



## Refusal by German courts to allow transgender parent who gave birth to a child to be recorded as father did not violate Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [O.H. and G.H. v. Germany](#) (applications nos. 53568/18 and 54741/18) the European Court of Human Rights held, unanimously, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned two applicants, a transgender parent (O.H.) and his child, the second applicant (G.H.), to whom he had given birth. They complained about a refusal of the German courts to allow O.H. to be recorded as father of G.H. on the grounds that O.H. had given birth to the child, even though the legal recognition of his gender change to male had already been obtained in 2011, i.e. before the child was conceived in 2013.

Under German law, the former sex and former forename of a transgender parent had to be indicated, not only where the birth had taken place before the recognition of the parent's gender change became final, but also where, as in the present case, the conception or birth of the child post-dated the gender reclassification.

Having regard to the fact that the first applicant was the parent of the second applicant had not been called into question in itself, to the limited number of situations which could lead – on presentation of the child's birth certificate – to the revelation of the transgender identity of O.H., and to the broad discretion ("margin of appreciation") afforded to the respondent State, the Court found that the German courts had struck a fair balance between the rights of the first applicant (O.H.), the interests of the second applicant (G.H.), considerations concerning the child's welfare and the public interests.

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

### Principal facts

The applicants, O.H. (born in 1982) and G.H. (born in 2013), are German nationals and live in Germany.

The first applicant, O.H., was born female and used female forenames until 2010 when the District Court granted his request to use male forenames. In 2011 the German courts acknowledged that O.H. was reclassified as male.

According to O.H., having obtained legal recognition of his reclassification to male, he had discontinued his hormonal treatment and had been able to conceive again. It was thus that in 2013 he gave birth to a son (G.H.) using sperm from a donor who had apparently agreed not to claim the status of legal father.

On his son's birth O.H. asked the civil register office to put his name down as the child's father rather than mother on the birth record. His request was referred by the registrar to the German courts,

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).

which ordered that his name be entered as the child's mother in accordance with German law. The applicants' appeals against that decision were unsuccessful.

Accordingly O.H. was recorded as the child's mother with the forenames that he had been using prior to his gender reclassification.

## Complaints, procedure and composition of the Court

In the European Court the applicants complained about a refusal of the German courts to allow O.H. to be recorded as father of G.H. on the grounds that he had given birth to the child, in spite of the legal recognition of his gender reclassification to male in 2011, that is to say before the child was conceived in 2013. The applicants relied in particular on Article 8 (right to respect for private life) of the Convention.

The applications were lodged with the European Court of Human Rights on 7 November 2018.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,  
Tim **Eicke** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Branko **Lubarda** (Serbia),  
Armen **Harutyunyan** (Armenia),  
Anja **Seibert-Fohr** (Germany),  
Ana Maria **Guerra Martins** (Portugal),

and also Andrea **Tamietti**, *Section Registrar*.

## Decision of the Court

### Article 8

Pointing to the factors to be taken into account when determining the discretion ("margin of appreciation") afforded to the States, the Court noted that the rights at stake in the present case did not entail a narrowing of that margin. It further observed that there was no consensus among European States as to how to indicate in the register of births, in the entry for a given child, that one of the persons having parental status was transgender. This lack of consensus reflected the fact that gender reclassification combined with parenthood raised sensitive ethical issues and served to confirm that States should in principle be afforded a wide margin of appreciation in such matters. Moreover, the German authorities had been called upon in the present case to weigh in the balance a number of private and public interests against a number of competing rights: first, the rights of the transgender parent (O.H.); second, the fundamental rights and interests of the child (G.H.), that is to say, his right to know his origins, his right to receive care and education from both his parents, and his interest in having a stable legal attachment to his parents; lastly, the public interest, which lay in the consistency of the legal system and in the accuracy and completeness of civil registration records, which had particular evidential value in German law. In the light of these circumstances, the Court considered that the German authorities had enjoyed a wide margin of appreciation in the present case. It also reiterated that whenever a child's situation was at stake, his or her best interests must be paramount.

As regards the right to respect for private life, the Court observed that the intention of the German legislature had been that the transgender parent's former sex and former forename should be indicated, not only in the case of a birth which had taken place prior to the recognition of the

parent's gender change becoming final, but also where, as in the present case, the child's conception or birth post-dated the gender reclassification.

