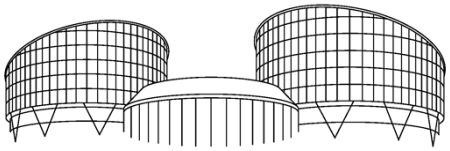

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF T.H. v. THE CZECH REPUBLIC

(Application no. 33037/22)

JUDGMENT

Art 8 • Private life • Refusal of applicant's request to change his personal numerical code (birth number) denoting gender on national identity card on the grounds he had not undergone gender reassignment surgery as required by domestic law • Decision amounted to the refusal to recognise the change of the applicant's gender • Making legal recognition of new gender identity of transgender persons conditional on undergoing a surgical operation entailing or possibly entailing sterilisation against their wishes, amounted to making the full exercise of their right to respect for private life conditional on relinquishing full exercise of the right to respect for physical integrity • Domestic authorities disregarded fair balance to be struck between the general interest and the interests of the individual

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 June 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of T.H. v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar*, President*,
María Elósegui,
Stéphanie Mourou-Vikström,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,
Pavel Simon*,* ad hoc *judge*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 33037/22) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, T.H. ("the applicant"), on 27 June 2022;

the decision to give notice of the application to the Czech Government ("the Government");

the decision not to have the applicant's name disclosed;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by Transgender Europe; the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), Trans*parent and the Institute for Legal Culture Ordo Iuris ("Ordo Iuris"), which were granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint Mr Pavel Simon to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Ms K. Šimáčková, the judge elected in respect of the Czech Republic, having withdrawn from sitting in the case (Rule 28 § 3);

Having deliberated in private on 20 May 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the requirement of sex reassignment surgery as a statutory condition for changing the personal numerical code denoting gender, and the authorities' refusal to grant the applicant's request for such a change on the grounds that he had not undergone that surgery. It raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in Prague. He was represented by Mr M. Matiaško, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. On the date of lodging of the application, the applicant was regarded for civil-law purposes as belonging to the male sex. For that reason, the masculine form is used in referring to him; however, this cannot be construed as excluding him from the gender with which he identifies.

5. The facts of the case may be summarised as follows.

I. BACKGROUND OF THE CASE

6. The applicant identifies as having a non-binary gender identity ("intergender"). At birth, he was registered as a boy and given a clearly male name. From an early age he struggled considerably with his gender identity, as the male identity assigned to him at birth did not match his psychological and social identity. Nevertheless, due to concerns about potential medical complications, he refused to undergo irreversible male-to-female sex reassignment surgery (which would have included, among other things, sterilisation). He did, however, undergo hormonal treatment (to reduce testosterone levels) and some body aesthetic procedures. In the autumn of 2012, he changed his first name and was issued a new identity card, mentioning his male sex and a male form of his personal numerical code (birth number).

7. From May 2012 the applicant repeatedly requested to have the "sex/gender marker" and personal numerical code on his national identity card changed to either a neutral one or, at the very least, a female one. However, the Ministry of the Interior dismissed those requests on the grounds that he had not fulfilled the legal conditions for such a change, namely that he had not demonstrated having undergone sex reassignment surgery, which was laid down as a condition for a change of sex/gender under Article 29 § 1 of the Civil Code and section 21(1) of the Specific Health Services Act (Law no. 373/2011).

8. The case file contains a medical report issued in July 2013 by a Swiss doctor (the applicant lived in Switzerland at that time) certifying that the applicant was receiving "appropriate clinical treatment for gender transition to the new gender of female".

9. In June 2015, following a complaint lodged by the applicant, the Czech Public Defender of Rights considered that the Ministry's conduct did not amount to discrimination because the legislation did not permit a change of birth number without completed sex reassignment surgery, and that it was the

role of the Constitutional Court to assess whether such a requirement was compatible with fundamental rights.

II. PROCEEDINGS GIVING RISE TO THE APPLICATION

10. On 11 August 2017 the applicant again asked the Ministry of the Interior to change his personal numerical code (birth number). However, his request and subsequent complaint were dismissed with reference to the legislation in force.

11. On 25 October 2017 the applicant lodged an administrative action against the alleged unlawful interference, claiming that the Ministry's response was in breach of the prohibition of ill-treatment and discrimination, and violated his right to respect for private life.

12. On 14 May 2018 the Prague Municipal Court dismissed his action on the grounds that, having not undergone sex reassignment surgery, he had not met one of the statutory conditions for changing his birth number. Referring to the case of *A.P., Garçon and Nicot v. France* (nos. 79885/12 and 2 others, 6 April 2017), the court found that judgment surprising and liable to be disputed, particularly in the light of the persuasiveness of the dissenting opinion, the inconsistency on the issue across the member States of the Council of Europe and the fact that the Court usually proceeded with restraint and respected the circumstances specific to member States in matters involving "values" of the type at the heart of the dispute between the applicant and the respondent. In the Municipal Court's view, the case at hand warranted a different conclusion, as in the context of Czech law, the interest in ensuring the reliability and consistency of civil status records and the need to protect legal certainty outweighed the applicant's right to gender self-determination.

