



## Imprecision of domestic legislation for gender changes in civil-status records in Georgia

In today's **Chamber** judgment<sup>1</sup> in the case of [A.D. and Others v. Georgia](#) (application no. 57864/17) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The applicants are transgender men (assigned female at birth). The case concerned their complaints that they had been unable to obtain legal recognition of their gender because they had not undergone sex reassignment surgery.

The Court found in particular that, despite the fact that the right to have one's sex changed in civil-status records had existed in Georgia since 1998, there had not apparently been one single case of successful legal gender recognition. The imprecision of the current domestic legislation undermined the availability of legal gender recognition in practice, and the lack of a clear legal framework left the domestic authorities with excessive discretionary powers, which could lead to arbitrary decisions in the examination of applications. Such a situation was fundamentally at odds with the respondent State's duty to provide quick, transparent and accessible procedures for legal gender recognition.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicants, A.D., A.K. and Nikolo Ghviniashvili ("the third applicant"), are Georgian nationals who were born in 1979, 1988 and 1973 respectively. They are transgender men (assigned female at birth).

Following successful applications to the Civil Status Agency between 2011 and 2015, their forenames were changed from traditionally female names to traditionally male ones in their civil-status records. They also received medical certificates from psychologists diagnosing them with "gender identity disorder (transsexualism)".

Backed by those certificates, between December 2014 and April 2015 each of the three applicants requested legal gender recognition – that is to have their gender changed in their civil-status records from female to male. Prior to that, A.K. and the third applicant had undergone hormonal treatment to increase testosterone levels and A.K. had had a mastectomy. Their requests were rejected by the agency on the ground that they had not shown that they had undergone medical sex reassignment procedures.

The applicants lodged complaints with the courts. During the court proceedings, the agency acknowledged that domestic law did not define which exact medical procedures were necessary or what kind of medical proof was required in order for a "change of sex" to take place within the meaning of the Civil Status Act of 20 December 2011. However, it maintained that a medical

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

certificate proving that their biological and/or physiological sex characteristics had been changed was necessary.

The Tbilisi City Court dismissed their complaints, reasoning that gender self-identification was not sufficient, since a precondition for changing the gender in the civil-status records was, according to the Civil Status Act of 20 December 2011, sex reassignment. As none of the applicants had undergone any of the existing sex reassignment procedures, their request for legal gender recognition could not be allowed. Whilst the court stipulated that the applicant's sex could be changed by way of medical procedures, it did not specify exactly what those procedures were. However, it concluded that only post-operative transgender people were entitled, after changing sex, to obtain legal gender recognition.

Appeals on points of law lodged by A.D. and A.K. were rejected by the Supreme Court in late 2016 and early 2017.

At the main hearing, in July 2017, of an appeal lodged by the third applicant at the Tbilisi Court of Appeal, one of the judges asked the relevant domestic authority which exact medical procedures he would have to undergo in order to be able to prove a change of sex, whether those could only be carried out by means of surgical intervention or whether some other, less intrusive, procedures might suffice and whether, in that connection, there was a need for further precisions to be introduced into the domestic law. The reply given was that the domestic law was already clear about what constituted a change of sex, and that it could be achieved by means of "surgical procedures".

In October 2017, the appeal was dismissed. The court wrote that, although several European countries had opted for allowing a change of gender in civil-status records on the basis of a person's gender self-identification, Georgian law was clear in making the matter contingent upon sex reassignment "by means of surgery". It went on to specify that it was important "for any medical procedures undertaken with the aim of changing sex to have an irreversible impact, and this irreversibility cannot be achieved by means of hormonal treatment only. ... The change of a secondary sex characteristic cannot in and of itself show a change of sex."

The third applicant's further appeal on points of law was dismissed by the Supreme Court essentially because he had not presented any medical certificate attesting that the hormonal treatment he had received was irreversible. Another reason given was that the Constitution did not recognise same-sex marriages and if transgender people were allowed to have their gender changed on their identity documents solely on the basis of their gender self-identification, that could potentially result in leeway for same-sex couples to marry, which would constitute a breach of the Constitution.

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), the applicants complained about their inability to have gender changed in civil-status records since the legal framework was unclear.

The applications were lodged with the European Court of Human Rights on 1 August 2017, 10 November 2017 and 18 October 2019 respectively.

The Court joined the applications and examined them in a single judgment.

Third-party interventions were submitted by the Public Defender of Georgia, ILGA-Europe and TGEU, and the Human Rights Centre of Ghent University.

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

Georges Ravarani (Luxembourg), *President*,  
Carlo Ranzoni (Liechtenstein),  
Mārtiņš Mits (Latvia),

Stéphanie Mourou-Vikström (Monaco),  
Lado Chanturia (Georgia),  
Mattias Guyomar (France),  
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

Under Article 8 of the Convention, the Court's case-law on legal gender recognition had already found that member States were expected to provide quick, transparent and accessible procedures for changing the registered sex of transgender persons.

The Court observed that, not only was the right to have one's sex changed in civil-status records enshrined in law in Georgia, but it was also interpreted as forming part of the constitutional right to free development of personality under Article 12 of the Constitution. However, despite the fact that such a right had existed in the country since 1998, there had not apparently been one single case of successful legal gender recognition.

The Court accepted that legal gender recognition had to be regulated in order to safeguard the principle of civil status, the consistency and reliability of civil-status records and, more broadly, the need for legal certainty. However, whilst the right to have one's sex changed in civil-status records existed in Georgia, the law did not clearly indicate the terms and conditions to be fulfilled for legal gender recognition to take place. The Government had also omitted to address the Court's specific question regarding the exact medical procedures required for the purposes of legal gender recognition. The Court found therefore that domestic law and practice did not provide any indication of the exact nature of the medical procedures to be followed.

It also observed that the Government put forward that the expression "change of sex" in the Civil Status Act had to be assessed on "biological, physiological and/or anatomical criteria". However, the utmost care and precision was required when using such different terms interchangeably, because each of those terms had its own particular meaning and entailed distinct legal implications. For instance, if "change of sex" was to be defined on the basis of biological criteria, then it would never be possible to obtain legal gender recognition, as chromosomes could not be changed by any amount of medical intervention.

The Court noted also that there was a clear contradiction in how the domestic courts had handled the third applicant's case. Whilst the Court of Appeal had stated that the completion of hormonal treatment, with the resulting change in secondary sex characteristics, was not sufficient for legal gender recognition, the Supreme Court had suggested the contrary, notably that a medical certificate attesting to the "irreversibility" of the hormonal treatment was sufficient.

The Court found that the inconsistencies in the reading of the domestic law by the domestic courts were conditioned, at least in part, by the fact that the law itself was not sufficiently detailed and precise. The imprecision of the current legislation undermined the availability of legal gender recognition in practice, and the lack of a clear legal framework left the domestic authorities with excessive discretionary powers, which could lead to arbitrary decisions. Such a situation was fundamentally at odds with the State's duty to provide quick, transparent and accessible procedures for legal gender recognition.

The Court concluded that there had been a violation of Article 8 of the Convention.

### Just satisfaction (Article 41)

The Court held that Georgia was to pay each of the applicants 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 9,812.86 to the third applicant in respect of costs and expenses.

*The judgment is available only in English.*

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