

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

FOURTH SECTION

CASE OF CSATA v. ROMANIA

(Application no. 65128/19)

JUDGMENT

STRASBOURG

18 April 2023

This judgment is final but it may be subject to editorial revision.



In the case of Csata v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Faris Vehabović*, President*,
Branko Lubarda,
Ana Maria Guerra Martins*, judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 65128/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 December 2019 by a Romanian national, Ms Alex-Daniel Csata ("the applicant"), who was born in 1982, lives in Timişoara and was represented by Mr C. Costea, a lawyer practising in Timişoara;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

Having deliberated in private on 28 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The issue in the case is whether the refusal to grant legal recognition of the applicant's gender identity was in breach of Articles 8 and 14 of the Convention.

2. The applicant is a transgender woman who was born in 1982. While she was assigned male at birth, she identified as a girl from a young age; she preferred behaving and socially presenting herself in a manner society expects of girls. Upon the appearance of secondary sexual characteristics during adolescence, she experienced a strong adverse reaction to the sex she had been assigned at birth. In 2013 and 2014 she was diagnosed with "sexual identity disorder" and commenced an integrative psychotherapeutic process and hormone replacement therapy. The applicant has been living as a woman ever since and is acknowledged as such in her current workplace.

3. On 10 October 2016 she applied to the Timișoara District Court seeking authorisation to undergo sex reassignment surgery and to amend her legal gender marker, forename and national identification number in her civil status records. She subsequently withdrew the request concerning the surgery as she no longer wanted to undergo it. A forensic psychiatric report issued in September 2017 by the Timișoara Institute of Forensic Medicine, at the court's request, found that the applicant met "the diagnostic criteria for sexual identity disorder – transsexualism" and that she had "the mental capacity to understand the consequences of identifying with a gender other than the one in her legal documents".

4. On 19 October 2017 the Timișoara District Court granted the applicant's request in part, allowing the amendment of her legal gender marker from male to female. It relied on the provisions of the domestic legislation and Article 8 of the Convention, as well as on the Court's case-law. The court rejected the applicant's remaining claims, finding that the amendments of the forename and of the national identification number were to be obtained through a separate administrative procedure.

5. Both the applicant and the defending authorities appealed against that decision to the Timiș County Court, which overturned it in a final decision of 23 May 2019; the court dismissed the application in full on the ground that the applicant had not undergone and was not planning to undergo sex reassignment surgery. The County Court reasoned that the applicant's objective was to register a mainly psychological condition corresponding to her gender identity in her civil status records which concerned the sex characteristics, assigned at birth. This "public display of an inner disorder" would lead third parties to think they were interacting with a woman, when "the person was in reality a man from a biological point of view". The most serious consequences might be encountered in the event of marriage or death; the applicant would end up being able to marry a man, thus violating domestic legislation, which prohibited marriage between persons of the same sex. Moreover, should there be a need for identification after death, her "biological characteristics" could lead to her gender being mistaken; the rights of potential heirs and their assets would therefore remain uncertain. The County Court's decision was drafted on 21 June 2019.

6. The applicant complained under Articles 8 and 14 of the Convention that she had not been able to obtain legal gender recognition because she had not undergone and was not planning to undergo sex reassignment surgery. She further claimed, on the basis of the same facts, that she had been discriminated against.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 § 1 OF THE CONVENTION

7. After unsuccessful friendly-settlement negotiations, on 18 February 2022 the Government submitted a unilateral declaration in which they admitted a breach of the applicant's rights under Articles 8 and 14 of the Convention and offered to pay her a sum to cover any pecuniary and non-pecuniary damage together with any incurred costs and expenses. They further requested the Court to strike the application out of its list of cases.

8. By a letter of 18 March 2022, the applicant asked for the merits of her complaints to be determined with a view to obtaining appropriate redress; she emphasised that she had yet to obtain legal gender recognition and that only

a judgment by the Court finding a violation of Articles 8 and 14 of the Convention would allow her to enjoy her rights domestically.

9. The Court notes that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI, and *Angelov and Others v. Bulgaria*, no. 43586/04, § 12, 4 November 2010).

10. The instant case concerns the applicant's inability to obtain legal gender recognition. The Government's declaration does not contain any undertaking to address this substantive issue under the Convention.