13. The applicant lodged a cassation appeal in which he specified that, although identifying himself as "intergender", he was seeking a change of his registered sex from male to female since the possibility of registering a third, neutral sex was not provided for by Czech law. He repeated that statement in his subsequent constitutional appeal (see paragraph 15 below).

14. On 30 May 2019 the Supreme Administrative Court dismissed a cassation appeal by the applicant as ill-founded. Considering it necessary to continue the judicial dialogue with the Court initiated by the Municipal Court, it emphasised that the concept of legal gender in domestic law – including the gender reassignment procedure – was rooted in a strong binary and essentially objective (medical) perception of gender by Czech society, which left no room for loosening legal-gender regulation on the basis of a subjective understanding. Indeed, the prevailing view in the Czech Republic was that any departure from a strictly binary social gender – derived from biological gender – was undesirable, contrary to "common sense" and disruptive to the basic building blocks of social order. By insisting on the binarity of legal gender and strict requirements for gender reassignment, society had

demonstrated its wish to maintain the existing prescriptive assessment of the disparity between biological and perceived gender. The legal gender reassignment procedure, which afforded a reasonable means for individuals to reconcile their subjectively perceived gender with the way their gender was "objectively" viewed, was therefore not incompatible with the constitutional order. Lastly, the Supreme Administrative Court considered that it was not its role to bring about a shift in the mindset of society through its case-law, and that any changes in that perception (accepted as a norm) should be instigated by the legislature.

15. Subsequently, the applicant lodged a constitutional complaint, claiming that making the change of his birth number conditional on sex reassignment surgery violated his rights to physical and mental integrity, and to respect for private and family life, in breach of Articles 3, 8 and 14 of the Convention. He also sought the annulment of the relevant provisions of domestic law, namely Article 29 § 1 of the Civil Code, section 21(1) of the Specific Health Services Act and section 13(3) of the Population Register Act (Law no. 133/2000). The matter was referred to the plenary of the Constitutional Court.

16. By plenary judgment no. Pl. ÚS 2/20 of 9 November 2021, the request for annulment was rejected because the required qualified majority had not been reached (falling short by one vote). The plenary noted, first, that the case had arisen from proceedings in which the applicant had sought only a change in his birth number and, second, that, according to his statements, he felt neither like a man nor like a woman, which meant that it was irrelevant to assess the gender reassignment procedure referred to in Article 29 § 1 of the Civil Code. That provision posed no obstacle to the applicant's ability to express himself in accordance with his gender, and its annulment would not lead to the creation of a third, neutral category corresponding to his feelings. In the plenary's view, the only provision applicable to the applicant's case was section 13(3) of the Population Register Act, which differentiated between the birth numbers of men and women (by adding 50 to the month number in the case of women), thus making it possible to deduce a person's legal gender. However, since the Czech legal order distinguished between men and women, who were treated differently or separately in certain contexts, it was logical, appropriate and constitutional for the State to register objective information about gender, necessary for it to carry out its functions, which was done through a unique numerical code assigned to each individual at birth. The court continued by stating that the purpose of the impugned provision was not to indicate the gender with which the holder of a birth number internally identified, as this was of no significance to the State. Moreover, it could not be inferred from the right to privacy that, in a situation where a person was uncomfortable with the information recorded, he or she had the right not to have that information registered, or to have information not reflecting reality registered instead. That being said, it was for the

legislature to determine the format of birth numbers and whether they had to allow for the identification of gender.

As to the Court's case-law relied on by the applicant, the Constitutional Court expressed doubts as to whether some of the Court's gender-related findings could be applied to the Czech legal system, particularly as they had been made in cases which – with the exception of *Hämäläinen v. Finland* ([GC], no. 37359/09, ECHR 2014) – were factually and legally different from the applicant's case. In this regard, the court observed that the Court had not yet ruled that gender should not be discernible from birth numbers (or comparable identifiers) or that States had to put in place birth numbers corresponding to a third gender or gender neutrality.

Seven of the fourteen voting judges of the Constitutional Court dissented.

17. On 7 June 2022, following the above plenary judgment, the Constitutional Court dismissed the applicant's constitutional appeal (no. II. ÚS 2460/19), stating that *A.P., Garçon and Nicot* (cited above) was not relevant to his case because he had only requested to change the format of the birth number and identified as "gender neutral", while in *A.P., Garçon and Nicot* the Court had considered the issue of transgender people and the legal recognition of their genuinely perceived identity. In the Constitutional Court's view, therefore, the Court's case-law on the issues arising from the applicant's case was not yet settled and, furthermore, did not always rely on a genuine consensus but rather on emerging European or even international "trends", which made it difficult for domestic courts to build on the Court's legal opinions and apply them to similar cases.

