

<b>Publication:</b>	A 232 C	
<b>Title:</b>	B. v. France	
<b>Application No:</b>	13343/87	
<b>Respondent:</b>	France	
<b>Referred by:</b>	Commission	
<b>Date of reference by Commission:</b>	12-11-1990	
<b>Date of reference by State:</b>		
<b>Date of Judgment:</b>	25-03-1992	
<b>Articles:</b>	8	<b>Conclusion:</b> Violation of article 8
	3	Not necessary to examine article 3
	50	Compensation under article 50 awarded
<b>Keywords:</b>	PRIVACY	

### Summary:

The Court first dealt with the Government's preliminary objections in respect of the failure of exhaustion of domestic remedies. It held that the applicant had complained in substance of a violation of her right to respect for her private life. The Court therefore dismissed the objection of failure to exhaust domestic remedies. The applicant had submitted to the Court of Cassation a point of law relating to Article 8. Furthermore, there had been no consistent case-law at that time to show in advance that her appeal was pointless. Such an appeal was after all in principle one of the remedies which should be exhausted in order to comply with Article 26, and had at the very least had the effect of postponing the starting point of the six-month period. The Court therefore also dismissed the objection that the application was out of time.

According to the applicant, the refusal to recognise her true sexual identity infringed her right to respect for her private life. The Court noted first of all that the notion of "respect" was not clear cut. In determining whether or not a positive obligation existed, it was necessary to have regard to the fair balance that had to be struck between the general interest and the interests of the individual. The Court considered that it was undeniable that with respect to transsexualism attitudes had changed, science had progressed and increasing importance was attached to the problem. However, there was as yet no sufficiently broad consensus between the member States of the Council of Europe to persuade the Court to reach opposite conclusions to those in its Rees judgment of 17 October 1986 and Cossey judgment of 27 September 1990. The Court found that there were noticeable differences between France and England with reference to their law and practice on civil status, change of forenames, use of identity documents, etc. Nothing would have prevented the insertion, once judgment had been given, in Miss B's birth certificate of an annotation whose purpose was to reflect her present position. Numerous French courts of first instance and courts of appeal had already ordered similar insertions to be made in cases of other transsexuals. The Court of Cassation had adopted a contrary position in its case-law, but this could change. It was true that the applicant had undergone the surgical

operation abroad, without the benefit of all medical and psychological safeguards now required in France. The operation had nevertheless involved the irreversible abandonment of the external marks of her original sex.

The Court considered that in the circumstances of the case the applicant's manifest determination was a factor which was sufficiently significant to be taken into account, together with other factors, with reference to Article 8. The judgements supplied to the Court by the Government did indeed show that non-recognition of a change of sex did not necessarily prevent the person in question from obtaining a new forename. However, this case-law had not been settled at the time when the French courts gave their rulings and it did not appear to be settled even now, as the Court of Cassation had apparently never had an occasion to confirm it. The refusal to allow the applicant the change of forename requested by her was therefore also a relevant factor from the point of view of Article 8. The Court found that the inconveniences which the applicant suffered as a result of the discrepancy between her legal sex as mentioned in various documents and her apparent sex reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8. The Court thus reached the conclusion, on the basis of the above-mentioned factors which distinguished this case from the Rees and Cossey cases, and without it being necessary to consider the applicant's other arguments, that she found herself daily in a situation which, taken as a whole, was not compatible with the respect due to her private life. Consequently, even having regard to the State's margin of appreciation, the fair balance which had to be struck between the general interest and the interests of the individual had not been attained, and there was thus a violation of Article 8 (15 votes to 6). The Court finally awarded the applicant under Article 50 100,000 FRF for non-pecuniary damage and 35,000 FRF for costs and expenses.