



The requirement to undergo sterilisation or treatment involving a very high probability of sterility in order to change the entries on birth certificates was in breach of the right to respect for private life

In today's **Chamber** judgment¹ in the case of [A.P., Garçon and Nicot v. France](#) (application nos. 79885/12, 52471/13 and 52596/13) the European Court of Human Rights held:

by six votes to one, that there had been a **violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights in respect of E. Garçon and S. Nicot, on account of the obligation to establish the irreversible nature of the change in their appearance;

by a majority, that there had been **no violation of Article 8** of the Convention in respect of E. Garçon on account of the obligation to prove that he actually suffered from gender identity disorder and in respect of A.P. on account of the obligation to undergo a medical examination.

The case concerned three transgender persons of French nationality who wished to change the entries concerning their sex and their forenames on their birth certificates, and who were not allowed to do so by the courts in the respondent State. The applicants submitted, among other points, that the authorities had infringed their right to respect for their private life by making recognition of sexual identity conditional on undergoing an operation involving a high probability of sterility.

The Court held, in particular, that making recognition of the sexual identity of transgender persons conditional on undergoing an operation or sterilising treatment to which they did not wish to submit amounted to making the full exercise of one's right to respect for private life conditional on relinquishing full exercise of the right to respect for one's physical integrity.

Principal facts

The three applicants are French nationals. The first applicant, A.P., was born in 1983 and lives in Paris (France). The second applicant, E. Garçon, was born in 1958 and lives in Perreux-sur-Marne (France). The third applicant, S. Nicot, was born in 1952 and lives in Essey-les-Nancy (France). In view of the similarity between the applications, the Court considered it appropriate to join them, in application of Rule 42 § 1 of the Rules of Court.

On 11 September 2008 A.P. brought proceedings against the public prosecutor at the Paris *tribunal de grande instance* (TGI) to have it established that he was now a female and that his first name was A. (a female forename). He submitted four medical certificates in support of his request, one of which certified gender reassignment surgery undergone in Thailand on 3 July 2008. In an interlocutory judgment of 17 February 2009, the TGI ordered a report covering the physiological, biological and psychological aspects of his situation. A.P. refused to submit to this examination, on account of its cost and the infringement of his physical and moral integrity. By a judgment of 10 November 2009, the TGI dismissed A.P.'s action. The Paris Court of Appeal confirmed the TGI's

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.

judgment in so far as it dismissed the request to change the entry on his sex, but ordered that the forenames be changed. On 7 June 2012 the Court of Cassation dismissed an appeal on points of law.

On 17 March 2009 E. Garçon brought proceedings against the public prosecutor at the Créteil *tribunal de grande instance* (TGI) to have it established that he was now a female and that his first name was Émilie. He referred to a certificate drawn up by a psychiatrist in 2004; this certificate indicated that he was transgender, but it was not added to the case file. On 9 February 2010 the TGI held that, since he had failed to demonstrate that he actually suffered from the alleged gender identity disorder, E. Garçon's action ought to be dismissed. The Paris Court of Appeal upheld the judgment. On 13 February 2013 the Court of Cassation dismissed an appeal on points of law.

On 13 June 2007 S. Nicot brought proceedings against the public prosecutor at the Nancy TGI to have it established that he was now a female and that his first name was Stéphanie. On 7 November 2008 the TGI adjourned the proceedings and ordered that medical documents on the applicant's medical and surgical treatment, proving the effectiveness of his sex change, be submitted to the case file. S. Nicot refused to submit these documents. In consequence, by a judgment delivered on 13 March 2009, the TGI dismissed his action. The Nancy Court of Appeal upheld the judgment. On 13 February 2013 the Court of Cassation dismissed an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), A.P., E. Garçon and S. Nicot complained that the rectification of the entry on their sex on their birth certificates was made conditional upon the irreversibility of the change in their appearance. E. Garçon further complained that the condition of proving that he suffered from gender identity disorder infringed the human dignity of the persons concerned. Lastly, A.P. complained that the medical examinations ordered by the domestic courts amounted, at least potentially, to degrading treatment.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8, E. Garçon and S. Nicot alleged that making the change in one's birth certificate conditional on providing evidence of gender identity disorder or gender dysphoria and on evidence of having undergone irreversible gender reassignment surgery amounted to reserving the exercise of this right to transsexual individuals and refusing it to transgender persons.