The Constitutional Court therefore considered that the State has a wide margin of appreciation in such matters, which were morally and ethically sensitive and on which there was no consensus among the Council of Europe member States. It found that the refusal to change the applicant's birth number to a "neutral" form – or even a "female" form – despite the applicant not considering himself a woman and not being one by any conceivable objective or subjective measure, did not upset the fair balance of interests at stake or violate the State's positive obligations under Article 8 of the Convention. Referring to the plenary judgment, the Constitutional Court reiterated that the State's interest in the case was very high, as the entire legal order was based on a binary approach to gender, which was not so much a choice of the public authorities, but rather respect for the attitude shown by the Czech society as a whole, and that a change brought about by the Court could provoke further social tensions and ultimately worsen the position of those concerned.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic legislation

18. Article 29 § 1 of the Civil Code, as in force at the material time, provided that gender reassignment was accomplished through surgery involving the disabling of the reproductive function and genital reconstruction. The date stated on the certificate issued by the healthcare provider was considered to be the official date of the change of sex/gender.

Under Article 29 § 2, gender reassignment does not affect an individual's personal status, personal relationships or financial and property situation. However, it results in the dissolution of a marriage or registered partnership. Regarding the duties and rights of the former spouses towards a common child, as well as their material duties and rights following the dissolution of their marriage, the decision will be taken by a court, even on its own initiative.

19. Under section 21(1) of the Specific Health Services Act (Law no. 373/2011), as in force at the material time, gender reassignment was to be understood, for the purposes of the Act, as the performance of medical procedures aimed at surgically altering sex and, at the same time, disabling the patient's reproductive function. The term "transsexual patient", as used in the Act, was to be understood as designating a person with a permanent dissonance between psychological and physical gender.

20. Section 13(3) of the Population Register Act (Law no. 133/2000) provides that the birth number is a personal numerical code based on an individual's date of birth, with 50 added to the month number in the case of women. Under section 17(2)(d), a change of birth number is carried out, *inter alia*, in the event of a change of sex/gender.

21. Section 17a of the Civil Registers Act (Law no. 301/2000) provides that an additional record of a change of sex is made on the basis of a certificate issued by a healthcare provider (see paragraph 15 above).

22. Under section 5(1)(a) of the Identity Card Act (Law no. 269/2021), an identity card must contain, *inter alia*, a person's first name(s) and surname, sex, citizenship, date of birth, place of birth, personal numerical code (birth number) and photograph.

B. Relevant case-law subsequent to the domestic proceedings instituted by the applicant

23. In judgment no. 6 As 207/2022 of 17 August 2023, delivered in a case in which the claimant unsuccessfully sought legal gender reassignment (from female to male) without undergoing the required surgery, the Supreme Administrative Court acknowledged that surgery disabling the reproductive

function and altering the sexual organs was mutilating and usually irreversible. The court emphasised, however, that beyond the general concept of legal certainty, another public interest pursued by the current legislation requiring surgical sterilisation was the protection of the fundamental natural attributes of family and parenthood. The court observed that if an individual born as a woman could legally become a man without disabling the reproductive function, that individual could give birth to a child as a man but would be unable to become the child's mother, since under the Civil Code, the child's mother was the woman who gave birth to the child.

The claimant challenged that judgment before the Constitutional Court, and his related request to annul the relevant legal provisions was referred to the plenary of the Constitutional Court.

24. In plenary judgment no. Pl. ÚS 52/23 of 24 April 2024, referring *inter alia* to the Court's case-law, the plenary considered that the legislation on legal gender reassignment – specifically the requirement to undergo surgery involving genital reconstruction and disabling of the reproductive function – amounted to a significant interference with the bodily integrity of trans people and with their right to self-determination and personal autonomy. The plenary held that it was disproportionate to the pursued aim of ensuring legal certainty by preventing arbitrary or purposeful gender changes. The court held that it was possible to achieve the same aim by less severe means (for example, by requiring opinions from several independent specialist sexologists confirming the irreversibility of the individual's conviction regarding gender reassignment, coupled with a period of reflection, and so on).

Consequently, the plenary decided to annul the first sentence of Article 29 § 1 of the Civil Code and the first sentence of section 21(1) of the Specific Health Services Act, suspending the enforceability of the annulment until 30 June 2025 in order to provide the legislature with sufficient time to adopt new legal regulations on gender recognition.

It follows that those provisions will cease to apply on 30 June 2025, even if no new legislation is adopted by that date.

C. Draft reform

25. In 2018 the Ministry of Justice drafted legislation to remove the requirement for irreversible sex reassignment surgery as a legal condition for a successful administrative change of sex/gender. Instead, the change would be conditional on a diagnosis of gender identity disorder. In October 2022 the then Minister of the Interior expressed support for that change. In 2023 the draft legislation was discussed and revised at expert and political levels and revised. At the end of March 2023 the Ministry of Justice announced plans to remove the requirement of sterilisation for the purpose of a change of gender.

26. In comments dated 21 October 2024 on the government's 2025 Legislative Work Plan, the Czech Public Defender of Rights noted the

absence of any task corresponding to the regulation of legal conditions for gender reassignment. The Public Defender stated that no draft amendment had yet been submitted by the relevant ministries, despite the approaching deadline for implementing the Constitutional Court's plenary judgment no. Pl. ÚS 52/23, and expressed concern about the potential legal vacuum that might arise after 30 June 2025.

