gender reassignment shall be established by law". The applicant agreed with the doctors that a further surgical step would be carried out following the adoption of the relevant laws governing those "conditions and procedures". No such laws have as yet been adopted.

In 2000, with the assistance of a Lithuanian Member of Parliament, the applicant chose a new name and surname for his birth certificate and passport, which were of Slavic origin, to avoid disclosing his gender; Lithuanian names and surnames are gender-sensitive. However, his personal code on his new birth certificate and passport (and on his Vilnius University diploma) remains unchanged; as it starts with the number four, it identifies his gender as female.

The applicant maintained that he faced a vast amount of daily embarrassment and difficulties; for example, he was unable to apply for a job, pay social security contributions, consult a doctor, communicate with the authorities, obtain a bank loan or cross the State border, without his female gender being disclosed. As a consequence, he alleged that he was condemned to social ostracism because he looked masculine but, in official papers, was identified as a woman. That state of affairs had left him in a permanent state of depression with suicidal tendencies.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 August 2003 and declared partly admissible on 6 July 2006. A hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 17 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian),
Riza **Türmen** (Turkish),
Mindia **Ugrekheldze** (Georgian),

Elisabet **Fura-Sandström** (Swedish),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (Serbian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Articles 3, 8, 12 (right to marry) and 14 (prohibition of discrimination), Mr L. complained about the lack of legislation allowing him to complete gender reassignment surgery and pursue his life as a person of male gender. He alleged, in particular, that the State's inaction in adopting that legislation was a concession to the negative attitude of the majority of the population towards a transsexual minority.

Decision of the Court

Article 3

An examination of the facts had shown that the applicant had suffered understandable distress and frustration but not circumstances of such an intense degree as to warrant considering his complaint under Article 3. The Court found it more appropriate to analyse that aspect of the applicant's complaint under Article 8. Consequently, the Court held that there had been no violation of Article 3.

Article 8

The Court observed that Lithuanian law had recognised transsexuals' right to change not only their gender but also their civil status. However, there was a gap in the relevant legislation: the law regulating full gender-reassignment surgery, although drafted, had yet to be adopted yet. In the meantime, no suitable medical facilities are reasonably accessible in Lithuania.

That legislative gap had left the applicant in a situation of distressing uncertainty as to his private life and the recognition of his true identity. Budgetary restraints in the public health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years, ie since 1 July 2003 when the relevant provisions had come into force. Given that only about 50 people (according to unofficial estimates) had been concerned, the budgetary burden on the State would not have been expected to be unduly heavy. Consequently, the Court considered that a fair balance had not been struck between the public interest and the rights of the applicant. The Court therefore concluded that there had been a violation of Article 8.

Articles 12 and 14

The Court observed that the applicant's complaint under Article 12 was premature, in that, should he complete full gender-reassignment surgery, his status as a man would be recognised together with the right to marry a woman. The key issue was that of the legislative

¹ This summary by the Registry does not bind the Court.

gap which had already been analysed under Article 8. It further observed that the applicant's complaint concerning discrimination was essentially the same as considered under Articles 3 and 8. The Court therefore held by six votes to one that there was no need to examine separately Mr L.'s complaints under Articles 12 and 14.

Judge Fura-Sandström expressed a partly dissenting opinion and Judge Popović expressed a dissenting opinion, the texts of which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Paramy Chanthalangsy (telephone: 00 33 (0)3 90 21 54 91)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.