On the one hand, the Federal Court of Justice had noted that the indication of the first applicant's (O.H.) original sex in the register of births in respect of the second applicant (G.H.) might infringe, among other things, the first applicant's (O.H.) right to self-determination with the risk of disclosure of his former gender and forenames. On the other hand, it had reiterated that this right was not guaranteed in an unlimited manner and had to be weighed against public interests (in particular the consistency of the legal system and the keeping of complete and accurate civil registration records) and against the rights and interests of the child (in particular the right to know his or her origins, the right to receive care and education from both parents and the interest in having a stable legal connection to a mother and a father from birth on the basis of biological reproductive functions). In that context, the Court emphasised that motherhood and fatherhood, as legal categories, were not interchangeable and were to be distinguished both by the preconditions attached to their respective justification and by the legal consequences which arose therefrom. It pointed out that the public interests relied on by the Federal Court of Justice were recognised by its own case-law.

As regards the rights of the child, the applicants had criticised the Federal Court of Justice for not examining the second applicant's (G.H.'s) individual rights and for considering them solely as limiting the rights invoked by the first applicant (O.H.). There had been no obligation for the Federal Court to consider the interests of the second applicant (G.H.) only as presented by the first applicant (O.H.); on the contrary, it had been required to examine them exhaustively and, in particular, to take account of any conflicts of interest between the two applicants. The Federal Court of Justice had expressly examined whether the attribution to parents of a legal status that was unrelated to biological reproductive functions would be such as to infringe the child's fundamental rights.

Moreover, the divergence between the interests of the transgender parent (O.H.) and those of the child (G.H.) had naturally arisen shortly after the child's birth, when it had been necessary to determine what information should be entered in the birth register, and thus at a time when the child's welfare could not be examined on an individualised basis on account of his or her young age. In the view of the Federal Court of Justice, the child's interests coincided to a certain extent with the general interest in ensuring the reliability and consistency of civil registration records together with legal certainty. In addition, the child's right to know his or her origins, which the Federal Court of Justice had emphasised in limiting O.H.'s right to gender identity, was also protected by the Convention and encompassed, in particular, the right to establish the details of one's descent.

As regards the child's right to be brought up by both parents, the Federal Court of Justice had identified as underlying that right, in particular, the child's interest in being able to establish and have recorded, as appropriate, the paternity of his biological father. If O.H. were to be indicated as father in the register of births, the child's biological father could be registered as father only on the condition that the child first contested O.H.'s paternity, an option which the Federal Court of Justice had found unacceptable for the child. It had also pointed out that a child's legal relationship with its parents in accordance with their respective reproductive functions enabled the child to be attached in a stable and unchanging manner to a mother and father who would not change, even in a scenario – that the Constitutional Court had regarded as not merely theoretical – where the transgender parent subsequently sought the annulment of the gender reclassification.

Lastly, the indication of O.H.'s former forenames in the register of births corresponded to the aim pursued by the sole possibility provided for by law, namely to record O.H. as the child's mother, and also served to prevent the child from having to disclose that his parent was transgender.

The Court reiterated that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves was in principle a matter that fell within the Contracting States' margin of appreciation and that there were different ways of ensuring respect for private life. The Federal Court of Justice had stated that the purpose of section 5(3) of

the TSG (*Transsexuellengesetz*) Act was to keep the transgender identity of a parent secret so as not to require the child to produce a birth certificate from which it could be seen that the parent was transgender; that it was possible to obtain a birth certificate without any mention of the parents in order not to reveal O.H.'s transgender identity; and that only a limited number of persons, who were generally aware of the transgender identity of the person concerned, were entitled to request a full copy of the birth certificate, any other person having to show a legitimate interest in obtaining one. In the Court's view, these precautions were such as to reduce the inconvenience to which O.H. might otherwise be exposed when required to prove his parental status *vis-à-vis* his son.

Consequently, having regard, on the one hand, to the fact that the first applicant was the parent of the second applicant had not in itself been called into question, to the limited number of scenarios which could lead, when the child's birth certificate was presented, to the disclosure of O.H.'s transgender identity and, on the other, to the wide margin of appreciation afforded to the respondent State, the Court considered that the German courts had struck a fair balance between the rights of the first applicant (O.H.), the interests of the second applicant (G.H.), considerations concerning the child's welfare and the public interests. There had therefore been no violation of Article 8 of the Convention.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_CEDH](https://twitter.com/ECHR_CEDH).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Inci Ertekin (tel : + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

**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.