II. EUROPEAN AND INTERNATIONAL LAW AND PRACTICE

A. Parliamentary Assembly of the Council of Europe (PACE)

27. On 22 April 2015 PACE adopted Resolution 2048 (2015) on discrimination against transgender people in Europe. This called on member States, among other things, to abolish sterilisation and other compulsory medical treatment, as well as a mental health diagnosis, as a necessary legal requirement to recognise a person's gender identity in laws regulating the procedure for changing a name and registered gender. PACE also urged member States to amend classifications of diseases used at national level and advocate the modification of international classifications, making sure that transgender people, including children, were not labelled as mentally ill, while ensuring stigma-free access to necessary medical treatment.

B. Commissioner for Human Rights of the Council of Europe

28. In the report following her visit to the Czech Republic from 20 to 24 February 2023 (CommHR(2023)26 of 5 September 2023), the then Commissioner for Human Rights, Dunja Mijatović, noted that by insisting on a surgical intervention, the legal gender recognition procedure clearly violated the Czech Republic's human rights obligations and was still based on a pathologised approach, despite the World Health Assembly having removed trans issues from the list of mental illnesses in the World Health Organisation's International Classification of Diseases in 2019. She stated that this approach was still far removed from international human rights best practice, which indicated that States should ensure "quick, transparent and accessible procedures, based on self-determination" (reference was made here to paragraph 6.1.2. of the above-mentioned PACE Resolution), and that they should not require applicants to fulfil abusive requirements, including medical diagnosis and divorce.

29. In March 2024 the then Commissioner published an issue paper entitled "Human rights and Gender Identity and Expression" in which she reiterated the stance against making the legal recognition of the gender identity of transgender people conditional on irreversible sterilisation surgery, and recommended a self-determination model of such recognition. The Commissioner stated as follows:

"In at least 11 member states, requirements for [legal gender recognition] continue to include sterilisation and invasive physical interventions, such as mandatory surgical interventions. Unwanted medical procedures and sterilisation violate the core right to physical integrity and the right to the protection of health, often involving painful and irreversible bodily alterations, and represent an unlawful interference with Article 8 of the Convention. Throughout her mandate, the Commissioner has condemned such requirements in various member states, including in Czechia, Slovakia and Georgia. As stated by the Court, such procedures coerce trans people into an "impossible dilemma" of choosing between their right to bodily integrity and their right to [legal gender recognition]. They may also result in a person forfeiting their capacity to have children and to found a family, as further discussed in the section on family life. These interventions are imposed under circumstances, which are incompatible with the guarantee of free and informed consent to medical treatment.

...

Since the publication of the 2009 Issue Paper on human rights and gender identity, there has been a shift in focus towards the question of whether individuals should be able to access [legal gender recognition] through self-determination. Under a self-determination model, applicants obtain [legal gender recognition] through a simple administrative procedure, often a statutory declaration submitted to a public office, without having to satisfy additional legal or medical requirements, such as the consent or diagnosis of a healthcare professional.

Across the Council of Europe, 11 member states now provide access to [legal gender recognition] by way of self-determination, with a number of other member states considering doing the same. Similar laws also exist in a number of countries beyond Europe, for example, in Argentina and New Zealand.

For many trans people, self-determination procedures are preferable for several reasons. Streamlining and simplifying the application process, self-determination removes the requirement to engage with judicial, administrative and medical bureaucracies that can operate as insurmountable barriers – particularly for trans people who are further marginalised and more vulnerable to discrimination due to other characteristics. More fundamentally, however, self-determination involves the symbolic recognition that trans people are the ultimate arbiters of their own legal gender, without a requirement for third party confirmation or approval. While the Court has so far not held that the Convention guarantees a right to [legal gender recognition] through self-determination, such procedures are recommended as a human rights best practice by numerous bodies and mandate holders, including within the UN, the Organization of American States and the Council of Europe. The Commissioner has also consistently recommended self-determination as the most effective means of realising [legal gender recognition], and therefore of respecting and upholding trans people's personal autonomy and identity, both of which are encompassed by the right to private life under Article 8 of the Convention in this sphere."

C. European Committee of Social Rights

30. On 15 May 2018 the European Committee of Social Rights issued a decision on complaint no. 117/2015 brought against the Czech Republic by the organisations Transgender Europe and ILGA-Europe. The complaint alleged that, in the Czech Republic, the sterilisation requirement imposed on trans people wishing to change their personal documents so that they reflect

their gender identity was in breach of, *inter alia*, Article 11 (the right to protection of health) of the European Social Charter of 1961.