A.P. alleged that there had been a violation of Article 6 (right to a fair hearing), in that the domestic courts had committed a manifest error of assessment in concluding that, since he had refused to submit to a medical examination, no proof had been adduced of an irreversible change in his appearance, although A.P. had submitted a medical certificate to that effect.

The application was lodged with the European Court of Human Rights on 5 December 2012.

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

Angelika **Nußberger** (Germany), *President*,
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court noted that, before the domestic courts, A.P. had not challenged the condition, imposed by French law at the relevant time, that the change in his appearance be irreversible, but had attempted to argue, using a medical certificate established abroad, that he fulfilled this condition. He had thus not exhausted the domestic remedies and this part of his application was therefore inadmissible.

With regard to the two other applicants' complaint concerning the criterion that the change in one's appearance be irreversible in order for requests for amendments to the "sex" entry on birth certificates to be granted, the Government did not dispute the applicability of Article 8 to the present case under its "private life" aspect, in that the latter included the right to sexual identity. The Court noted, firstly, that the disputed criterion implied undergoing an operation or medical treatment involving a high probability of sterility. In addition, given that individuals' physical integrity and sexual identity were at stake, the Court granted the respondent State limited room for manoeuvre ("a narrow margin of appreciation"). The Court noted that making recognition of the sexual identity of transgender persons conditional on undergoing an operation or sterilising treatment to which they did not wish to submit amounted to making the full exercise of one's right to respect for private life conditional on relinquishing full exercise of the right to respect for one's physical integrity. The Court held that the fair balance that the States Parties were required to strike between the general interest and the interests of the individuals concerned had not been maintained. In consequence, it considered that the condition that the change in an individual's appearance had to be irreversible amounted to a failing by the respondent State to comply with its positive obligation to guarantee the right to respect for private life. The Court held that there had been a violation of Article 8 in this regard.

With regard to the condition of proving that one did in fact suffer from gender identity disorder, imposed by French law in order to grant requests for changing sex, the Court observed that a broad consensus existed among the member States in this area and that this criterion did not directly call into question an individual's physical integrity. The Court concluded from this that, although individuals' sexual identity was at stake, the States retained considerable room for manoeuvre in deciding whether to impose such a condition. It followed that the respondent State had not failed in its positive obligation to guarantee E. Garçon's right to private life. The Court concluded that there had not been a violation of Article 8 in that connection.

Lastly, with regard to the obligation to undergo a medical examination, complained of by A.P., the Court noted that the contested examination had been ordered by a judge as part of the evidence-gathering process, an area in which the Court granted the States Parties considerable room for manoeuvre. The Court noted that, although the medical report entailed a genital examination, the scope for potential interference in the exercise of his right to respect for private life had to be considered as very relative. That circumstance did not therefore represent a failing by the respondent State to comply with its positive obligation to guarantee A.P.'s right to private life. It followed that there had not been a violation of Article 8 in that connection.

Article 14 taken together with Article 8

The Court noted that this part of the application was admissible. However, having regard to its finding of a violation of Article 8 of the Convention in respect of E. Garçon and S. Nicot on account of the obligation to establish the irreversible nature of the change in their appearance, the Court did not consider it necessary to examine separately the complaint under Article 14 taken together with Article 8.

Article 6 § 1

The Court noted that this part of the application was admissible. It considered, however, that the facts complained of by A.P. did not raise, under Article 6 § 1, any issue distinct from those it had already determined under Article 8. It therefore concluded that it was not necessary to examine this part of the application.

Just satisfaction (Article 41)

The Court considered that, in the circumstances of the case, the finding of a violation of Article 8 of the Convention constituted sufficient just satisfaction, and considered it reasonable to award E. Garçon and S. Nicot, each, 958.40 euros in respect of costs and expenses.

Separate opinion

Judge Ranzoni expressed a dissenting opinion. It is annexed to the judgment.

The judgment is available only in French.

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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.