11. Even assuming that the current domestic case-law offers an effective prospect of obtaining legal gender recognition without undergoing sex reassignment surgery, the Court observes that the unilateral declaration contains no undertaking by the Government to reopen the proceedings at the domestic level. The Court further notes that the domestic legislation provides for the reopening of proceedings in civil matters in the event of a finding of a violation of the Convention by the Court. Therefore, in such circumstances, it has not been established with sufficient certainty that the applicant could seek and obtain the reopening of the proceedings in her case solely on the basis of a striking-out decision adopted by the Court (see *Bocu v. Romania*, no. 58240/14, § 27, 30 June 2020).

12. Accordingly, the Court considers, in the particular circumstances of the case, that the unilateral declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the case. That being so, the Court rejects the Government's request for the application to be struck out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

14. The general principles concerning the legal recognition of the gender identity of transgender people, including those who have not undergone or do not wish to undergo sex reassignment surgery, have been summarised in *X and Y v. Romania* (nos. 2145/16 and 20607/16, §§ 106-08 and 146-48, 19 January 2021).

15. In the present case, the domestic courts found that the applicant was a transgender person on the basis of detailed medical information and the way she presented herself socially. They refused to accept her request for legal gender recognition on the ground that she had not undergone sex reassignment surgery. The Court observes that the applicant did not wish to undergo such surgery and invoked, in substance, before both the domestic courts and the Court, her right to self-determination.

16. In *X and Y v. Romania* (cited above, §§ 151-57), the Court found that, while the Romanian domestic legislation did not enshrine a specific procedure concerning the legal recognition of gender identity, it did contain a legal basis for deciding upon such requests. After an in-depth examination of the relevant domestic case-law, the Court concluded that the Romanian legal framework in terms of legal gender recognition was not clear and foreseeable in its application.

17. As regards the requirement to undergo sex reassignment surgery in order to obtain legal gender recognition, which was used to justify the rejection of the applicant's requests, 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 for a change of legal identity (see, *mutatis mutandis, S.V. v. Italy,* no. 55216/08, § 69, 11 October 2018).

18. However, the rigid reasoning of the authorities placed the applicant, for an unreasonable and continuous period, in an anomalous position in which she experienced feelings of vulnerability, humiliation and anxiety (see *X and Y v. Romania*, cited above, § 165). She faced an insoluble dilemma, being required either to undergo the surgery and waive the full exercise of her right to respect for her physical integrity or to renounce the recognition of her gender identity, which relates to her right to respect for private life. The Court therefore finds that the authorities disregarded the fair balance which has to be struck between the general interest and the interests of the individual (see *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others, § 132, 6 April 2017).

19. As already established in *X and Y v. Romania* (cited above, § 163), the domestic legislation does not contain a requirement to undergo sex reassignment surgery in order to obtain legal gender recognition. The Government argued that the domestic case-law concerning legal gender recognition had developed since 2019, when the applicant's case was decided, in the sense that the courts no longer required such surgery to be undergone. This further confirms that undergoing such surgery cannot be considered a relevant aspect when striking a fair balance between the competing public and private interests at stake.

20. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities' refusal to grant legal recognition to the applicant's gender identity in the absence of sex reassignment surgery breached the applicant's right to respect for her private life.

21. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

22. The applicant alleged a violation of Article 14 read in conjunction with Article 8 of the Convention, based on the same facts.

23. 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 paragraphs 13-21 above), the Court considers it unnecessary to examine whether there has been a violation in the present case of the provision relied on (see *X and Y v. Romania*, cited above, § 171).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and 4,000 Romanian lei (RON – equivalent to EUR 810) in respect of costs and expenses incurred before the domestic courts and before the Court.

25. The Government contested the claim in respect of non-pecuniary damage arguing that, should the Court find a violation in the case, that finding should, in itself, constitute just satisfaction and that, in any event, the amount claimed was excessive. Concerning the costs and expenses, the Government argued that the invoices put forward by the applicant did not provide sufficient information to determine whether the expenses incurred were necessary and duly justified.

26. The Court considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 810 covering costs and expenses under all heads, 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 on the merits the complaint under Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 810 (eight hundred and ten euros), 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Faris Vehabović President