The Committee considered that gender reassignment surgery, as required in the Czech Republic for a change of gender identity, was not necessary for the protection of health, and that obliging an individual to undergo such serious surgery – which could in fact be harmful to health – could not be considered consistent with the State's obligation to refrain from interfering with the enjoyment of the right to health. It emphasised that any medical treatment without free and informed consent could not be compatible with physical integrity and necessarily with the right to protection of health. The Committee referred to the Court's finding in *Van Kück v. Germany* (no. 35968/97, § 75, ECHR 2003-VII) that medical treatment could not be considered to be the subject of genuine consent when the fact of not submitting to it deprived the person concerned of the full exercise of his or her right to gender identity and personal development. It concluded that the condition attached to the recognition of a transgender person's gender identity vitiated free consent and violated physical integrity and human dignity. It could not, therefore, be considered compatible with the right to protection of health as guaranteed by Article 11 § 1 of the Charter.

D. UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

31. In his report of 1 February 2013 (A/HRC/22/53), the Special Rapporteur stated as follows:

> "38. In the context of prioritizing informed consent as a critical element of a voluntary counselling, testing and treatment continuum, the Special Rapporteur on the right to health has also observed that special attention should be paid to vulnerable groups. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of, and adapt to, the specific needs of lesbian, gay, bisexual, transgender and intersex persons (A/64/272, para. 46). The Committee on Economic, Social and Cultural Rights has indicated that the International Covenant on Economic, Social and Cultural Rights proscribes any discrimination in access to health-care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.
>
> ...
>
> 76. ... hormone therapy and genital-normalizing surgeries under the guise of so called 'reparative therapies' ... are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.
>
> ...
>
> 88. The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, 'reparative therapies' or

'conversion therapies', when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups."

32. His report of 5 January 2016 (A/HRC/31/57) states as follows:

"49. Transgender persons often face difficulties in accessing appropriate health care, including discrimination on the part of health-care workers and a lack of knowledge about or sensitivity to their needs. In most States they are refused legal recognition of their preferred gender, which leads to grave consequences for the enjoyment of their human rights, including obstacles to accessing education, employment, health care and other essential services. In States that permit the modification of gender markers on identity documents abusive requirements can be imposed, such as forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures (A/HRC/29/23). Even in places with no legislative requirement, enforced sterilization of individuals seeking gender reassignment is common. These practices are rooted in discrimination on the basis of sexual orientation and gender identity, violate the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture."

...

72. With regard to abuses in health-care settings, the Special Rapporteur calls upon States to:

...

(e) Outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups; and ensure that health-care providers obtain free, full and informed consent for such procedures and fully explain the risks, benefits and alternatives in a comprehensible format, without resorting to threats or inducements, in every case;

...

(h) Adopt transparent and accessible legal gender recognition procedures and abolish requirements for sterilization and other harmful procedures as preconditions;

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained about the authorities' refusal to grant his requests to change his "sex/gender marker" and birth number on the grounds that he had not undergone the irreversible surgery required by domestic law for gender reassignment.

He relied on Articles 3 and 8 of the Convention, the relevant parts of which read as follows:

Article 3

"No one shall be subjected to ...inhuman or degrading treatment..."

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

34. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

35. Pointing to the vote of the plenary Constitutional Court (see paragraph 16 above), the applicant observed that the judges who had dealt with his case had been very divided, with a majority considering that the sterilisation requirement was extremely harmful and amounted to ill-treatment.

36. He also argued that his case revealed an alarming phenomenon of disrespect for the Convention system and the relatively well-established case-law of the Court, as demonstrated by the Supreme Administrative Court in its judgment of 30 May 2019 and by the minority of the plenary Constitutional Court. In his view, one of the reasons for such a problematic approach could be the fact that cases of transgender and non-binary people had always been dealt with by the Court under Article 8 of the Convention, which guaranteed relative rights and allowed for considerations of proportionality. While welcoming the Government's acknowledgement that there had been a violation of Article 8 in his case, he – together with the third-party interveners Transgender Europe and ILGA-Europe – asked the Court to find that the sterilisation requirement, as a condition for legal gender recognition, also violated the prohibition of ill-treatment enshrined in Article 3.

37. On this last point, the applicant asserted that there was a clear consensus among European countries, healthcare professionals and various human rights experts (see paragraphs 30-32 above) that the sterilisation requirement amounted to ill-treatment and that there was no imminent necessity for it, which was why almost all member States had abolished it. Relying on a number of cases (*V.C. v. Slovakia*, no. 18968/07, ECHR 2011 (extracts); *N.B. v. Slovakia*, no. 29518/10, 12 June 2012; *I.G. and Others v. Slovakia*, no. 15966/04, 13 November 2012; and *G.M. and Others*

v. the Republic of Moldova), he further stated there was an emerging trend at the Court towards recognising that interventions into reproductive rights, when they violated the principle of informed consent for individuals in vulnerable situations, were contrary to Article 3. He submitted that trans people, just like Roma and people with disabilities, also belonged to a particularly vulnerable group.

38. As to his own situation, the applicant argued that when he had requested to change his "sex/gender marker", he had been at an early stage of his reproductive life, and that the sterilisation requirement, stemming from the law itself and not from any individual failure or practice, had placed him in a situation where he had faced an "impossible dilemma" (*X and Y v. Romania*, cited above, § 165), resulting in severe medical and psychological after-effects, including severe mental suffering.

(b) The Government

39. First, relying on the fact that the Court had previously dealt with the sterilisation requirement for the purposes of legal gender recognition solely under Article 8 of the Convention, the Government submitted that there had been no violation of Article 3 in the present case.

40. Second, with respect to the alleged violation of Article 8, they mainly drew attention to the reasoning set out in the decisions issued in the applicant's case by the Supreme Administrative Court and the Constitutional Court (whose plenary had proceeded on the assumption that the applicant sought recognition of a third, neutral gender). Considering that they had to exercise judicial restraint, both courts had found that the decision reached by the Court in the case of *A.P., Garçon and Nicot* (cited above) was not applicable to the applicant's case, making reference, in particular, to the current attitudes of Czech society and its strictly binary and objective understanding of gender, which was reflected in many areas of the Czech legal order. Therefore, in the view of those courts, the impugned legislation pursued the aims of legal certainty and the preservation of social order, and also, as added later by the Supreme Administrative Court, the protection of the fundamental natural attributes of family and parenthood (see paragraph 23 above).

41. Lastly, the Government added that the current regulation of gender reassignment had entered into force in 2012, and that following the Court's judgments in *Y.Y. v. Turkey* (no. 14793/08, ECHR 2015 (extracts)) and *A.P., Garçon and Nicot* (cited above) and the decision of the European Committee of Social Rights (see paragraph 30 above), a political debate had been launched at the domestic level on whether that legislation was compatible with Article 8 (see paragraph 25 above).

2. Submissions by the third-party interveners

(a) European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), Transgender Europe and Trans*parent

42. In their joint submissions of March 2024, relying *inter alia* on the findings of various international human rights bodies, the third-party interveners argued that medical interventions resulting in the sterilisation of transgender people vitiated free consent and violated the physical integrity of those individuals, and that, as such, they were contrary not only to Article 8 but also to Article 3 of the Convention and to Article 14 taken in conjunction with those provisions.

43. The third-party interveners further stated that there had been moves across Europe, sometimes triggered by court decisions, to simplify legal gender recognition procedures, abandon any requirement for sterilisation and, in some countries, also acknowledge violations stemming therefrom and compensate victims of such policies. They observed that out of the thirty-two member States allowing for legal gender recognition, only twelve still required sterilisation, while in many others, the procedure was based solely on self-determination. As to the Czech Republic, a recent survey showed that 57% of respondents among transgender people were dissatisfied with how the transition process was regulated in the country. In another survey, 49% of Czech respondents supported legal gender recognition for transgender people.

(b) Ordo Iuris

44. Ordo Iuris submitted that the States' margin of appreciation as to the requirements for the legal recognition of sex reassignment for transgender people should be extended in the Court's case-law in order to take into account cultural specificities of countries where the majority of society was attached to conservative moral values. It observed that the Court had always accepted that the margin of appreciation was wider in sensitive moral and ethical issues, even when most member States had adopted a uniform practice, as in the case of abortion (*A, B and C v. Ireland* [GC], no. 25579/05, ECHR 2010). With regard to transgender people, there were, in its view, weighty reasons to keep a wide margin of appreciation, such as the principle of the inalienability of civil status, the reliability and consistency of civil status records, legal certainty, the persisting relevance of the biological and binary concept of sex, and the protection of a child's interests in a family in which one of the parents turned out to be transgender.

45. Ordo Iuris was of the view that it could not be inferred from the Court's case-law that States were obliged to legally recognise transgender people who had not completed the hormone-surgical reassignment process, since Article 8 was found to be breached only when compulsory surgery led

to irreversible sterilisation. In its view, therefore, surgery only altering appearance without interfering with the genital organs could ensure a proportionate balance. It noted, in this regard, that many member States still required some kind of medical intervention (surgery, hormone therapy or examination). It also stressed that to remain within the protection of the Convention, individual decisions regarding so-called gender identity had to be based on a serious, consistent and determined attitude on the part of the person concerned, and that respect for gender identity did not imply the right for an individual to arbitrarily choose his or her sex identity.

3. The Court's assessment

(a) Scope of the case

46. The Court notes at the outset that the applicant relied on both Articles 3 and 8. It reiterates that, being the master of the characterisation to be given in law to the facts of a case, it is not bound by the characterisation given by the parties. In the present case, having regard, in particular, to the fact that the applicant was not subjected to any medical intervention against his will (compare, for example, *G.M. and Others v. the Republic of Moldova*, no. 44394/15, §§ 84-85, 22 November 2022, with further references) nor to any interference with his reproductive rights (compare, for example, *V.C. v. Slovakia*, cited above, where the applicant was subject to unvoluntary sterilisation), as well as to the nature of the proceedings brought by him before the domestic authorities and to the approach taken by it in similar cases (compare *A.P., Garçon and Nicot*, cited above, and *X and Y v. Romania*, nos. 2145/16 and 20607/16, § 104, 19 January 2021), the Court considers that his complaints fall to be examined solely under Article 8 of the Convention.

47. The Court further observes that, both before it and the domestic courts, the applicant invoked in substance his right to self-determination. While it is true that the applicant's arguments before the Constitutional Court led it to approach his case as concerning primarily the issue of a change of his birth number (equivalent to a sex/gender marker) to a third, neutral form (see paragraphs 16 and 17 above), the Court notes that the applicant stated on several occasions that he was seeking a change of his registered sex from male to female (see paragraph 13 above) and that when he lived in Switzerland, he had been receiving treatment corresponding to that change (see paragraph 7 above). Also, the applicant has not, before the Court, explicitly challenged the absence of a legal gender recognition procedure available to individuals who identify as non-binary. His complaint to the Court must therefore be understood as aiming at the refusal by the domestic authorities of his request to change his gender from male to female. Consequently, the present case does not concern any obligation of the respondent State to recognize a third gender or a non-binary gender status (see also *Y v. France*, no. 76888/17, §§ 90-91, 31 January 2023).

(b) General principles

48. The Court reiterates that the right to respect for private life under Article 8 of the Convention extends to gender identity, as a component of personal identity. This holds true for all individuals, including transgender people who have not undergone gender reassignment treatment or who do not wish to undergo such treatment (see *A.P., Garçon and Nicot*, cited above, §§ 92-94, and *R.K. v. Hungary*, no. 54006/20, § 52, 22 June 2023).

49. The Court has already found that it is the States' positive obligation under Article 8 to provide quick, transparent and accessible procedures for changing the registered sex/gender marker of transgender people (see *A.D. and Others v. Georgia*, nos. 57864/17 and 2 others, 1 December 2022, and *R.K. v. Hungary*, cited above). It has further established that making the legal recognition of the new gender identity of transgender people conditional on sterilisation or treatment involving a very high probability of sterilisation, which such individuals did not wish to undergo, violates Article 8 of the Convention. In the Court's view, such a requirement amounts to making the full exercise of the right to respect for private life conditional on relinquishing full exercise of the right to respect for physical integrity, which is directly involved when it comes to sterilisation (see, in particular, *A.P., Garçon and Nicot*, cited above, § 131).

50. On the other hand, the Court has considered that the requirements to prove, with a view to having the gender marker on a birth certificate amended, the existence of a psychiatric diagnosis of gender identity disorder and to undergo an expert medical assessment, strike a fair balance between the competing interests at stake (ibid., §§ 139-54). In this connection, however, it observes that at the time, "transsexualism" was included in Chapter V of the World Health Organisation's International Classification of Diseases (ICD-10) entitled "Mental and behavioural disorders", under the category "Disorders of adult personality and behaviour", sub-category "Gender identity disorders" (ibid., § 139). As pointed out by the Commissioner for Human Rights of the Council of Europe (see paragraph 28 above), this is no longer the case. The new version issued in 2024 (ICD-11) has redefined gender identity-related health to reflect current knowledge that trans-related and gender diverse identities are not conditions of mental ill-health. Therefore, "transsexualism" has been replaced with "gender incongruence of adolescence and adulthood", which now appears in a new chapter "Conditions related to sexual health" and is characterised by a marked and persistent incongruence between an individual's experienced gender and the assigned sex, which often leads to a desire to "transition", in order to live and be accepted as a person of the experienced gender. This may involve hormonal treatment, surgery or other healthcare services to align the individual's body, as much as desired and to the extent possible, with the experienced gender.

51. Article 8 has also been found to have been violated in situations where, in the absence of any clear and foreseeable legal framework for gender recognition, the domestic authorities refused to legally recognise the applicants' gender reassignment on the grounds that they had not undergone gender reassignment surgery (see *X and Y v. Romania*, cited above), or where authorisation for gender reassignment by means of surgery was contingent upon a prior requirement of inability to procreate (see *Y.Y. v. Turkey*, no. 14793/08, ECHR 2015 (extracts)).

52. Furthermore, the Court has previously held that it attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed than to the existence of clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transgender people but of legal recognition of the new gender identity of post-operative transgender people (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 85, ECHR 2002-VI, and *Y.Y. v. Turkey*, cited above, § 108).

53. Nevertheless, where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, or where the States are required to strike a balance between competing private and public interests or Convention rights, the margin of appreciation afforded to them in implementing their positive obligations under Article 8 will usually be wide. However, where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see, in particular, *Hämäläinen v. Finland* [GC], no. 37359/09, § 67, ECHR 2014, and *A.P., Garçon and Nicot*, cited above, § 121). The Court has also considered that since the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 and the right to gender identity and personal development is a fundamental aspect of the right to respect for private life, the States have only a narrow margin of appreciation in that area (ibid., § 123).

(c) Application of the general principles to the present case

54. The Court observes that, under Czech law, transgender people are able to have their gender reassignment recognised and civil status records amended (see paragraphs 20 and 21 above). Under the Civil Code and the Specific Health Services Act, as in force until 30 June 2025 (see paragraphs 15, 16 and 24 above), legal gender reassignment has been dependent on surgical intervention, accompanied by the disabling of the reproductive function and the alteration of sexual organs, which had to subsequently be certified by a healthcare provider. Thus, at the material time and up until that date, transgender people in the Czech Republic who did not wish, or were not advised for health or other reasons, to undergo gender

reassignment surgery were unable to have their identity documents changed to reflect their gender.

55. In the present case, the domestic authorities refused to accept the applicant's request to change his personal numerical code (birth number), as such a change was contingent on completed gender reassignment involving surgery, which refusal amounted in the Court's view to the refusal to recognise the change of the applicant's gender. However, the applicant did not wish to undergo such surgery.

56. The Court reiterates that it fully accepts that safeguarding the principle of the inalienability of civil status, the consistency and reliability of civil status records, and, more broadly, the need for legal certainty are in the general interest and justify putting in place stringent procedures aimed, in particular, at verifying the underlying motivation for requests to change legal identity (see, *mutatis mutandis, A.P., Garçon and Nicot*, cited above, § 142, and *S.V. v. Italy,* no. 55216/08, § 69, 11 October 2018). However, it has also established that making the legal recognition of the new gender identity of transgender people conditional on sterilisation, or on treatment involving a very high probability of sterilisation which such individuals do not wish to undergo, amounts to making the full exercise of their right to respect for private life under Article 8 of the Convention conditional on their relinquishing the full exercise of their right to respect for physical integrity, as protected by that provision (see *A.P., Garçon and Nicot*, cited above, § 131).

57. In this connection, the Court also takes into account the international material (see paragraphs 27-31 above). In particular, various bodies of the Council of Europe – such as PACE, the Commissioner for Human Rights and the European Committee of Social Rights – have criticised legislation that makes the recognition of a person's gender identity conditional on sterilisation or other compulsory medical treatment. The third-party interveners in the present case referred to those findings, insisting on the need to abandon the sterilisation requirement (see paragraphs 42-43 above).

58. In the present case, the applicant faced precisely such an insoluble dilemma, being required either to undergo surgery and waive the full exercise of his right to respect for his physical integrity, or to renounce the recognition of his gender identity, which relates to his right to respect for private life. While admitting that safeguarding the principle of the inalienability of civil status, ensuring the reliability and consistency of civil-status records and, more generally, ensuring legal certainty, are in the general interest (see paragraph 56 above), the Court finds that the domestic authorities disregarded the fair balance which has to be struck between the general interest and the interests of the individual (ibid., § 132). This has not been contested by the Government (see paragraphs 39-40 above).

59. Lastly, the Court observes that legislative reform is currently underway in the Czech Republic concerning the gender recognition

procedure (see paragraphs 25 and 41 above), a process which has been given fresh impetus by the Constitutional Court's plenary judgment no. Pl. ÚS 52/23 (see paragraph 24 above). The Court notes that that judgment – which demonstrates the importance of judicial dialogue in a system based on shared responsibility – offers an effective prospect that the new regulation will allow transgender people to obtain legal gender recognition without undergoing sex reassignment surgery. At the same time, it shows respect for the prevailing attitude of a binary approach to gender within Czech society, as referred to by the highest domestic courts (paragraphs 14 and 17 above), as well as for the rights and freedoms of others (see, for example, paragraphs 23 and 44 *in fine* above) within the meaning of the second paragraph of Article 8 of the Convention. In this connection, the Court notes that gender reassignment may indeed give rise to different situations involving important private and public interests (see, for example, *Hämäläinen*, cited above; *O.H. and G.H. v. Germany*, nos. 53568/18 and 54741/18, 4 April 2023; and *A.H. and Others v. Germany*, no. 7246/20, 4 April 2023).

60. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention in respect of the period of time until 30 June 2025 (see paragraphs 24 and 54).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 3 AND 8

61. Under Article 14 of the Convention taken in conjunction with Articles 3 and 8, the applicant complained that he was forced to repeatedly and involuntarily disclose his gender identity ("come out") every time he had to present his identity documents.

62. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It should therefore be declared admissible. However, in view of its finding concerning Article 8 (see paragraph 60 above), the Court considers it unnecessary to examine whether there has been a violation in the present case of Article 14 read in conjunction with that provision (see *S.V. v. Italy*, § 77, and *X and Y v. Romania*, § 171, both cited above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

64. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of prolonged psychological suffering.

65. The Government proposed that the Court adopt the same approach as in similar cases of a violation of Article 8, where a much lower amount or no amount at all had been awarded (see *A.D. and Others v. Georgia*, and *A.P., Garçon and Nicot*, both cited above).

66. Having regard to all the circumstances of the present case, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage caused to the applicant (see *A.P., Garçon and Nicot*, cited above, § 164).

B. Costs and expenses

67. The applicant also claimed EUR 3,000 (plus VAT chargeable to his lawyer) for thirty hours' legal work related to the proceedings before the Court. He submitted an invoice issued by his lawyer, payable by 7 March 2024.

68. The Government argued that the applicant had submitted an invoice issued by his lawyer but no confirmation that he had actually paid the sum in question.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, namely the invoice establishing the applicant's obligation to pay his lawyer's fee, and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 14 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President